

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.

Douglas Wilson Companies, Court Appointed Receiver  
Case of Common Pleas, Hamilton County, Ohio  
Case No. 1001127

## **EXHIBIT A**

FMP Northgate LLC by Douglas P. Wilson of Douglas Wilson Companies, the court appointed receiver for FMP Northgate LLC ("Claimant") appointed by the Order Appointing Receiver entered February 15, 2010 in The Haminton County, Ohio Court of Common Pleas, Case No. A1001127, a copy of which is attached as Exhibit B, and files this claim regarding the balance due from Debtor Large Apparel of Ohio, Inc., a Delaware Corporation ("Debtor") based on its lease with Claimant:

Claimant leased certain property located in Northgate Mall to Debtor ("Property") pursuant to a Lease dated May 26, 2006 ("Lease"), a copy of which is attached as Exhibit C. Debtor identifies the Lease as Store 405. Claimant did not object to the proposed cure amount of \$88,648.57 proposed by Debtor in the Schedule of Executory Contract Cure Amounts ("Schedule"). Exhibit F to Debtor's Schedule of Assets and Liabilities lists the amount due to Claimant by Debtor at \$88,648.57 and there is no indication in said Schedule by Debtor that the debt is contingent, unliquidated or disputed.

Claimant and Debtor have been in negotiations regarding the Lease and upon information and belief, Claimant expects that its lease will be assumed. In the event the Lease is rejected, Claimant reserves all rights to amend this claim to seek rejection damages as allowed by law. If the Lease is assumed, then Claimant shall be paid the cure amount listed in the Schedule and all amounts that have become due post-petition or an amount agreed to between the parties.

Claimant is entitled to administrative priority for all amounts that have become due post-petition, which are detailed in Exhibit D, and may continue to accrue. To date, \$22,045.38 has accrued post-petition due to Debtor's continued use of the leased premises.

Claimant expressly reserves all of its rights under the Bankruptcy Code (including under 11 U.S.C § 365) and applicable nonbankruptcy law and the right to assert additional claims arising from or in connection with the loan documents. Neither the filing of this proof of claim nor anything contained in this proof of claim shall constitute a waiver or be deemed to constitute a waiver of any claims Claimant had, has or may have in the future against the Debtor or any third party, all of which claims are expressly reserved.

Claimant reserves the right to amend and/or supplement this proof of claim to reflect any additional expenses, damages or claims of whatever kind or nature that it may have against the Debtor.

The filing of this proof of claim is not:

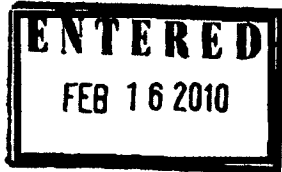
- (a) a waiver or release of any right or claim of Claimant arising out of any other claim, of any nature whatsoever, which Claimant has against the Debtor;
- (b) an election of any remedy to the exclusion, express or implied, of any other remedy;
- (c) a consent that this claim is a debt which is subject to discharge in this or any other subsequent bankruptcy proceeding; or

- (d) a waiver of its rights to seek any relief, redress or remedy in this or any subsequent bankruptcy proceeding.

All notices, responses and/or objections concerning this proof of claim should be sent to:

Cara R. Hurak  
Graydon, Head & Ritchey LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, Ohio 45202

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



Wells Fargo Bank, N.A., as trustee for the  
registered holders of Credit Suisse First  
Boston Mortgage Securities Corp.,  
Commercial Mortgage Pass-Through  
Certificates, Series 2003-CPN1, acting by and  
through its special servicer Midland Loan  
Services, Inc.,

Case No. A 1001127

Judge: Ethna Cooper

**ORDER APPOINTING RECEIVER**

Plaintiff,

vs.

FMP Northgate LLC, et al.,

Defendants.



D87078687

A. Plaintiff, Wells Fargo Bank, N.A. (successor by merger to Wells Fargo Bank Minnesota, N.A.), as trustee for the registered holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2003-CPN1 ("Plaintiff"), filed its complaint seeking certain relief, including the appointment of a receiver.

B. Defendant FMP Northgate LLC, successor by merger to Northgate Partners, LLC ("Borrower") granted Plaintiff a certain mortgage (the "Mortgage") as more fully set forth in the complaint.

C. The Mortgage granted to Plaintiff a mortgage lien against certain real property (the "Real Estate") located in Colerain Township, Hamilton County, Ohio, being more particularly described in Exhibit A, attached. Plaintiff has further been granted a security interest in Collateral. Borrower operates the Northgate Mall on the Real Estate (the "Project").

D. The term "Collateral" means all personal property, tangible or intangible, used or useable in connections with the Real Estate, including without limitation, all collateral and



personal property described in the Mortgage and other loan documents, and all cash on hand, bank accounts, credit card receipts, bank deposits, security deposits and other cash collateral.

E. The Court has reviewed the complaint and the accompanying Exhibits and any responses thereto. The Court has also reviewed Plaintiff's motion and any responses thereto.

F. Plaintiff's proposed receivership is a limited receivership over the Property and the Collateral and not over the Borrower and is for the purpose of maintaining the uninterrupted operation of the Project and to market and sell the Project. The receivership is not for the purpose of liquidating the Borrower.

G. The proposed receiver Douglas Wilson Companies is extremely experienced with managing this type of property and has acted as receiver in numerous commercial real estate cases.

H. This matter came on before the Court upon the Plaintiff's Motion for an Order Appointing Receiver. Having considered the pleadings and statements of counsel, the Court finds the motion to be well taken.

Pursuant to O.R.C. §2735.01(B) and (F), the Court therefore orders as follows:

1. **Appointment of Receiver and the Receivership Property.**

1.1 Douglas Wilson Companies, a California corporation (by its Chairman, Douglas P. Wilson) ("Receiver"), whose address is 450 B Street, Suite 1900, San Diego, CA 92101, is appointed Receiver of the Receivership Property (as defined below), effective immediately (the "Effective Date"), provided that within five business days of the Effective Date, the Receiver shall post the bond as required below and take the oath attached to this Order. The Receiver's duty to act as receiver is subject to the terms of this Order.

1.2 As of the Effective Date, the Receiver is authorized to direct and take immediate possession and full control of the Receivership Property and to take such other actions as the Receiver deems reasonable and appropriate to take possession of, to exercise full control over, to prevent waste, and to preserve, manage, secure and safeguard the Receivership Property. Borrower shall have neither possession nor control of, nor any right to, Income (as defined below) derived from, the Receivership Property.

1.3 The Receiver shall take possession of and receive from all depositories, banks, brokerages, and otherwise (collectively, "Financial Institutions"), any money on deposit in all such Financial Institutions belonging to or arising from the operation of the Receivership Property, whether such funds be in accounts titled in the name of the entity or not (but excluding any money paid to, or held by, Plaintiff). Notwithstanding the foregoing, all Income shall be deposited into the Lockbox Account presently existing under Borrower's Loan Agreement attached to the complaint and funds shall be disbursed from the Cash Management Account described in the Loan Agreement and funds shall be disbursed from the Cash Management Account, except that Plaintiff may otherwise consent to disbursements to Receiver's operating account. Except for the existing Lockbox Account and the existing Cash Management Account, all Financial Institutions are directed to deliver such deposits to the Receiver and such records as the Receiver may reasonably request with respect to such accounts. The Receiver may indemnify the Financial Institution upon whom such demand is made, and is empowered to open or close any such accounts. The Receiver shall deposit money and funds collected and received in connection with the Receivership Property at federally insured banking institutions or savings associations with offices in this State, which are not parties to this case.

**1.4 Borrower, its property manager, and all of their respective employees are ordered to cooperate with Plaintiff in the transition of the management of the Receivership Property to the Receiver and on the Effective Date turn over to the Receiver all of the following pertaining to the Receivership Property (but only to the extent that such items are in their possession, custody, or control):**

- (a) All keys.**
- (b) All leases including all communication/correspondence files.**
- (c) Documents pertaining to all pending new leases/renewals.**
- (d) A current rent-roll.**
- (e) Tenant contact names and telephone numbers.**
- (f) The occupant ledgers.**
- (g) All security deposits, security deposit accounts, and an accounting for all security deposits.**
- (h) The petty cash fund, if any.**
- (i) A current aged account receivable/delinquency report.**
- (j) An aged listing of all trade payables and other payables.**
- (k) A list of historical common area maintenance charges and operating expenses for the Project.**
- (l) A list of utilities and utility accounts.**
- (m) Year-end 2008 operating statements, year-end 2009 operating statements, and year-to-date 2010 operating statements.**
- (n) All on-site employee payroll records and employee files and applications.**
- (o) An inventory of all equipment, furniture, vehicles and supplies.**
- (p) All existing service contracts.**
- (q) All pending bids for contractor work.**
- (r) All insurance policies on the Project and their terms.**
- (s) All tenant and vendor insurance certificates and loss runs.**
- (t) Information regarding all insurance claims submitted in the past three (3) years.**
- (u) Surveys, site plans, specifications, floor plans, drawings, measurements, etc.**

- (v) Documents identifying and summarizing all pending litigation (excluding this action).
- (w) All documents, books, records and computer files, computer equipment, software, management files, equipment, furniture, supplies, and all passwords needed to access all software and computer files, e-mail account maintained at the on-site management office(s) (and all off-site financial records) including the office located at the Project including, but not limited to, all records concerning the Income, and the operation and management of the Project.
- (x) The tax identification number(s) utilized by Borrower for the operation of the Project.
- (y) Such other records pertaining to the management of the Receivership Property as may be reasonably requested by the Receiver.

Notwithstanding anything in this section to the contrary, the property manager's obligations in this section shall be only upon the Receiver's request.

1.5 Borrower shall prepare and submit to the Plaintiff and the Receiver an accounting for all Income and security deposits received since the first uncured Event of Default (as defined in the Loan Agreement). This accounting shall be delivered no later than 14 days after the Effective Date.

1.6 Borrower and its employees are prohibited from removing any personal property belonging to Borrower from the premises, or diverting any Income.

1.7 Borrower shall fully cooperate with the Receiver in adding the Receiver and Plaintiff as additional insureds and the Plaintiff as the loss payee on all insurance relating to the operation and management of the Receivership Property including, but not limited to, fire, extended coverage, auto and van coverage, property damage, liability, fidelity, errors and omissions, and workers compensation, and modifying the policies if deemed appropriate by the Receiver, but subject to Approval for any modifications to insurance. Borrower and its property managers, employees, and agents are prohibited from canceling, reducing, or modifying any and all insurance coverage in existence with respect to the Receivership Property.

## **2. Receiver's Duties and Authority.**

2.1 The Receiver shall be vested with and shall discharge the following authority, powers and duties:

- (a) To maintain, secure, manage, operate, repair and preserve the Receivership Property.
- (b) To change any and all locks to the Receivership Property and, if appropriate, limit access to some or all of the Receivership Property.
- (c) To assume control over the Receivership Property and to collect and receive all Income.
- (d) To prepare and maintain complete books, records, and financial reports of the Receivership Property, including, but not limited to, operating statements, income statements, balance statements, and all other statements prepared for the Receivership Property in a form acceptable to Plaintiff.
- (e) To allow Plaintiff, its counsel and appraisers and other independent third party consultants engaged by Plaintiff access to the Receivership Property at all reasonable times to inspect the Receivership Property and all books and records, and to cooperate with Plaintiff, its counsel, appraisers, and other independent third-party consultants to evaluate the Project.
- (f) To retain, hire, or discharge on-site employees (none of whom are, or shall be deemed to be, employees of Plaintiff).
- (g) To establish pay rates for any on-site employees.
- (h) To review existing worker's compensation, disability, general liability, and "all risks" hazard insurance and to retain, modify, or purchase such insurance, and name the Plaintiff and the Receiver as additional insureds, as the Receiver deems appropriate for the Receivership Property's preservation and protection, but subject to Approval.
- (i) To maintain a separate account with a federally insured banking institution or savings association with offices in this State in the Receiver's own name, as Receiver, from which the Receiver shall disburse all authorized payments as provided in this Order.
- (j) To receive and endorse checks pertaining to the Receivership Property either in the Receiver's name or in Borrower's name.
- (k) To pay all appropriate real estate taxes, personal property taxes, and any other taxes or assessments against the Receivership Property.
- (l) To prepare and file any tax returns arising in connection with the Receivership Property and the operation of the Receivership Property as may be required by law. The Receiver shall not be responsible for the preparation and filing of any tax returns for Borrower or its affiliates,

(including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns) other than to provide Borrower with information in the Receiver's possession that may be necessary for Borrower or its affiliates to prepare and file their returns. Borrower shall provide to the Receiver any information needed to file any tax returns for the Receivership Property.

- (m) To operate the Receivership Property under any existing name or trade name (or a new name, if the Receiver deems it appropriate to do so).
- (n) To determine and report to the Court and Plaintiff whether any Income received by Borrower since the first uncured Event of Default has been used for purposes other than for the maintenance, management, and expenses of the Project.
- (o) To expeditiously and diligently lease any vacant space in the Project upon market terms and conditions, subject to Approval.
- (p) To collect any unpaid or delinquent rents and common area maintenance ("CAM") charges regardless of whether the obligation(s) accrued before or after the Receiver's appointment.
- (q) To execute, cancel, or modify lease agreements or extensions of leases, subject to Approval.
- (r) To enforce any valid covenant of any existing lease; and to execute, cancel, or modify leases, but subject to Approval.
- (s) To prosecute tenant eviction proceedings in the ordinary course of management of the Receivership Property and to retain an attorney for such purpose, subject to Approval.
- (t) To utilize the Borrower's tax identification number(s) during the operation of the Project.
- (u) To take any and all steps necessary to receive, collect, and review all mail addressed to the Borrower, including, but not limited to, mail addressed to each and every one of the Borrower's employees, and any post office boxes held in the name of the Borrower, and at the Receiver's discretion to instruct the U.S. Postmaster to re-route, hold, or release said mail to Receiver. Mail reviewed by the Receiver in the performance of its duties will promptly be made available for inspection to the Borrower after review by the Receiver

2.2 Any security or other deposits that tenants have paid to Borrower or Borrower's agents and that are not paid to the Receiver, and over which the Receiver has no control, shall be obligations of Borrower and may not be refunded by the Receiver without Approval. Any other

security or other deposits that tenants have paid or may pay to the Receiver shall be refundable by the Receiver in accordance with the leases or agreements.

**3. Receiver's Authority Subject to Approval.**

3.1 In carrying out the duties contained in this Order, the Receiver is authorized, but not required to, and only upon Approval:

- (a) To engage contractors and skilled trades on a competitive-bid basis to complete tenant improvements to the Real Estate and/or to maintain the Real Estate, and to execute such contracts for such purposes as the Receiver deems appropriate, but no Approval is required if:
  - (i) The aggregate amount of the contract is less than \$10,000;
  - (ii) The expenditure is included in the Approved Budget; or
  - (iii) The expenditure is for a life-threatening or other health or safety emergency.
- (b) To enforce, amend, or terminate any existing contracts affecting the Real Estate. The Receiver shall not be bound by any contract between the Borrower and any third party that the Receiver does not expressly assume in writing.
- (c) To reject any leases or unexpired contracts of Borrower that are burdensome on the Receivership Property.
- (d) To execute, cancel, modify, renegotiate, or abrogate all service, maintenance, or other contracts relating to the operations of the Receivership Property, but subject to Approval for contracts in excess of \$10,000. All such contracts are to be terminated upon a sale or disposition of the Receivership Property or termination of the Receivership. The Receiver shall not be bound by any contract between the Borrower and any third party that the Receiver does not expressly assume in writing.
- (e) To employ attorneys, accountants, agents, and other professionals as the Receiver may from time to time deem appropriate and on such terms and conditions as the Receiver deems appropriate.
- (f) To borrow funds for purposes relating to the operations of the Receivership Property. The Receiver shall not borrow funds without first providing Plaintiff, by advance written notice, a reasonable opportunity to elect to advance funds required by the Receiver.
- (g) To contest, protest, or appeal any ad valorem tax or assessment, real estate tax, personal property tax, or other tax or assessment pertaining to the Receivership Property for any new or currently pending tax appeal. Any refund or reimbursement of taxes, whether for taxes paid by the Receiver or Borrower, and whether pertaining to any tax period before or after the

entry of this Order, shall be deemed "Income" to be applied as provided in this Order.

- (h) To prosecute any and all claims, including but not limited to claims related to going out of business sales, administrative expenses, lease assumptions, lease assignments and/or lease rejections, against any of Borrower's tenants in any bankruptcy court action on behalf of or in the name of Borrower until conclusion of the bankruptcy action and to file any proof of claim, amended proof of claim, and/or any such other pleading as may be necessary to pursue any administrative expense, lease assumption, lease assignment and/or lease rejection claim (collectively the "Bankruptcy Claim"). Any amounts paid in partial or full satisfaction of any Bankruptcy Claim, whether such claim arose before or after entry of this Order, shall be deemed "Income" to be applied as provided in this Order.

#### **4. Transfer of the Receivership Property.**

4.1 Pursuant to O.R.C. §2735.04, the Receiver is authorized, and the Court appoints the Receiver as Borrower's attorney-in-fact, to transfer all or any portion of the Receivership Property on behalf of, and in the name of, Borrower, subject to the following conditions precedent:

- (a) The Sheriff has not sold the Property at a foreclosure sale.
- (b) The sale shall be a commercially reasonable sale to a bona fide third party purchaser as determined by the Receiver in its reasonable business judgment.
- (c) The sale may be a cash sale or a sale subject to the existing mortgage.
- (d) No sale shall be made to the Receiver, or to any person or entity with a beneficial interest in the Receiver, or to any person or entity in which the Receiver has a beneficial interest.
- (e) All real estate taxes shall be current at the time of the sale.
- (f) The other terms and conditions of sale shall be appropriate in the reasonable business judgment of the Receiver.

4.2 The procedures to be followed for any transfer of Receivership Property by the Receiver shall be as follows:

- (a) Receiver's selection of any real estate broker and the listing agreement shall be subject to Approval.
- (b) The sale, and contracts for sale, shall be subject to approval and confirmation by further Order of the Court (the "Confirmation Order").

- (c) The Receiver and/or Plaintiff shall petition the Court for approval of any contract for transfer of the Receivership Property and confirmation of such sale. Any resulting Confirmation Order shall be a final order unless (a) a timely motion for rehearing or timely appeal as of right is filed, and (b) the order is stayed within such period upon posting a bond in the amount of the purchase price and such other conditions deemed appropriate by the Court.
- (d) The closing on the transfer of the Receivership Property shall take place in person or by escrow at the offices of a title company approved by the Plaintiff unless otherwise approved by the Receiver and Plaintiff. The closing statement with respect to such sale (including all closing costs, prorations, sales commissions, and any other adjustments to the purchase price) shall be subject to Plaintiff's Approval.
- (e) Within ten (10) days after closing on the transfer of any of the Receivership Property, the Receiver shall file an affidavit with the Clerk of Court stating the following with respect to the property which was sold:
  - (i) The property was sold for a commercially reasonable price;
  - (ii) The date of sale;
  - (iii) The sale complied with the conditions of this Order and the Confirmation Order;
  - (iv) The sale price.

4.3 Subject to Sections 4.1 and 4.2 above, the Receiver has the authority with respect to the transfer of Receivership Property to do and perform all and every act desirable, proper or necessary with respect to the Receivership Property including, without limitation, the authority to execute and deliver deeds of conveyance, any mortgage loan assumption and/or modification agreement, the closing statement, and all other documents necessary or desirable to transfer the Receivership Property, all on behalf of and in the name of Borrower.

4.4 The "Net Proceeds of the Transfer of the Receivership Property" shall be the gross sales price of the Receivership Property less customary closing costs, prorations, sales commissions and other adjustments reasonably approved by the Receiver and Plaintiff in writing.

4.5 The Net Proceeds of the Transfer of the Receivership Property shall be disbursed as follows:

- (a) First, to the payment of any unpaid fees of the Receiver, the out-of-pocket expenses incurred by the Receiver, and other expense of the Receivership, if any, and a reasonable "holdback" for reasonably anticipated postclosing expenses.
- (b) Second, to Plaintiff until the indebtedness secured by Plaintiff's Mortgage has been paid in full.
- (c) Third, to the Clerk of the Court to be held pending further order of the Court.

4.6 Nothing in this Order shall enlarge or restrict the claims and defenses of Plaintiff, other mortgage lien claimants, mechanic's lien claimants, judgment lien claimants and other parties with respect to the Receivership Property.

**5. Rights of Mechanic's Lien Claimants.**

5.1 The rights and priorities of Plaintiff, other mortgage lien claimants, mechanic's lien claimants, judgment lien claimants and all other parties claiming an interest in the Receivership Property shall be determined in accordance with Ohio Revised Code 1311.01, *et seq.*, and other applicable law without regard to the provisions of this Order (except that such lien claims, to the extent they are ultimately deemed to be valid and binding under applicable law, shall, in the event of a sale by the Receiver under Section 4, above, attach to the Net Proceeds of the Sale of the Receivership Property as defined above, and not to the Receivership Property itself).

5.2 Any money received by Plaintiff pursuant to Section 4.5(b) above shall be subject to the rights, if any, of mechanic's lien claimants, other mortgage lien holders, judgment lien holders and other parties (with respect to the Receivership Property).

**6. Extent of Receiver's Authority.**

6.1 Although the Receiver shall have possession and control of the Receivership Property, the Receiver shall not take title to the Receivership Property. Title to the Real Estate shall remain in the name of Borrower (other than Income and other Receivership Property

distributed to Plaintiff as provided in this Order), or its assigns, unless foreclosed upon by the Plaintiff or sold by the Receiver as provided above, in which case title to the Real Estate will remain in the name of Borrower until the delivery of the Sheriff's Deed or the deed from the Receiver, as the case may be.

6.2 Without limiting or expanding the foregoing, the Receiver is authorized to exercise all powers generally available and shall be subject to all the duties of a receiver under the laws of the State of Ohio that may be incidental to the management of the Receivership Property as described in this Order. The Receiver shall have any additional powers that are provided by law and that the Court may from time to time direct or confer.

6.3 The Receiver shall not take any action that impedes or interferes with the foreclosure or foreclosure sale process in carrying out the duties contained in this Order. The Receiver is barred from impeding or frustrating the foreclosure or foreclosure sale process.

6.4 During the pendency of this action, the Receiver may apply to this Court for further instructions or directions.

6.5 The authority granted to the Receiver is self-executing, unless the action requires Approval. The Receiver is authorized to act on behalf of, and in Borrower's name (or the Receiver's name), as the Receiver deems appropriate without further order of this Court and without personal recourse against the Receiver (subject to the General Provisions).

6.6 Any and all advances made by Plaintiff shall be construed as follows:

- (a) All advances to the Receiver by the Plaintiff for the benefit of the Receivership Property, including any advances for working capital or Plaintiff improvements, and any other costs and expenses incurred by the Receiver under this Order, shall be deemed protective advances under the Mortgage. Any such protective advances shall be fully secured by Plaintiff's first priority mortgage lien and security interest against the Real Estate and other Receivership Property.

Without derogating from the foregoing, any and all funds advanced by Plaintiff to the Receiver pursuant to this Order shall:

- (i) Be deemed made pursuant to contract;
  - (ii) Be added to the amount of the indebtedness owed by the Borrower to Plaintiff;
  - (iii) Be deemed secured by the liens and security interests in favor of Plaintiff under the Loan Documents on the Receivership Property to the same extent and with same priority as the other indebtedness secured by all existing liens and security interest under the Loan Documents in favor of Plaintiff; and
  - (iv) Accrue interest at the interest rate as provided under the Loan Documents in favor of Plaintiff.
- (b) All such funds advanced, including interest on advances, shall be deemed a prior lien before the repayment of any and all other claims against the Receivership Property (except for taxes and assessments having first priority as a matter of law) or proceeds of either of them.
  - (c) The Receiver is authorized to issue receivership certificate(s) to secure any such protective advances by the Plaintiff, but subject to Approval.
  - (d) Nothing contained in this Order shall require Plaintiff to advance funds to the Receiver for the payment of operating costs or any other expense related to the Receivership Property. All such protective advances shall be discretionary with the Plaintiff.

**7. Receivership Property and Income.**

7.1 "Receivership Property" means and includes:

- (a) The Real Estate.
- (b) All tangible and intangible property used or useable in connection with the operations of the Real Estate including, without limitation, insurance premium refunds, insurance proceeds, condemnation awards, utility deposits and deposits of every other kind related to the property, causes of action, drawings, plans, specifications, escrow agreements, and all Collateral.
- (c) All Income.
- (d) Any refund or reimbursement of taxes, whether for taxes paid by the Receiver or Borrower, and whether pertaining to any tax period before or after the entry of this Order, and the right to institute or continue any contest, protest, or appeal of any ad valorem tax or assessment, real estate tax, personal property tax, or other tax or assessment pertaining to the Receivership Property.

- (e) All fixtures, trade fixtures, and tenant improvements of every kind or nature located in or upon or attached to, or used or intended to be used in connection with the operation of the Real Estate and any buildings, structures or improvements located on the Real Estate (to the full extent of Borrower's interest in such).
- (f) All permits, licenses, other contracts, and other intangible property pertaining to the Real Estate and the operations of the Real Estate.
- (g) All trade names and trademarks owned or used by Borrower in connection with the Project.
- (h) All books, records, accounts, and documents that in any way relate to the Project, Collateral, or Income.
- (i) All other property, estate, right, title and interest as described in the Mortgage, Assignment of Leases and Rents, Note and other loan documents.

7.2 The term "Income" means, collectively, all cash, cash on hand, checks, cash equivalents, credit card receipts, demand deposit accounts, bank accounts, cash management or other financial accounts, bank or other deposits, and all other cash collateral (all whether now existing or later arising); current and past-due earnings, revenues, rent, CAM charges, issues and profits, accounts, and accounts receivable (all whether unpaid, accrued, due, or to become due); all claims to rent, CAM charges, issues, profits, income, cash collateral, payments made pursuant to any administrative expense, lease termination, lease assumption, lease assignment and/or lease rejection claims in any bankruptcy action, and all other gross income derived with respect to the Project or business operations at the Project, regardless of whether earned before or after entry of this Order. "Income" includes all Income received after the first uncured Event of Default under the Mortgage that was not either (a) paid to the Plaintiff or (b) used for ordinary and necessary business expense, regardless of whether the Income was received on or after the filing of the complaint.

7.3 Lockbox and Cash Management Accounts. Receiver shall deposit all Income into the existing Lockbox Account. The Lockbox Account and the existing Cash Management

Account (collectively the "Controlled Accounts") shall continue to be subject to Plaintiff's security interest and shall continue to be perfected by Plaintiff's control of the accounts. Distribution of Income from the Controlled Accounts to the Receiver's operating accounts shall be subject to the terms of the Loan Agreement pertaining to those accounts.

7.4 Income distributed to the Receiver from the Controlled Accounts shall be applied as follows (but subject to the lien rights granted to Plaintiff):

- (a) to the Receiver's approved fees and expenses;
- (b) to the repayment of any receivership certificate securing any protective advances made by Plaintiff to Receiver;
- (c) to the current post-receivership operating expenses, including any on-site employee payroll expenses, any real estate taxes, and any other taxes arising from the operations of the Project and use in normal business operations incurred during the Receivership, to the extent in the Approved Budget. The Receiver shall not make disbursements other than permitted under the Approved Budget except for:
  - (i) life-threatening or other health or safety issues,
  - (ii) variations on individual line-item(s) not exceeding 10% so long as expenses in the aggregate are within 5% of the Approved Budget on a monthly basis, or
  - (iii) upon Plaintiff's Approval;
- (d) to the loan balance due Plaintiff until paid in full; and
- (e) any surplus to be held pending further order of the Court.

**8. Receiver Compensation, Reports, Accounting, and Bond.**

8.1 The Receiver's compensation shall be as set out in the schedule attached as **Exhibit B**. In addition, the Receiver shall be reimbursed for all expenses incurred by the Receiver, provided that the Receiver's general office administration, accounting and overhead shall not be charged against the Income or Receivership Property. The Receiver, his consultants, agents, employees, legal counsel, and professionals shall be paid on a monthly basis. To be paid on a monthly basis, the Receiver must file a statement of account with the Court and serve a copy on all parties each month for the time and expense incurred in the preceding calendar

8.7 The Receiver shall submit the Receiver's Reports to the Court, for the Court's *in camera* inspection. The Receiver's Reports are not to be filed with the Clerk at the Court and shall not be available for public inspection without a specific order of the Court.

8.8 The Receiver shall furnish to Plaintiff's or Borrower's counsel any additional information regarding the Receivership Property as required by law and as may be reasonably requested by them, but the Receiver is authorized to request instructions from this Court should any party request information or documents that would be unduly burdensome or expensive to produce, or to annoy or harass, or for any other improper purpose.

8.9 The Receiver shall furnish the Receiver's Reports to the following:

Paul E. Perry, Esq.  
Miller, Canfield, Paddock and Stone, P.L.C.  
511 Walnut Street, 19<sup>th</sup> Floor  
Cincinnati, OH 45202

Joseph Scaffin  
Midland Loan Services, Inc.  
3355 Lenox Road, N.E.  
Suite 660  
Atlanta, GA 30326

All other counsel of record who give Receiver written request for the reports.

8.10 The Receiver shall post a surety bond from an insurance company licensed to do business in this State in an amount not less than \$1,000,000. The cost of the bond is an expense of the Receivership.

**9. Confidentiality.**

9.1 "Confidential Information" means the Receiver's Reports and any other nonpublic information.

9.2 The parties to this action, their counsel, and all those in active concert or participation with them, who receive actual notice of this Order, or otherwise, shall keep all

Confidential Information provided by the Receiver confidential, and all such persons are prohibited from disclosing any Confidential Information to anyone other than the parties to this action and their counsel without specific order of this Court, except that (1) Plaintiff and its attorneys and agents may provide potential purchasers, consultants, and any other appropriate persons with information useful for the marketing, leasing, selling, or management of the Receivership Property and (2) Plaintiff and its attorneys and agents may provide Plaintiff's assignor and its master servicer, special servicer, any subservicer, trustee, and any trust certificate holder with any information required in the normal course of business of real estate mortgage investment conduit trusts.

**10. Approval.**

10.1 "Plaintiff's Approval" means written consent either directly by Plaintiff or by Plaintiff's counsel. "Court Approval" means approval by a specific Order of the Court. "Approval" when appearing without a modifier means either Plaintiff's Approval or Court Approval.

**11. Term and Final Accounting.**

11.1 This Receivership shall continue until further order of the Court.

11.2 The Receiver can be removed either (1) automatically thirty days after the filing of a written demand for removal signed by Plaintiff's counsel and filed with the Court; or (2) in the Court's equitable discretion upon a motion for cause. If the Receiver is removed, a successor receiver can be appointed by a stipulated order on behalf of Plaintiff and Borrower. If Plaintiff and Borrower cannot agree on a successor receiver, the Court will name a successor receiver by further order after a motion is filed by Plaintiff or Borrower requesting the appointment of a successor receiver.

11.3 Immediately upon termination of the Receivership, the Receiver shall turn over to Plaintiff or its designee (including any property manager), all of the Receivership Property unless otherwise ordered by the Court.

11.4 Neither the termination of the Receivership nor the Receiver's removal will discharge the Receiver or the Receiver's bond.

11.5 The Receiver shall submit a final accounting (with copies to the recipients of Receivers Reports as identified above) for approval by the Court within thirty days after the termination of the Receivership or the Receiver's removal.

11.6 Only after the Court approves the Receiver's final accounting may the Receiver be discharged and the Receiver's bond be cancelled.

## **12. General Provisions.**

12.1 No person or entity shall file suit against the Receiver, or take other action against the Receiver, without an order of this Court permitting the suit or action; provided, however, that no prior court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action.

12.2 The Receiver and its employees, agents, and attorneys shall have no personal liability in connection with any liabilities, obligations, liens, or amounts owed to any of Borrower's creditors because of its duties as Receiver. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determined in accordance with Ohio law.

12.3 The Receiver and its employees, agents, and attorneys shall have no personal liability and they shall have no claim asserted against them relating to the Receiver's duties

under this Order, except for claims due to their gross negligence, gross or willful misconduct, malicious acts, or the failure to comply with this Court's orders.

12.4 Borrower, all property managers, and all those in active participation or concert with them who receive notice of this Order, and all those having claims against the Receivership Property who receive notice of this Order, are enjoined from, and shall not:

- (a) **Commit Waste.** Commit or permit any waste on all or any part of the Receivership Property, or suffer or commit or permit any act on all or any part of the Receivership Property in violation of law, or remove, transfer, encumber, or otherwise dispose of any of the Receivership Property.
- (b) **Collect Income.** Demand, collect, receive, discount, or in any other way divert or use any of the Income.
- (c) **Terminate any Utility Service.** Terminate or withhold any electric, gas, water, sewer, telephone, or other utility service supplying the Receivership Property, require any utility deposit, or otherwise interfere with the continued operations of the Receivership Property.
- (d) **Interfere with the Receiver.** Directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of and operation or management of the Receivership Property.
- (e) **Transfer or Encumber the Receivership Property.** Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal, or in any manner whatsoever deal in or dispose of the whole or any part of the Receivership Property including, but not limited to, the Income, without prior court order.
- (f) **Impair the Preservation of the Receivership Property.** Do any act that will, or that will tend to, impair, defeat, divert, prevent, or prejudice the preservation of the Receivership Property, including the Income, or the preservation of Plaintiff's interest in the Receivership Property and the Income.

Notwithstanding anything in this section to the contrary, the injunctions in this section that apply to the property manager shall apply except as the Receiver otherwise directs.

12.5 The Receiver shall faithfully perform and discharge the Receiver's duties and obey the Court's orders.

12.6 The Receiver is subject to the personal jurisdiction of the Court.

12.7 The Receiver's duty to act as Receiver is subject to the Receiver's written acceptance and approval of the terms of this Order. Upon acceptance, the Receiver shall be bound by each and every term contained in this Order and each and every obligation of the Receiver imposed by this Order.


**13. Amendment of Order.**

13.1 This Order may be amended for cause after a motion or hearing. This Order may also be amended by order agreed to by Plaintiff, Borrower, and the Receiver.

**14. No Prejudice to Foreclosure/Final Order.**

14.1 This Order shall not prejudice Plaintiff's judicial foreclosure of the Mortgage, or an action by Plaintiff under any security agreement or the Uniform Commercial Code with respect to the Collateral, or any of Plaintiff's other claims as set forth in any amendments to the complaint.

14.2 Pursuant to Ohio Civ.R. 54(B), the Court finds there is no just reason for delay and therefore enters this Order as a final order.

**ENTER**  
FEB 16 2010  
  
Judge, Court of Common Pleas  
ETHNA M. COOPER, Judge

**MAGISTRATE**  
FEB 16 2010  
HAS SEEN

Reference: Northgate Mall, Cincinnati, Ohio

**LEGAL DESCRIPTION- PARCEL A (3.488 Acres)**

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio, and being more particularly described as follows:

Commencing at the original southwesterly corner of Registered Land Certificate No. 43544, as recorded in the Hamilton County, Ohio Registered Land Office;

Thence, S 86° 52'45" E, 2271.93 feet along the south line of R.L.#43544 to a point;

Thence, N 17° 14'00" W, 286.74 feet to a point;

Thence, N 72° 46'00" E, 190.14 feet to the west line of Colerain Avenue;

Thence, N 17° 14'00" W, 1389.13 feet to a point;

Thence, S 47° 16'00" W, 2.22 feet to a point on the west line of Colerain Avenue and being the PRINCIPAL point of beginning of the tract of land to be herein described;

Thence from the above described PRINCIPAL point of beginning, and continuing along said west line, N 17° 13'51" W, a distance of 272.02 feet to a point;

Thence S 72° 46'00" W, a distance of 147.12 feet to a point;

Thence N 43° 43'00" W, a distance of 154.14 feet to a point on the southerly line of Springdale Road;

Thence along said southerly line, S 47° 16'00" W, a distance of 298.93 feet to a point;

Thence S 34° 44'01" E, a distance of 97.87 feet to a point;

Thence S 27° 41'08" E, a distance of 74.26 feet to a point;

Thence S 22° 03'50" E, a distance of 69.09 feet to a point;

Thence N 63° 50'59" E, a distance of 27.01 feet to a point;

Thence S 37° 40'50" E, a distance of 21.69 feet to a point;

Thence N 60° 57'30" E, a distance of 111.63 feet to a point;

Thence S 60° 05'30" E, a distance of 157.85 feet to a point;

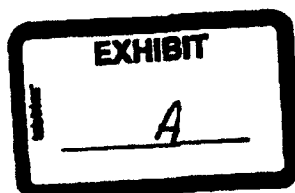
Thence N 68° 05'01" E, a distance of 180.18 feet to a point on the west line of said Colerain Avenue;

Thence along said west line, N 17° 13'51" W, a distance of 7.59 feet;

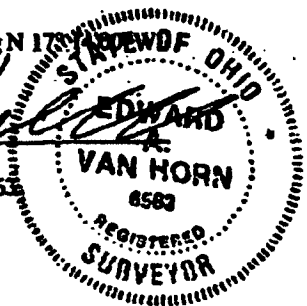
Thence N 09° 36'23" E, a distance of 14.31 feet to a point;

Thence N 17° 13'51" W, a distance of 27.92 feet to the PRINCIPAL point of beginning, and containing 3.488 acres of land, more or less, subject however to all prior easements of record.

Note: Bearings are based on the centerline of Colerain Avenue (State Route-27) as being N 17° 13'51" W.



Edward A. Van Horn  
Registered Surveyor #6363



9050 1502

Reference: Northgate Mall, Cincinnati, Ohio

### **LEGAL DESCRIPTION- PARCEL B ( 6.059 Acres)**

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio, and being more particularly described as follows:

Commencing at the original southwesterly corner of Registered Land Certificate No. 43544, as recorded in the Hamilton County, Ohio Registered Land Office;

Thence S 86° 52'45" E, 1535.59 feet along the south line of R.L.#43544 to a point, said point being the southwest corner of Registered Land Tract - C (Parcel No.510-103-95) and being the PRINCIPAL point of beginning of the tract of land to be herein described;

Thence from the above described PRINCIPAL point of beginning, and continuing along said south line, S 86° 52'45" E, a distance of 858.50 feet to a point;

Thence N 64° 01'59" E, a distance of 47.44 feet to a point on the west line of Colerain Avenue;

Thence along said west line N 17°13'14"W, a distance of 30.28 feet to a point;

Thence N 72°46'47"E, a distance of 9.50 feet to a point;

Thence N 17°13'14"W, a distance of 33.80 feet to a point;

Thence along a curve to the left having a radius of 20.00 feet, an arc length of 21.40 feet, and a chord bearing N 13°25'49"E, a distance of 20.39 feet to a point;

Thence N 17°13'14"W, a distance of 22.92 feet to a point;

Thence N 72°46'47"E, a distance of 1.74 feet to a point;

Thence N 17°13'14"W, a distance of 48.15 feet to a point;

Thence N 13°51'46"W, a distance of 31.88 feet to a point;

Thence S 72° 46'00" W, a distance of 184.97 feet to a point;

Thence N 17° 14'00" W, a distance of 137.42 feet to a point;

Thence N 72° 46'00" E, a distance of 190.14 feet to a point;

Thence N 17° 14'00" W, a distance of 15.07 feet to a point;

Thence N 86° 52'49"W, a distance of 380.13 feet to a point;

Thence N 14° 23'00" W, a distance of 155.56 feet to a point;

Thence S 75° 37'00" W, a distance of 92.89 feet to a point;

Thence S 42° 46'00" W, a distance of 347.06 feet to a point;

Thence S 14° 23'00" E, a distance of 86.49 feet to a point;

Thence S 42° 37'15" W, a distance of 155.18 feet to the PRINCIPAL point of beginning, and containing 6.059 acres of land, more or less, subject however to all prior easements of record,

\* Of which a portion of the above described tract of land lies within Registered Land Tract - C (Parcel No.510-103-95) and Registered Land Certificate #169555, (Parcel No.510-103-166), and is situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio, being more particularly described as follows:

Commencing at the original southwesterly corner of Registered Land Certificate No. 43544, as recorded in the Hamilton County, Ohio Registered Land Office;

Thence, S 86° 52'45" E, 1535.59 feet along the south line of R.L.#43544 to a point, said point being the southwest corner of said Registered Land Tract - C (Parcel No.510-103-95) and being the PRINCIPAL point of beginning of the tract of land to be herein described;

Thence from the above described PRINCIPAL point of beginning, and continuing along said south line, S 86° 52'45" E, a distance of 858.50 feet to a point;

Thence N 64° 01'59" E, a distance of 47.44 feet to a point;

Thence along said west line N 17°13'14"W, a distance of 30.28 feet to a point;

Thence N 72°46'47"E, a distance of 9.50 feet to a point;

Thence N 17°13'14"W. a distance of 33.80 feet to a point;  
 Thence along a curve to the left having a radius of 20.00 feet, an arc length of 21.40 feet, and a chord  
 bearing N 13°25'49"E, a distance of 20.39 feet to a point;  
 Thence N 17°13'14"W, a distance of 22.92 feet to a point;  
 Thence N 72°46'47"E, a distance of 1.74 feet to a point;  
 Thence N 17°13'14"W, a distance of 48.15 feet to a point;  
 Thence N 13°51'46"W, a distance of 31.88 feet to a point;  
 Thence S 72° 46'00"W. a distance of 184.97 feet;  
 Thence N 17° 14'00" W, a distance of 223.06 feet to a point;  
 Thence N 86° 52'49"W, a distance of 177.33 feet to a point;  
 Thence N 14° 23'00" W, a distance of 155.56 feet to a point;  
 Thence S 75° 37'00" W, a distance of 92.89 feet to a point;  
 Thence S 42° 46'00" W, a distance of 347.06 feet to a point;  
 Thence S 14° 23'00" E, a distance of 86.49 feet to a point;  
 Thence S 42° 37'15" W, a distance of 155.18 feet to the point of beginning, and containing 5.839 acres of  
 land, more or less.

Note: Bearings are based on the centerline of Colerain Avenue (State Route-27) as being N 17°14'00"W.



Reference: Northgate Mall, Cincinnati, Ohio

### **LEGAL DESCRIPTION- PARCEL C ( 27.655 Acres)**

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio and being more particularly described as follows:

Beginning on the west line of the original Registered Land Certificate No.43544, said point being described as lying N 02° 29'00"E, a distance of 585.82 feet from the southwesterly corner of said original Registered Land Certificate No.43544;

Thence along said west line, N 02° 29'00"E, a distance of 427.54 feet to the southerly right-of-way line of Springdale Road;

Thence along said south line and on a curve to the right having a radius of 1382.39 feet, a central angle of 10° 37'57", a length of curve distance of 256.53 feet; the chord of said curve bearing N 72° 20'10" E, a distance of 256.16 feet to a point;

Thence N 77° 39'00" E, a distance of 182.65 feet;

Thence S 12°21'00"E, a distance of 10.00 feet to a point;

Thence N 77°39'00"E, a distance of 91.71 feet to a point;

Thence along a curve to the left having a radius of 1490.00', a central angle of 01°26'42", an arc length of 37.58 feet, and a chord bearing N 76°55'38"E, a distance of 37.58 feet to a point;

Thence N 14°23'00"W, a distance of 10.00 feet to a point;

Thence along a curve to the left having a radius of 1480.00 feet and a central angle of 28°56'32", a length of curve distance of 747.60 feet; the chord of said curve bearing N 61°44'16" E, a distance of 739.68 feet;

Thence N 47° 16'00" E, a distance of 130.14 feet; Thence S 42°44'00"E, a distance of 20.00 feet to a point;

Thence N 47°16'00"E, a distance of 42.22 feet to a point; Thence N 17°14'00"W, a distance of 22.16 feet to a point;

Thence N47°16'00"E, a distance of 37.49 feet to a point;

Thence departing said south line, S 34 44'01" E, a distance of 97.87 feet;

Thence S 27° 41'08" E, a distance of 74.26 feet; Thence S 22 03'50" E, a distance of 69.09 feet;

Thence N 63° 50'59" E, a distance of 27.01 feet; Thence S 37 40'50" E, a distance of 21.69 feet;

Thence N 60° 57'30" E, a distance of 111.63 feet; Thence S 60 05'30" E, a distance of 157.85 feet;

Thence N 68° 05'01" E, a distance of 180.18 feet to the westerly right-of-way line of Colerain Pike ( S.R. #27);

Thence S 17°13'51"E, a distance of 45.35 feet to a point; Thence S 72°46'09"W, a distance of 33.54 feet to a point;

Thence S 17°13'51"E, a distance of 28.27 feet to a point; Thence S 76°05'01"E, a distance 46.00 feet to a point;

Thence S 17°18'44"E, a distance of 24.40 feet to a point; Thence N 72°46'09"E, a distance of 2.60 feet to a point;

Thence S 17° 14'00"E, a distance of 94.19 feet to a point;

Thence S 75° 37'00"W, a distance of 490.08 feet to a point; Thence S 14 23'00"E, a distance of 646.58 feet to a point;

Thence S 75° 37'00"W, a distance of 101.00 feet to a point; Thence S 14 23'00"E, a distance of 190.95 feet to a point;

Thence N 75°37'00"E, a distance of 190.83 feet to a point; Thence S 42 46'00"W, a distance of 347.06 feet to a point;

Thence N 14° 23'00"W, a distance of 379.25 feet to a point; Thence S 75 37'00"W, a distance of 138.40 feet to a point;

Thence N 14° 23'00"W, a distance of 80.00 feet to a point; Thence S 75 37'00"W, a distance of 30.00 feet to a point;

Thence N 14° 23'00"W, a distance of 70.00 feet to a point; Thence S 75° 37'00"W, a distance of 60.00 feet to a point;  
 Thence N 14° 23'00"W, a distance of 60.00 feet to a point; Thence S 75° 37'00"W, a distance of 90.00 feet to a point;  
 Thence S 14° 23'00"E, a distance of 60.00 feet to a point; Thence S 75° 37'00"W, a distance of 60.00 feet to a point;  
 Thence S 14° 23'00"E, a distance of 70.00 feet to a point; Thence S 75° 37'00"W, a distance of 30.00 feet to a point;  
 Thence S 14° 23'00"E, a distance of 50.00 feet to a point; Thence S 75° 37'00"W, a distance of 325.00 feet to a point;  
 Thence N 14° 23'00"W, a distance of 419.11 feet to a point;

Thence continuing N 14° 23'00"W, a distance of 127.19 feet to the southwest corner of Registered Land Tract D (Parcel No. 510-103-196);  
 Thence N 14° 23'00"W, a distance of 230.00 feet to the northwest corner of said Registered Land Tract D;  
 Thence N 65° 31'09"E, a distance of 370.74 feet to the northeast corner of said Registered Land Tract D;  
 Thence S 14° 23'00"E, a distance of 255.00 feet to a southeasterly corner of said Registered Land Tract D;  
 Thence S 60° 37'00"W, a distance of 56.57 feet to a southeasterly corner of said Registered Land Tract D;  
 Thence S 75° 37'00"W, a distance of 325.00 feet to said southwest corner of Registered Land Tract D;  
 Thence S 14° 23'00"E, a distance of 127.19 to a point;

Thence S 75° 37'00"W, a distance of 175.00 feet to a point;  
 Thence N 55° 31'00"W, a distance of 30.94 feet to a point;  
 Thence S 75° 37'00"W, a distance of 495.83 feet to the point of beginning, and containing a net acreage of said Parcel C, excluding above said Registered Land Tract D, to be 27.655 acres of land, more or less.

\* Of which the above described Parcel C lies within Registered Lands, and is situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio, being more particularly described as follows;

Beginning on the west line of the said original Registered Land Certificate No.43544, said point being described as lying N 02° 29'00"E, a distance of 585.82 feet from the southwesterly corner of said original Registered Land Certificate No.43544;

Thence along said west line, N 02° 29'00"E, a distance of 427.54 feet to the southerly right-of-way line of Springdale Road;

Thence along said south line and on a curve to the right having a radius of 1382.39 feet, a central angle of 07° 20'40", a length of curve distance of 177.20 feet, the chord of said bearing N 70° 41'32" E, a chord distance of 177.08 feet to a point;

Thence S 01° 13'00" W, a distance of 143.84 feet to a point; Thence N 77° 39'00" E, a distance of 228.00 feet to a point;

Thence N 01° 13'00"E, a distance of 146.17 feet to the southerly right-of-way of Springdale Road;

Thence N 77° 39'00"E, a distance of 33.39 feet along the southerly right-of-way of Springdale Road to a point;

Thence S 12° 21'00"E, a distance of 10.00 feet to a point; Thence N 77° 39'00"E, a distance of 91.71 feet to a point;

Thence along a curve to the left having a radius of 1490.00', a central angle of 01° 26'42", an arc length of 37.58 feet, and a chord bearing N 76° 55'38" E, a distance of 37.58 feet to a point;

Thence N 14° 23'00"W, a distance of 10.00 feet to a point;

Thence along a curve to the left having a radius of 1480.00 feet and a central angle of 28° 56'32", a length of curve distance of 747.60 feet; the chord of said curve bearing N 61° 44'16" E, a distance of 739.68 feet;

Thence N 47° 16'00" E, a distance of 130.14 feet;

Thence S 42° 44'00"E, a distance of 20.00 feet to a point; Thence N 47° 16'00"E, a distance of 42.22 feet to a point;

Thence N 17° 14' 00" W, a distance of 22.16 feet to a point; Thence N 47° 16' 00" E, a distance of 37.49 feet to a point;

Thence S 34° 44' 01" E, a distance of 97.87 feet to a point; Thence S 27° 41' 08" E, a distance of 74.26 feet to a point;

Thence S 22° 03' 50" E, a distance of 69.09 feet to a point; Thence N 63° 50' 59" E, a distance of 27.01 feet to a point;

Thence S 37° 40' 50" E, a distance of 21.69 feet to a point; Thence N 30° 57' 30" E, a distance of 111.63 feet to a point;

Thence S 60° 05' 30" E, a distance of 157.85 feet to a point; Thence N 68° 05' 01" E, a distance of 180.16 feet to a point on the westerly right-of-way of Colerain Avenue (S.R.27);

Thence S 17° 13' 51" E, a distance of 45.35 feet to a point; Thence S 72° 46' 09" W, a distance of 33.54 feet to a point;

Thence S 17° 13' 51" E, a distance of 28.27 feet to a point; Thence S 76° 05' 01" E, a distance of 46.00 feet to a point;

Thence S 17° 18' 44" E, a distance of 24.40 feet to a point; Thence N 72° 46' 09" E, a distance of 2.60 feet to a point;

Thence S 17° 14' 00" E, a distance of 94.19 feet to a point;

Thence S 75° 37' 00" W, a distance of 490.08 feet to a point; Thence S 14° 23' 00" E, a distance of 646.58 feet to a point;

Thence S 75° 37' 00" W, a distance of 101.00 feet to a point; Thence S 14° 23' 00" E, a distance of 190.95 feet to a point;

Thence N 75° 37' 00" E, a distance of 190.83 feet to a point; Thence S 42° 46' 00" W, a distance of 347.06 feet to a point;

Thence N 14° 23' 00" W, a distance of 379.25 feet to a point; Thence S 75° 37' 00" W, a distance of 138.40 feet to a point;

Thence N 14° 23' 00" W, a distance of 80.00 feet to a point; Thence S 75° 37' 00" W, a distance of 30.00 feet to a point;

Thence N 14° 23' 00" W, a distance of 70.00 feet to a point; Thence S 75° 37' 00" W, a distance of 60.00 feet to a point;

Thence N 14° 23' 00" W, a distance of 60.00 feet to a point; Thence S 75° 37' 00" W, a distance of 90.00 feet to a point;

Thence S 14° 23' 00" E, a distance of 60.00 feet to a point; Thence S 75° 37' 00" W, a distance of 60.00 feet to a point;

Thence S 14° 23' 00" E, a distance of 70.00 feet to a point; Thence S 75° 37' 00" W, a distance of 30.00 feet to a point;

Thence S 14° 23' 00" E, a distance of 50.00 feet to a point; Thence S 75° 37' 00" W, a distance of 325.00 feet to a point;

Thence N 14° 23' 00" W, a distance of 419.11 feet to a point;

Thence continuing N 14° 23' 00" W, a distance of 127.19 feet to the southwest corner of Registered Land Tract D (Parcel No. 510-103-196);

Thence N 14° 23' 00" W, a distance of 230.00 feet to the northwest corner of said Registered Land Tract D;

Thence N 65° 31' 09" E, a distance of 370.74 feet to the northeast corner of said Registered Land Tract D;

Thence S 14° 23' 00" E, a distance of 255.00 feet to a southeasterly corner of said Registered Land Tract D;

Thence S 60° 37' 00" W, a distance of 56.57 feet to a southeasterly corner of said Registered Land Tract D;

Thence S 75° 37' 00" W, a distance of 325.00 feet to said southwest corner of Registered Land Tract D;

Thence S 14° 23' 00" E, a distance of 127.19 feet to a point;

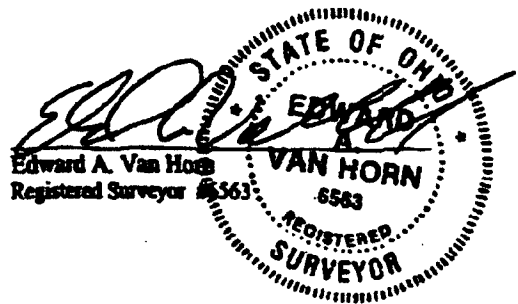
Thence S 75° 37' 00" W, a distance of 175.00 feet to a point;

Thence N 55° 31' 00" W, a distance of 30.94 feet to a point;

Thence S 75° 37'00"W, a distance of 495.83 feet to the point of beginning and containing a net acreage of said Parcel C lying within Registered Lands, excluding above said Registered Land Tract D, to be 26.913 net-acres of land, more or less.

The above described Parcel is subject to and benefited by the Amendment to and Restatement of Operating Agreement dated September 18, 1992 and recorded September 24, 1992 in Official Record 5959, Page 1412 of the Hamilton County, Ohio Registered Land Records (the "Operating Agreement"). The Operating Agreement grants certain cross-easements between the tracts comprising the Northgate Mall Shopping Center for pedestrian and vehicular access, ingress and egress to and from the tracts and publicly dedicated streets, roads and highways, parking, utility facilities, and other easement rights (as more particularly described in said Operating Agreement).

Note: Bearings are based on the centerline of Colerain Pike (State Route-27) as being N 17° 14'00"W



Reference: Northgate Mall, Cincinnati, Ohio

**LEGAL DESCRIPTION- PARCEL E (2.181 Acres)** *PL*

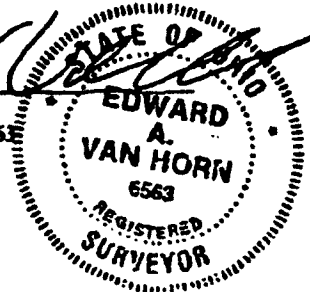
Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio,  
and being more particularly described as follows:

Beginning at the southwesterly corner of Registered Land No. 43544, as recorded in the Hamilton County Registered Land Office; thence  
S 86°52'45"E, a distance of 903.06 feet along the southerly line of Registered Land No. 43544 to a point;  
thence N 14°23'00"W, a distance of 936.30 feet to the point and place of beginning;  
Thence N 14°23'00"W, a distance of 230.00 feet to a point;  
Thence N 65°31'09"E, a distance of 370.74 feet to a point;  
Thence S 14°23'00"E, a distance of 255.00 feet to a point;  
Thence S 30°37'00"W, a distance of 56.57 feet to a point;  
Thence S 75°37'00"W, a distance of 325.00 feet to the point and place of beginning, containing 2.181 acres of land, more or less.

Of which all of the above described tract of land lies within Registered Land Tract - D (Parcel No. 510-103-196).

Note: Bearings are based on the centerline of Colerain Pike (State Route-27) as being N 17°14'00"W.

*Edward A. Van Horn*  
Edward A. Van Horn  
Registered Surveyor #6563



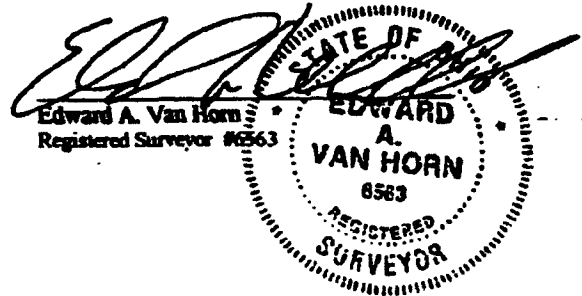
Reference: Northgate Mall, Cincinnati, Ohio

**LEGAL DESCRIPTION- PARCEL F ( 0.015 Acres)**

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Colerain Township, Hamilton County, Ohio,  
and being more particularly described as follows;

Commencing at the intersection of the centerline of Mall Drive and the centerline of Commons Circle;  
thence S 71°09'48"W, a distance of 30.00 feet along the centerline of Mall drive to a point;  
thence N 18°50'12"W, a distance of 265.50 feet to the point and place of beginning, also being on the west  
line of Commons Circle;  
Thence S 71°09'48"W, a distance of 132.00 feet to a point;  
Thence N 18°50'12"W, a distance of 5.00 feet to a point;  
Thence N 71°09'48"E, a distance of 132.00 feet to a point;  
Thence S 18°50'12"E, a distance of 5.00 feet to the point and place of beginning, and containing 0.015  
acres or land, more or less.

Note: Bearings are based on the centerline of Colerain Pike (State Route-27) as being N 17°14'00"W.





## **DOUGLAS WILSON COMPANIES**

450 B Street, Suite 1900, San Diego, CA 92101

Phone: 619.641.1141 Fax: 619.641.1150

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

### **SCHEDULE OF HOURLY RATES BY WORK PERFORMED\***

Chairman	\$395
Executive Management	\$375
Asset Management	\$105 - \$350
Construction Management	\$200 - \$350
Sales & Marketing	\$225 - \$350
Forensic Accounting	\$135 - \$350
Legal	\$250 - \$325

### **REIMBURSABLE COSTS ARE BILLED AT COST\*\***

Bond  
Court Filing Service  
Photocopies  
Postage  
Messenger/Overnight Delivery  
Travel, Meals, & Expenses

\* Rates for specific personnel may vary slightly from the above based on experience levels, but will not exceed these values for the given category of work performed. These hourly rates are subject to change from time to time.

\*\* Other direct costs we incur in connection with our services, such as outside attorneys, accountants and other professionals, may be reimbursable based on the terms of our agreement.



**IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**Wells Fargo Bank, N.A., as trustee for the  
registered holders of Credit Suisse First  
Boston Mortgage Securities Corp.,  
Commercial Mortgage Pass-Through  
Certificates, Series 2003-CPN1, acting by and  
through its special servicer Midland Loan  
Services, Inc.,**

Case No. A 1001127

Judge: Ethna Cooper

**RECEIVER'S OATH**

Plaintiff,

vs.

**FMP Northgate LLC, et al.,**

Defendants.

State of \_\_\_\_\_  
County of \_\_\_\_\_

The undersigned, after being first sworn, states:

1. I am authorized to take this oath on behalf of the Receiver named by the Court in this case.
2. The Receiver accepts its duties under the terms of this Order.
3. The Receiver will faithfully discharge its duties, account for all property and monies coming into its possession, and obey the orders of the Court entered in this action.

Douglas Wilson Companies

Dated: \_\_\_\_\_, 2010

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

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Ohio  
My Commission Expires: \_\_\_\_\_

17636604.4\13131800065

month. If no objection thereto is filed and served on or within ten (10) days following service thereof, such statement of account may be paid. If an objection is timely filed and served, such statement of account shall not be paid absent further order of the Court. In the event objections are timely made to fees and expenses, objected to fees and expenses will be paid within ten (10) days of an agreement among the parties or entry of a Court order adjudicating the matter.

8.2 The Receiver's compensation shall be paid (1) first from the Income from the Receivership Property and (2) next, by the Plaintiff, but only to the extent that the Income is insufficient to pay the Receiver's compensation. The Receiver is authorized to issue receivership certificate(s) to secure any such protective advances by the Plaintiff, but subject to Approval.

8.3 Nothing in this Order shall require the Receiver to advance funds other than from Income without a bond or security for payment satisfactory to the Receiver.

8.4 Within 30 days after obtaining possession of the Receivership Property the Receiver shall submit to the Court, for the Court's *in camera* inspection, a list of all of the personal property, whether tangible or intangible, of which it has taken possession.

8.5 By the 20<sup>th</sup> day of each calendar month, the Receiver shall prepare operating reports (including, without limitation, an income and expense statement, a balance sheet and a cash flow analysis) pertaining to the operations of the Receivership Property during the immediately preceding month. The Receiver shall further prepare a proposed operating budget and capital budget for 2010 for the Receivership Property (the "Budget") within 30 days of the Effective Date, and thereafter each December 1 for the succeeding year. (The Budget and the monthly operating reports are collectively "Receiver's Reports.")

8.6 The Budget will be reviewed by the parties and be subject to Plaintiff's Approval. The Budget, as approved, shall be the "Approved Budget."

**LEASE AGREEMENT**  
**BY AND BETWEEN**  
**FMP NORTHGATE LLC,**  
**A DELAWARE LIMITED LIABILITY COMPANY**  
**("LANDLORD"),**

**AND**  
**LARGE APPAREL OF OHIO, INC., A DELAWARE CORPORATION**  
**D/B/A ASHLEY STEWART ("TENANT")**

**AT**  
**NORTHGATE MALL**  
**CINCINNATI, OHIO**



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## STANDARD SHOPPING CENTER LEASE AGREEMENT

This Lease Agreement (the "Lease") is made as of the 26<sup>th</sup> day of May, 2006, by FMP Northgate LLC, a Delaware limited liability company ("Landlord"), and Large Apparel of Ohio, Inc., a Delaware corporation, d.b.a Ashley Stewart ("Tenant").

### ARTICLE I

#### REFERENCE PROVISIONS, DEFINITIONS AND EXHIBITS

As used in this Lease, the following terms shall have the meanings set forth in Sections 1.1 and 1.2 below.

##### SECTION 1.1. REFERENCE PROVISIONS.

A. Premises: the space indicated on the lease plan attached as Exhibit A containing a total Floor Space of approximately 5,070 square feet.

B. Term: ten (10) Lease Years (as defined in Section 1.2[] below).

C. Commencement Date: the earlier of September 1, 2006 or the date on which Tenant opens to the public for business.

D. Termination Date: the last day of the tenth (10<sup>th</sup>) Lease Year, or if the Term is sooner terminated pursuant to the provisions of this Lease, the effective date of such termination.

E. Minimum Rent:

(i) Commencing on the first day of the first (1st) Lease Year and/or partial year, if any and continuing through the last day of the third (3rd) Lease Year (the "First Period"): Sixty Seven thousand Five Hundred and NO/100 Dollars (\$ 67,500.00 ) per annum; and

(ii) Commencing on the first day of the fourth (4th) Lease Year and continuing through the last day of the seventh (7th) Lease Year (the "Second Period"): Seventy Two Thousand and NO/100 Dollars (\$ 72,000.00 ) per annum; and

(iii) Commencing on the first day of the eighth (8th) Lease Year and continuing through the last day of the tenth (10<sup>th</sup>) Lease Year (the "Third Period"): Seventy Six Thousand Five Hundred and NO/100 Dollars (\$ 76,500.00 ) per annum; and

F. Percentage Rent: An amount equal to (1) for each Lease Year (a) Gross Sales (as defined in Section 5.4 below) in excess of (i) One Million One Hundred Twenty Five Thousand and NO/100 Dollars (\$ 1,125,000.00 ) during the First Period; (ii) One Million Two Hundred Thousand and NO/100 Dollars (\$ 1,200,000.00 ) during the Second Period; (iii) One Million Two Hundred Seventy Five Thousand and NO/100 Dollars (\$ 1,275,000.00 ) during the Third Period; multiplied by (b) six percent ( 6 %) (the amounts set forth in (i) through (iii) above shall each be referred to individually as the "Full Year Breakpoint" for the Lease Year in question) and (2) for any Partial Lease Year (as defined in Section 1.2[] below), the amount of Gross Sales in excess of the amount arrived at by multiplying the Full Year Breakpoint, for the appropriate Lease Year, by a fraction, the numerator of which shall be the number of days in the Partial Lease Year and the denominator of which shall be three hundred sixty-five (365) (the "Partial Year Breakpoint") multiplied by six percent ( 6 %); provided that, if at any time during any Lease Year or Partial Lease Year Tenant is not open for business, then the Full Year Breakpoint or Partial Year Breakpoint for such Lease Year or Partial Lease Year, as the case may be, shall be decreased by an amount equal to such breakpoint multiplied by a fraction, the numerator of which shall be the number of days in such Lease Year or Partial Lease Year that Tenant is not open for business and the denominator of which shall be three hundred sixty-five (365), or the number of days in such Partial Lease Year, whichever is applicable.

G. Marketing Fund Dues: Two Thousand Five Hundred and Thirty Five and NO/100 Dollars (\$2,535.00) per annum.

H. INTENTIONALLY DELETED

I. Permitted Use: the sale at retail of women's clothing and accessories and sundry items.

J. Trade Name: Ashley Stewart, and any other name, as Tenant may request from time to time.

K. Notice Address:

TO LANDLORD:

FMP Northgate LLC  
c/o Feldman Mall Properties  
3225 North Central Avenue  
Phoenix, Arizona 85012  
Attn: Leasing Department

With a copy to:

FMP Northgate LLC  
c/o Northgate Mall Management Office  
9501 Colerain Avenue  
Cincinnati, Ohio 45251  
Attn: General Manager

TO TENANT:

Large Apparel of Ohio, Inc.,  
c/o Urban Brands, Inc.  
100 Metro Way  
Secaucus, New Jersey 07094  
Attn: Corporate Real Estate

L. Shopping Center: that certain commercial project presently known as Northgate Mall, which is located in Cincinnati, Ohio.

M. Possession Date: possession of the Premises shall be deemed to have been tendered and accepted upon Tenant's receipt of a possession notice from Landlord, provided physical possession of the Premises is tendered to Tenant. Notwithstanding the foregoing, if Tenant accepts physical possession of the Premises prior to receipt of such notice, the date Tenant accepts possession shall be deemed to be the Possession Date. Landlord agrees to deliver possession by April 24, 2006. If Landlord fails to deliver possession, Tenant may terminate the Lease.

N. Improvement Allowance. An amount not to exceed the lesser of (i) One Hundred One Thousand Four Hundred and NO/100 Dollars (\$101,400.00) or (ii) the costs actually expended by Tenant in connection with the initial Tenant Improvements, payable pursuant to Section 9.7.

**SECTION 1.2. DEFINITIONS.**

A. Common Areas: all improvements, equipment, signs and areas (as the same may be enlarged, reduced, replaced, removed or otherwise altered by Landlord), from time to time, made available by Landlord for the non-exclusive use or benefit of Landlord, Tenant and other tenants, occupants and users of the Shopping Center, and their respective employees, agents, subtenants, concessionaires, licensees, customers and invitees, or any of them, which may include (but shall not be deemed a representation as to their availability) the Enclosed Mall, sidewalks, parking areas, access roads, driveways, landscaped areas, service ways, tunnels, loading docks, roofs, stairs, ramps, elevators, escalators, public washrooms, community halls or auditoriums, parcel pick-up stations, and other similar areas and improvements, all as Landlord shall, from time to time, deem appropriate (in its reasonable business judgment).

B. Concessionaire: any person conducting any business in the Premises by, under or through Tenant under any sublease, concession or license from Tenant, or otherwise, whether or not the same was authorized under the provisions of this Lease.

C. INTENTIONALLY OMITTED

D. Enclosed Mall: the portion or portions of the Shopping Center, if any, which contain Common Area and which are actually enclosed by walls and roof, as the same may exist, from time to time.

E. Floor Space: the number of square feet in the Premises (as set forth in Section 1.1(A)) or in other space in the Shopping Center, as determined by Landlord (in its reasonable business judgment).

F. Landlord Related Parties: Landlord, its members, principals, beneficiaries, partners, officers, directors, agents, employees and any Mortgagee(s) (as defined in Section 14.1 below).

G. Laws: all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedents in the state in which the Shopping Center is located, and decisions of federal courts applying the Laws of such state, at the time in question.

H. Lease Year or Partial Lease Year: a period of twelve (12) consecutive calendar months, the first Lease Year commencing on the Commencement Date, if the Commencement Date is the first day of a calendar month, and otherwise on the first day of the first full calendar month following the Commencement Date. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year. Any portion of the Term which is less than a Lease Year shall be deemed a Partial Lease

Year, except that if the Commencement Date occurs on a date other than the first day of a calendar month, then the period commencing on the Commencement Date and ending on the last day of the calendar month in which the Commencement Date occurs shall be included in the first Lease Year.

I. Major Stores: those premises (other than Common Areas) within the Shopping Center (whether occupied or vacant) which contain Floor Space of ten thousand (10,000) square feet or more.

J. Managing Agent: the managing agent (if any) of the Shopping Center as designated from time to time by Landlord in a written notice to Tenant.

K. Rent: all Minimum Rent and Additional Rent. All sums and charges payable by Tenant to Landlord in addition to the Minimum Rent shall be deemed to be "Additional Rent" under this Lease whether or not the same shall be designated as such. Landlord shall have the same remedies for Tenant's failure to pay Additional Rent as for Tenant's failure to pay Minimum Rent.

L. Satellite Store Space: the aggregate Floor Space of all premises in the Shopping Center exclusively appropriated for use by a tenant, whether occupied or vacant, but excluding the Floor Space of (i) mezzanine space, (ii) basement space (if any), (iii) storage space not located within a tenant's or occupant's primary premises, (iv) retail merchandising carts and (v) Major Stores. For purposes of this Lease, the Floor Space described in clauses (i), (ii) and (iii) herein shall be collectively referred to as the "Ancillary Space."

M. Tenant Related Parties: Tenant, its assignees, Concessionaires, agents, contractors, employees or invitees.

### SECTION 1.3. EXHIBITS AND MANUALS.

The exhibits and manuals listed in this Section 1.3 are attached to this Lease and are hereby incorporated in and made a part of this Lease.

Exhibit A	-	Lease Plan
Exhibit B	-	Construction Exhibit
Exhibit B-1	-	Signage Criteria
Exhibit C	-	Center Rider

## ARTICLE II

### LEASED PREMISES AND THE SHOPPING CENTER

#### SECTION 2.1. DEMISE.

Landlord, in consideration of the Rent to be paid and the other conditions and covenants to be satisfied and performed by Tenant, demises and leases to Tenant, and Tenant leases and takes from Landlord, the Premises, each upon the terms and conditions of this Lease; provided, however, that in addition to other rights provided to or reserved by Landlord in this Lease or otherwise, Landlord shall have (i) the exclusive right to use both the exterior faces of the exterior walls of the Premises and, subject only to Tenant's rights and obligations under Section 4.6 below, the roof of the Shopping Center, and (ii) the right to install, maintain, use, repair and replace pipes, ducts, cables, conduits, vents, utility lines and wires to, in, through, above and below the Premises as and to the extent that Landlord, may from time to time deem appropriate (in its reasonable business judgment) for the proper operation and maintenance of the Shopping Center. Landlord shall use its reasonable efforts to locate said pipes, ducts, cables, conduits, plumbing vents, utility lines or wires in non-sales areas of the Premises, however, to the extent any of the same are located within sales areas of the Premises, they shall not be visible to the public.

#### SECTION 2.2. CHANGES TO SHOPPING CENTER.

Exhibit A sets forth the general layout of the Shopping Center (or the portion thereof in which the Premises is located) but is not, and shall not be deemed to be, a warranty, representation or agreement on the part of Landlord that all or any part of the Shopping Center is, will be, or will continue to be, configured as indicated on Exhibit A. In addition to other rights provided to or reserved by Landlord under this Lease, Landlord hereby reserves the right, at any time and from time to time, to (i) make alterations or additions to, build additional stories on, and demolish or otherwise change, all or any part of any buildings or other improvement in or about the Shopping Center, and build other buildings or improvements in or about the Shopping Center; (ii) construct deck or elevated parking facilities; and (iii) convey portions of the Shopping Center to others or withdraw portions from the Shopping Center. If the Shopping Center is expanded, Tenant's GLA will be adjusted accordingly. If Tenant's business is affected due to such expansion, Tenant will be able to abate rent. Tenant consents to the performance of all work deemed appropriate by Landlord to accomplish any of the foregoing, and any inconvenience caused thereby, provided, however, that Landlord agrees to use reasonable efforts to minimize the interference with Tenant's business in the Premises. The design and performance of such work shall be in the sole

discretion of Landlord. None of the Landlord Related Parties (as defined in Section 1.2[G] above) shall be subject to any liability as a result of any change in the Shopping Center, nor shall the same entitle Tenant to any compensation or diminution of Rent, or entitle Tenant to terminate this Lease or constitute an actual or constructive eviction. Notwithstanding anything to the contrary contained in this Lease, subject to Section 2.3 below, Landlord shall not change the dimensions or location of the Premises or materially obstruct access to or visibility of the Premises from the Enclosed Mall without Tenant's consent (which consent shall not be unreasonably withheld or delayed), unless Landlord is required to do any of the foregoing by reason of any Law (as defined in Section 1.2[H] above) or as a result of any cause beyond the reasonable control of Landlord, or in accordance with the provisions of Articles XI or XII below or unless such access or visibility is temporarily affected as a result of repairs, remodeling, redevelopment, renovation or other construction to the Shopping Center. Landlord shall use due diligence to complete all such repairs, remodeling, renovations, redevelopment or other construction.

### **ARTICLE III**

#### **TERM**

##### **SECTION 3.1. TERM.**

The Term shall commence at 12:00 A.M. on the Commencement Date and shall end at the end of Normal Mall Hours (as defined in Section 4.3 below) on the Termination Date. Tenant shall, upon request by Landlord, confirm the Commencement Date in writing.

##### **SECTION 3.2. SURRENDER OF LEASED PREMISES.**

On the Termination Date (whether by lapse of time or otherwise), Tenant shall quit and surrender the Premises in accordance with the terms of this Lease and in good order, condition and repair, ordinary wear and tear excepted. Tenant shall also deliver all keys for the Premises as specified by Landlord, and inform Landlord of all combinations on locks, safes and any vaults in the Premises.

##### **SECTION 3.3. HOLDING OVER.**

A. This Lease shall terminate on the Termination Date pursuant to the terms of this Lease without the necessity of notice from either Landlord or Tenant. Tenant's occupancy subsequent to the Termination Date, whether or not with the consent of Landlord, shall be deemed to be that of a tenancy at sufferance, subject to all the terms, covenants, and conditions of this Lease, except that for each day Tenant holds over the Minimum Rent shall and additional rent shall be at the same rate Tenant is currently paying if Landlord and Tenant are actively under negotiations for a new lease.

B. In addition to paying to Landlord the Holdover Rent, if Tenant fails to surrender the Premises to Landlord on the Termination Date as required by this Lease, Tenant shall indemnify, defend (with counsel acceptable to Landlord (acting reasonably)) and hold the Landlord Related Parties harmless from and against all loss, liability, damages and expense (including, without limitation, attorneys' fees) sustained or incurred by any of the Landlord Related Parties on account of or resulting from such failure, including, without limitation, claims made by any succeeding tenant of all or any part of the Premises.

C. Notwithstanding anything contained herein to the contrary, if Landlord and Tenant elect to negotiate a renewal of this Lease or a new lease, during the period of their negotiations occurring after the Termination Date, Tenant shall continue to pay the Rent payable in the last Lease Year or Partial Lease Year of the Term, provided that any annual or other periodic escalation of Rent set forth in this Lease shall continue during the holdover period as if said holdover period was part of the original Term. Notwithstanding anything to the contrary contained herein, neither Landlord nor Tenant shall have any obligation to commence to negotiate, or to continue negotiation of, a renewal of this Lease or a new lease covering the Premises and in the event that such negotiation is not commenced or such negotiation is discontinued at any time by either party in its sole discretion, Tenant shall be liable to pay Holdover Rent retroactive to the first day of the holdover period as aforesaid.

### **ARTICLE IV**

#### **USE AND OPERATION OF THE LEASED PREMISES**

##### **SECTION 4.1. USE AND TRADE NAME.**

Tenant shall use the Premises solely for the Permitted Use (and Tenant shall use the Premises for all of the purposes specified in the Permitted Use), and for no other purpose, and shall operate its

business on the Premises solely under the Trade Name and under no other name; provided, however, Tenant may change its Trade Name without Landlord's written consent provided: (i) the use of the trade name proposed shall not violate any then existing lease or other agreement affecting the Shopping Center; (ii) the trade name proposed shall not be similar to the trade name of any other then existing tenant or occupant in the Shopping Center; (iii) the proposed trade name is the trade name used by a majority of the stores operated by Tenant or its affiliates under the current Trade Name; (iv) Tenant shall install new internally illuminated storefront signage with Tenant's new Trade Name and Tenant shall make all necessary modifications to the sign band or the bulkhead of the Premises at its sole cost and expense and in accordance with Landlord's specifications and design criteria for the Shopping Center and Exhibit B attached hereto; (v) Tenant shall reimburse Landlord the reasonable expenses incurred by Landlord in modifying any directories that reference Tenant's store to reflect the new Trade Name; and (vi) Tenant notifies Landlord of its change of trade name at least thirty (30) days prior to said change. On or before the thirtieth (30th) day after Tenant changes its trade name, Tenant shall submit drawings to Landlord for Landlord's review and approval prior to the installation of the sign or modification of the sign band or bulkhead.

#### **SECTION 4.2. CONTINUOUS OPERATION BY TENANT.**

A. Tenant shall (i) carry at all times in the Premises a full stock of merchandise; and (ii) conduct its business on the Premises at all times in a first-class manner consistent with reputable business standards and practices and operate the entire Premises continuously and uninterruptedly during all of the hours set forth below, during the entire Term in accordance with the terms of this Lease. Tenant shall be entitled to close its store for business without penalty of not more than 15 days during any calendar year.

B. If Tenant violates any provision of this Section 4.2, then Landlord shall have, in addition to all remedies in this Lease provided, the right to collect upon demand, in addition to the other Rent payable under this Lease, liquidated damages in an amount equal to twice the Rent per day for each and every day that such violation exists. The payment of such Additional Rent shall not relieve Tenant of any of its obligations under this Lease.

#### **SECTION 4.3. STORE HOURS.**

Tenant shall conduct its business in the Premises during the hours designated by Landlord as the normal mall hours (the "Normal Mall Hours"). Tenant acknowledges that as of the date hereof the Normal Mall Hours are as follows: (i) Monday through Saturday, between the hours of 10:00 a.m. and 9:00 p.m., and (ii) Sunday, between the hours of 12:00 p.m. and 6:00 p.m. Landlord shall have the right to alter such Normal Mall Hours from time to time during the Term of this Lease, provided that Landlord gives Tenant thirty (30) days prior written notice of such change, and provided further that if such change includes any additional hours other than the hours specifically stated in clauses (i) and (ii) above, Tenant shall be obligated to conduct its business in the Premises during such additional hours if, and only if, at least one (1) Major Store and seventy-five percent (75%) of the Satellite Store Space tenants in the Shopping Center are similarly obligated or otherwise open for business during such additional hours, provided that Tenant's sales for such extended time opening exceeds Tenant's expenses for the same period.

#### **SECTION 4.4. ADDITIONAL OPERATIONAL COVENANTS.**

Tenant covenants and agrees, at all times during the Term and such other times as Tenant occupies the Premises or any part thereof, to comply, at its own cost and expense, with the following:

A. Any handling of freight or deliveries to or from the Premises shall be made in a manner which is consistent with good shopping center practice and only at such times, in the areas and through the entrances and exits designated by Landlord. Any truck or machine used for handling freight or making such deliveries shall have rubber wheels only.

B. All garbage and other refuse shall be kept inside the Premises in the kind of container specified by Landlord and shall be placed outside of the Premises prepared for collection in the manner and at the times and places specified by Landlord. If Landlord elects to furnish or designate such service for the removal or recycling of garbage and other refuse, Tenant shall use the service furnished or designated by Landlord, but Tenant shall not be obligated to pay more for such service than the prevailing competitive rates charged by reputable, independent trash removal or recycling contractors for the same service on a direct and individual basis. If furnished or billed by Landlord, Tenant shall pay for such service monthly as Additional Rent. If Landlord does not provide such service, Tenant shall be solely responsible for the removal (including any recycling required by any applicable Law) of all garbage and other refuse from the Premises and shall pay promptly all charges therefor.

C. Tenant shall not (i) suffer, allow or permit any vibration, noise, odor or flashing or bright light to emanate from the Premises; (ii) paint or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle(s) parked in the parking area(s) of the

Shopping Center, whether belonging to Tenant, its employee(s), or any other person(s); (iii) solicit business or distribute, or cause to be distributed, in the Common Areas any handbills, promotional materials or other advertising; (iv) conduct or permit any other activities in the Premises that might constitute a nuisance; (v) permit the parking of vehicles so as to interfere with the use of any driveway, corridor, walkway, parking area, mall or any other Common Area; or (vi) use or occupy the Premises or do or permit anything to be done therein which in any manner might cause injury or damage in or about the Shopping Center.

D. Tenant shall maintain positive air pressure in the Premises so as to prevent the drawing of heated or cooled air from other areas of the Shopping Center, and keep the Premises heated or air-conditioned, as the case may require, at least to the same temperature as the Landlord is endeavoring to maintain in the Shopping Center. If Tenant fails to operate its heating, ventilating and air-conditioning equipment servicing the Premises in accordance with this Section 4.4(D) and does not cure such failure within thirty (30) days after receipt of written notice thereof from Landlord, such failure shall constitute a default hereunder and in addition to all of Landlord's other rights and remedies hereunder with respect to such default.

E. Tenant shall use and allow to be used all plumbing within the Premises and the Shopping Center only for the purpose for which it is designed, and no foreign substance of any kind shall be thrown therein. The expense of any breakage, stoppage or damage resulting from a violation of this provision shall be paid for by Tenant upon demand.

F. Tenant shall contract for and utilize termite and pest extermination services for the Premises as necessary.

G. Tenant shall keep the Premises and any display windows or signs in or on the Premises well lighted during such hours and days that the Shopping Center, or the portion thereof in which Tenant is located, is lighted by Landlord.

H. Tenant shall contract for and utilize a window-cleaning service and maintain the windows in the Premises in a reasonably clean condition and in a manner consistent with a first class shopping center. If Tenant fails to keep its windows clean, Landlord may cause the same to be kept clean (through a service or otherwise) and Tenant shall pay the cost thereof upon demand. Landlord must use a window cleaning service competitive in price.

I. Tenant shall use good faith efforts to avoid any action which would cause any work stoppage, picketing, labor disruption or dispute, or any interference with the business or the rights and privileges of Landlord or any other tenant, occupant or other person lawfully in the Shopping Center (any such event shall be referred to collectively herein as a "Labor Dispute"). If any action or inaction on the part of any Tenant Related Party causes a Labor Dispute, Tenant shall have any pickets removed and, if deemed necessary by Landlord, terminate at any time any construction work being performed in the Premises giving rise to such Labor Dispute, until such time as Landlord shall have given its written consent for the resumption of such work (which consent shall not be unreasonably withheld), and Tenant shall have no claim for damages of any nature against any of the Landlord Related Parties in connection therewith, nor shall the Commencement Date be extended as a result thereof.

J. Tenant shall pay before delinquency all fees and charges and shall maintain all licenses and permits required for Tenant to lawfully use the Premises as contemplated by this Lease.

K. Tenant shall, but not be required to (i) use the Shopping Center name as existing, or as the same may be changed from time to time, in designating the location of the Premises in all newspaper or other advertising, and all other references to the location of the Premises; and (ii) to the extent Tenant mentions in local advertising the location of any of its stores, Tenant shall include its Trade Name and the address and identity of Tenant's business in the Premises in all such advertisements made by Tenant in any manner, in any medium.

L. Tenant shall not conduct or permit to be conducted any auction, fire, "going out of business", liquidation or similar type of sale; provided, however, that this provision shall not restrict the absolute freedom (as between Landlord and Tenant) of Tenant to determine its own selling prices nor shall it preclude periodic, seasonal, promotional or clearance sales held in the ordinary course of business. Tenant may have sidewalk sales.

M. Tenant shall not place a load on any floor in the Shopping Center exceeding the load which it was designed to carry, nor shall Tenant install, operate or maintain thereon any heavy item or equipment except in such manner as to achieve a proper distribution of weight.

N. Tenant shall not install, operate or maintain in the Premises or in any other area of the Shopping Center any electrical equipment which does not bear the Underwriters Laboratories seal of approval, or its equivalent, or which would overload the electrical system or any part thereof beyond its capacity for proper, efficient and safe operation as determined by Landlord (in its reasonable business judgment), taking into consideration the overall electrical system and the present and future requirements therefor in the Shopping Center.

O. To the extent required by Landlord (in its reasonable business judgment), or any applicable Law, Tenant shall provide sound barriers for all mechanical systems serving the Premises.

P. Tenant shall not store, display, sell, or distribute any alcoholic beverages or any dangerous materials without the prior written consent of Landlord.

Q. Tenant shall not sell, distribute or display any item or provide any service in any manner which, in Landlord's good faith judgment, is inconsistent with the quality of operation of the Shopping Center or may tend to injure or detract from the moral character or image of the Shopping Center within the community. Without limiting the generality of the foregoing, Tenant shall not permit any "adult" entertainment or nudity in the Premises and shall not sell, distribute or display any paraphernalia commonly used in the use or ingestion of illicit drugs, or any x-rated, pornographic or so-called "adult" newspaper, book, magazine, film, picture, video tape, video disk, or other similar representation or merchandise of any kind.

R. Tenant shall comply with and shall cause the Premises to comply with all Laws affecting the Premises or any part or the use thereof. Notwithstanding the foregoing, except as provided below, Tenant shall have no obligation to comply with any such Laws to the extent the same require structural alterations or structural repairs to the Premises (collectively, the "Structural Work"), all of which required Structural Work shall be the obligation of Landlord (except that the foregoing does not in any way relieve Tenant from any responsibility to pay its share of Landlord's Operating Costs as provided in this Lease), except to the extent that such Structural Work is (a) to the storefront of the Premises, (b) caused by an act or omission of Tenant, or Tenant's agents, employees or contractors, (c) required as a result of Tenant's specific use of the Premises or the particular configuration of the Leasehold Improvements within the Premises, (d) necessitated by or to any improvement, alteration or addition to the Premises performed by or at the direction of Tenant, or (e) required of Tenant in its capacity as an employer, in any of which cases such Structural Work shall be performed at Tenant's sole cost and expense, and at Landlord's option, shall be performed by Tenant.

S. Tenant shall not operate or permit to be operated on the Premises any coin or token operated vending machine or similar device including, without limitation, telephones, amusement devices and machines for sale of beverages, foods, candy, cigarettes or other goods, but Tenant shall have the right to operate vending machines located in a non-sales area of the Premises for the exclusive use of Tenant's employees.

T. If Landlord designates any portion of the Shopping Center parking area for employee parking ("Employee Parking Areas"), Tenant and Tenant's employees shall park their motor vehicles only in said Employee Parking Areas. Tenant shall furnish Landlord with automobile license numbers assigned to Tenant's cars and cars of its employees within five (5) days after each and every request therefor and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees park their cars in areas other than the Employee Parking Areas, then Landlord, after giving one (1) written warning sent to Tenant's store and Tenant's corporate office of such violation per Lease Year, shall have the right to charge Tenant Ten Dollars (\$10.00) per day per car parked in any areas other than the Employee Parking Areas, for every subsequent violation per Lease Year. Landlord must provide ample parking for Tenant's customers.

U. Tenant shall comply with and observe all other reasonable rules and regulations established by Landlord, from time to time, provided such rules and regulations shall be uniformly and non-discriminatorily applicable to all other similarly situated Satellite Store Space tenants.

V. Except as required by Section 4.4(K), no symbol, design, name, mark or insignia adopted by Landlord for the Shopping Center or picture or likeness of the Shopping Center shall be used by Tenant without the prior written consent of Landlord.

#### SECTION 4.5. SIGNS AND ADVERTISING.

Tenant shall not place or permit to be placed on the exterior of the Premises or the door, window or roof, within any display window space or within five (5) feet behind the entry to the Premises any sign, decoration, lettering or advertising matter without Landlord's prior written approval, except that Tenant may utilize such material within the Premises on a temporary basis (collectively, the "Temporary Signs") to advertise special sales or promotional events without Landlord's approval provided that such Temporary Signs are professionally made, in good taste and not taped to any window of the Premises. Tenant shall submit to Landlord reasonably detailed drawings of its proposed signs (other than Temporary Signs) that comply with the Signage Criteria attached as Exhibit B-1 for review and approval by Landlord prior to utilizing same. All signs, awnings, canopies, decorations, lettering, advertising matter or other items used by Tenant shall be insured and maintained at all times by Tenant in good condition, operating order and repair. Flashing signs are prohibited. Tenant shall install one (1) internally illuminated, individually lettered sign or other type of sign as specified by Landlord above the storefront of the Premises and professionally lettered name signs on its service doors both in accordance with plans and specifications therefor approved by Landlord. Tenant shall have space on the pylon sign if the center contains one.

Landlord shall have the right, after twenty-four (24) hours prior written notice to Tenant and without any liability for damage to the Premises reasonably caused thereby, to remove any items displayed or affixed in or to the Premises which Landlord determines (in its reasonable business judgment) to be in violation of the provisions of this Section 4.5.

#### **SECTION 4.6. TENANT'S USE OF ROOF.**

No radio or television aerial or other device shall be erected on the roof or exterior walls of the Premises or the building in which the Premises are located without first obtaining Landlord's written consent. If the Premises are located immediately under the roof of the Shopping Center, then Tenant is hereby given a non-exclusive right to use that part of the roof of the building in which the Premises are located within the lines formed by projecting the perimeter wall lines of the Premises vertically, such use being solely for the installation and maintenance of Tenant's heating, ventilating and air conditioning system, if any; provided, however, that (i) roof penetrations shall be made only with Landlord's prior written consent and by a contractor designated by Landlord; (ii) Tenant shall, at its expense, promptly repair, utilizing a contractor designated by Landlord, any damage or wear to the roof resulting in whole or in part from the use described in this Section 4.6; and (iii) Landlord may relocate Tenant's equipment at any time at Landlord's expense, with notice to Tenant.

### **ARTICLE V**

#### **RENT**

##### **SECTION 5.1. RENT PAYABLE.**

Tenant shall pay the Rent payable under this Lease to Landlord, without prior demand therefor or any setoff or deduction whatsoever, at the times set forth in this Lease in lawful money of the United States, at the place designated from time to time by Landlord by notice given to Tenant. Unless another time shall be expressly provided for payment, Rent shall be due and payable on demand or together with the next succeeding installment of Minimum Rent, whichever shall first occur. Tenant's covenant to pay Rent shall be independent of every other covenant set forth in this Lease. Tenant shall also pay to Landlord all applicable sales or other taxes which may be imposed on any item of Rent at the same time as such item of Rent is due and payable to Landlord. In addition to constituting a default under this Lease, if Tenant shall fail to make any payment of Rent when due, Tenant shall pay a late charge equal to the greater of One Hundred Dollars (\$100.00) or three percent (3%) of the amount of Rent past due to reimburse Landlord for its additional administrative costs in processing such payment. Unless Landlord notifies Tenant otherwise, all Rent payments shall be made via electronic fund transfer ("EFT") to Commerce Bank, 2751 Street Road, Bensalem, Pennsylvania ABA#036001808, FMP Northgate LLC, account #367721776.

A. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as payment on account. The acceptance by Landlord of a payment for a lesser amount with an endorsement or statement thereon or in any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and Landlord may accept such payment without prejudice to any other rights or remedies which Landlord may have against Tenant.

B. If Tenant pays any installment of Rent by check and such check is returned for insufficient funds or other reasons not the fault of Landlord, then Tenant shall pay Landlord, on demand, a processing fee of One Hundred Dollars (\$100.00) per returned check plus all applicable late charges. Landlord agrees to waive one (1) fee per annum.

##### **SECTION 5.2. PAYMENT OF MINIMUM RENT.**

A. Tenant shall pay to Landlord the Minimum Rent provided in Section 1.1(E), in equal monthly installments, in advance, commencing on the Commencement Date and on the first day of each and every calendar month thereafter throughout the Term.

##### **SECTION 5.3. PAYMENT OF PERCENTAGE RENT.**

Tenant shall pay to Landlord Percentage Rent for each Lease Year annually.

##### **SECTION 5.4. "GROSS SALES" DEFINED.**

A. The term "Gross Sales" shall mean: the total price charged for all goods, merchandise, tickets, trade-ins, beverages and food sold, leased or licensed, and all services or other operations or items sold or rendered, at, in, on or from the Premises by Tenant or any Concessionaire, whether for cash or on a charge, credit, time basis or otherwise, without reserve or deduction for inability or failure to

collect, including, but not limited to, the following: (i) orders originated or accepted by Tenant at the Premises but delivery or performance is made from or at any place other than the Premises, or vice versa; (ii) orders received or filled at the Premises made by mail, telephone or other means; (iii) sales by means of mechanical and other vending machines in the Premises; (iv) all service, finance or interest charges imposed by Tenant on any type of account or note receivable, to the extent that the principal amount thereof consists of monies which were or should have been included in Gross Sales; and (v) all gross income received by Tenant from its operations in, at, on or from the Premises (including, without limitation, the type of transactions described above) which Tenant or any Concessionaire in the ordinary course of business would credit or attribute to its business upon the Premises and which are neither included in nor excluded from Gross Sales by the other provisions of this Lease, but without any duplication; and in all cases without deduction or allowance for cost of inventory, or other costs or expenses of purchasing, selling and transporting, or other costs or expenses related to overhead or franchise fees or taxes, except as specifically provided in Section 5.4(B) below.

B. There shall not be included, or if included in the calculation of Gross Sales, there shall be deducted, as the case may be, provided that specific record is made at the time of each transaction: (i) the actual net amount of refunds, credits or allowances actually made or allowed by Tenant in accordance with reasonable business practices upon transactions included within Gross Sales where the item is returned by the purchaser to and accepted by Tenant (provided that anything given in exchange for returned items and any such credits to customers shall be included in Gross Sales when used); (ii) sales or retailer's excise taxes which are separately added by Tenant to the sales price, paid directly by the customer, collected by Tenant and actually paid over by Tenant to the governmental taxing authorities, but not deducting from Gross Sales any other tax of any nature; (iii) the exchange of merchandise between the stores of Tenant where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which has been made at, on, in or from the Premises; (iv) returns to shippers or manufacturers for credit; (v) sales of fixtures which are not part of Tenant's stock in trade; (vi) bulk sales or wholesale transfers of merchandise not in the ordinary course of business; and (vii) the following, only to the extent that they do not, in the aggregate, exceed two percent (2%) of Gross Sales in any Lease Year or Partial Lease Year: (a) sales to employees of Tenant at a discount; (b) Tenant's accounts receivable consisting of bad checks and bad debts; provided, however, if such accounts are actually collected later, the amounts shall be included in Gross Sales at such time, and further provided Tenant shall use reasonable efforts within the retail trade to collect such bad checks and bad debts; (c) service charges levied against sales through the use of national bank cards or other similar third party credit services such as Visa or Mastercard and check verification charges; and (d) the amount received from the sale of gift certificates until such certificates are treated as a sale at the Premises pursuant to Tenant's bookkeeping practices.

#### **SECTION 5.5. STATEMENTS OF GROSS SALES.**

A. Within ten (10) days after the end of each calendar month included in the Term, Tenant shall deliver to Landlord a written statement by Tenant setting forth the amount of Gross Sales made during such month.

B. On or before the sixtieth (60th) day following each Lease Year or Partial Lease Year included in the Term, Tenant shall deliver to Landlord a written certified statement setting forth the items required under Sections 5.5(A)(ii), (iii), (iv) and (v) with respect to such Lease Year or Partial Lease Year.

C. If Tenant shall fail to deliver any statement of Gross Sales when due and does not cure such failure within ten (10) days after written notice from Landlord, in addition to all of Landlord's other rights and remedies hereunder.

#### **SECTION 5.6. RECORDS AND AUDITS.**

A. The business of Tenant and any Concessionaire upon the Premises shall be operated so that a duplicate dated sales slip, dated invoice, register receipt or similar evidence of payment, serially numbered, shall be issued with each transaction resulting in Gross Sales or exclusions therefrom. Tenant shall keep at the Premises or at the home or regional office of Tenant, a general ledger, sales receipts, sales records and other supporting documentation for at least one (1) years after the end of the period to which they pertain. All such documentation shall disclose in detail all information required to permit Landlord to verify Tenant's Gross Sales and conform to, and be in accordance with, generally accepted accounting principles consistently applied. If the documentation Tenant is required to maintain pursuant to this Section 5.6(A) is insufficient to permit Landlord to verify Gross Sales and exclusions therefrom, Tenant shall pay to Landlord, upon demand, the cost of any examination or audit performed pursuant to Section 5.6(B) below, including, without limitation, all reasonable travel expenses incurred by Landlord in conducting such examination or audit. If any audit is required or a controversy arises regarding Percentage Rent, Tenant shall retain its books and records until such audit is terminated or controversy is resolved notwithstanding the expiration of the Term.

B. Landlord, its agents and employees shall have the right at any time during normal business hours after not less than thirty (30) days' prior written notice to Tenant, to cause an examination or complete audit to be made of the documentation described in Section 5.6(A) and such other

documentation, including, without limitation, bank accounts as Landlord shall reasonably require. If any audit or examination shall disclose that any statement of Gross Sales understates Gross Sales for the reporting period (i) to any extent, Tenant shall pay to Landlord upon demand the resultant deficiency in Percentage Rent, together with interest thereon; and (ii) to the extent of three percent (3%) or more, Tenant shall pay to Landlord as Additional Rent, upon demand, the cost of the audit or examination including, without limitation, all reasonable travel expenses incurred by Landlord in conducting such audit.

#### SECTION 5.7. TAXES.

The term "Taxes" shall mean all federal, state, local governmental, special district and special service area taxes and assessments, exactions, impact fees and charges (including, without limitation, lease, rent or occupancy taxes) and other governmental charges and levies, general and special, ordinary and extraordinary, unforeseen as well as foreseen of any kind and nature (including interest thereon whenever the same may be payable in installments) which Landlord shall pay or become obligated to pay or which are or shall become levied, due and payable or liens upon, assessed directly or indirectly against all or any portion of the Shopping Center (or any of the rents received therefrom) arising out of the use, occupancy, ownership, leasing, management, repair, replacement or operation of the Shopping Center, any part thereof, appurtenance thereto or property, fixtures or equipment therein imposed by any authority having jurisdiction over the Shopping Center or any part thereof, in the amount billed and payable immediately prior to the date the same are delinquent together with the costs (including, without limitation, reasonable attorneys' fees) of any negotiation, contest or appeal pursued by Landlord to reduce or prevent an increase in any portion of such Taxes, regardless of whether any reduction or limitation is obtained, and all of Landlord's administrative costs with respect to the foregoing, all of which shall arise during the Term or which shall be attributable to the period included in the Term. No inheritance, estate, franchise, corporation, income or profit tax that is or may be imposed upon Landlord personally shall be deemed to be included in "Taxes" and no amount payable by Tenant pursuant to Section 5.11 shall be considered part of Taxes. Notwithstanding anything contained herein to the contrary, Tenant's obligation hereunder to reimburse Landlord for payment of Taxes shall not include penalties imposed for late payment of Taxes.

#### SECTION 5.8. PAYMENT OF TAX RENT.

A. Tenant's proportionate share of Taxes (the "Tax Rent") for each Tax Year (as hereinafter defined) shall be computed by multiplying the amount of the Taxes less any Deductible Contributions (hereinafter defined) to Taxes, by a fraction, the numerator of which shall be the Floor Space of the Premises and the denominator of which shall be the Floor Space of the Satellite Store Space (excluding the Floor Space of all Separately Assessed Tenants, [each as hereinafter defined], Leaseable, provided, however, that the denominator shall in no event be less than eighty percent (80%) of the leasable area of the Shopping Center (and the denominator shall be increased by the Deductible Contributions made by any tenant whose Floor Space is added back to the denominator in order to reach eighty percent). The leased and occupied Satellite Store Space for a Tax Year shall be the average of the leased and occupied Satellite Store Space on the first day of each calendar month in such Tax Year. For purposes of this Section, "Deductible Contributions" shall mean all contributions to Taxes made by (i) all Separately Assessed Tenants, (ii) all Temporary Tenants, (iii) all Ancillary Tenants (as hereinafter defined), (iv) all Exterior Tenants who are not Separately Assessed Tenants, and (v) all Major Stores who are not Separately Assessed Tenants. "Separately Assessed Tenant" shall mean any tenant (excluding Tenant) whose premises within the Shopping Center are separately assessed and included on a separate tax bill and who is obligated to pay the entire amount of such tax bill directly to the taxing authorities or to Landlord. "Temporary Tenant" shall mean any tenant or occupant (excluding Tenant) who occupies Satellite Store Space within the Shopping Center pursuant to a lease, license or other similar agreement with an original stated term of twelve (12) months or less. "Exterior Tenant" shall mean any tenant (other than Tenant) in the Shopping Center who does not have a storefront on the Enclosed Mall. "Ancillary Tenant" shall mean any tenant or occupant of the Shopping Center who occupies Ancillary Space (as defined in Section 1.2[M] above) in the Shopping Center, provided that if such Ancillary Tenant occupies other space in the Shopping Center in addition to such Ancillary Space, the "Deductible Contributions" made by such Ancillary Tenant shall only include the contributions to Taxes (or in the case of Section 6.4, contributions to Landlord's Operating Costs) that are directly attributable to the Ancillary Space occupied by such Ancillary Tenant. The term "Tax Year" means each twelve (12) month period established as the real estate tax year by the taxing authorities having jurisdiction over the Shopping Center.

B. Tax Rent shall be paid by Tenant, in advance, in equal monthly installments in such amounts as are estimated and billed by Landlord for each Tax Year during the Term, with the first installment being due on the Commencement Date and each succeeding installment being due on the first day of each calendar month thereafter. If at any time during a Tax Year (or after a Tax Year if the final amount of the Taxes has not been determined) it shall appear that Landlord has underestimated the Tax Rent for such Tax Year, Landlord may adjust the amount of the monthly installments of Tax Rent and bill Tenant for any deficiency which may have accrued during such Tax Year. After Landlord's receipt of the received tax bills for each Tax Year, Landlord shall notify Tenant of the amount of Taxes for the Tax Year in question and the amount of the Tax Rent for such Tax Year. Any overpayment or deficiency in the Tax Rent for such Tax Year shall be adjusted between Landlord and Tenant as follows: Tenant shall pay Landlord or Landlord shall credit to Tenant's account (or, if such adjustment is at the end of the Term,

pay Tenant), as the case may be, within sixty (60) days after the aforesaid notification to Tenant, the amount of any such excess or deficiency of Tax Rent paid or payable by Tenant. Landlord warrants that Tenant's initial estimate for taxes for the first Lease Year shall not exceed \$4.07 per square foot.

#### **SECTION 5.9. RENT FOR A PARTIAL MONTH.**

For any portion of a calendar month included at the beginning or end of the Term, Tenant shall pay one thirtieth (1/30th) of each monthly installment of Rent for each day of such portion in advance at the beginning of such portion.

#### **SECTION 5.10. RENT FOR A PARTIAL LEASE YEAR OR PARTIAL CALENDAR YEAR.**

During any Partial Lease Year or partial calendar year, as the case may be, each item of Rent which is calculated on an annual basis but payable in monthly installments (such as, but not limited to, Marketing Fund Dues, the Mall HVAC Charge and Premises HVAC Charge), shall be appropriately prorated based on the number of days in such Partial Lease Year or partial calendar year, as the case may be, contained in the Term of this Lease.

#### **SECTION 5.11. TAXES PAYABLE BY TENANT.**

If any tax, excise on rents or other imposition, however described, is levied or assessed by any taxing authority on account of Tenant's interest in this Lease, Landlord's receivables, the Rent, Tenant's inventory, the Leasehold Improvements, any Tenant Property, or if any other taxes are imposed upon this Lease, Tenant's right to occupy the Premises, Tenant's investment or business operation in the Premises (including, without limitation, any and all documentary stamps or similar taxes assessed upon this Lease or the consideration received by Landlord by reason of this Lease), then Tenant shall be responsible therefor and shall pay the same before delinquency. If any taxing authority requires that any such tax or excise on rents or other imposition, however described, for which Tenant is responsible (other than the Taxes included in the calculation of the Tax Rent) be paid by Tenant, but collected by Landlord for and on behalf of such taxing authority and forwarded by the Landlord to such taxing authority, then the same shall be paid by Tenant to Landlord at such times as such taxing authority shall require and be collectible by Landlord and the payment thereof enforced in the same fashion as provided for the enforcement of payment of Rent.

### **ARTICLE VI**

#### **COMMON AREAS**

##### **SECTION 6.1. USE OF COMMON AREAS.**

During the Term, Tenant, its employees, agents and customers shall have a non-exclusive license, in common with Landlord and all others to or for whom Landlord has given or may hereafter give rights to use the Common Areas (as the same may exist from time to time), but such license shall at all times be subject to the exclusive control and management by Landlord and such reasonable rules and regulations as Landlord may, from time to time, impose.

##### **SECTION 6.2. MANAGEMENT AND OPERATION OF COMMON AREAS.**

Landlord shall operate, decorate, repair, equip and maintain, or shall cause to be decorated, operated, repaired, equipped and maintained, the Common Areas in a manner deemed by Landlord, in its reasonable business judgment, to be appropriate. In connection with the exercise of its rights under this Section 6.2, Landlord may: (i) utilize the Common Areas for promotions, exhibits, food facilities and any other use which Landlord, in its reasonable business judgment, deems appropriate for such Common Areas; (ii) erect, install, remove and lease, kiosks, planters, pools, sculpture and other improvements within the Common Areas; (iii) enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of any part of the Shopping Center; (iv) close temporarily all or any portion of the Common Areas; (v) grant individual tenants and others the right to conduct sales in the Common Areas; (vi) restrict parking by tenants and other occupants of the Shopping Center, their employees, agents, and concessionaires and the respective visitors and invitees of each; (vii) close all or any portion of the Shopping Center and in connection therewith, seal off all entrances to the Shopping Center or any portion thereof to such extent as may, in the sole opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public thereon; (viii) temporarily suspend any and all services, facilities and access by the public to all or any part of the Shopping Center on legal holidays or due to any event beyond the reasonable control of Landlord; and (ix) do and perform any other acts in and to said Common Areas as, in the exercise of good business judgment, Landlord shall deem advisable.

### SECTION 6.3. "LANDLORD'S OPERATING COSTS" DEFINED.

The term "Landlord's Operating Costs" shall mean all costs and expenses incurred in a manner deemed by Landlord, in its reasonable business judgment, to be appropriate and for the best interest of the Shopping Center in connection with the operation, equipping, replacement, maintenance and repair of the Shopping Center (and all systems, structures and Common Areas related thereto), including, without limitation, the costs and expenses of: (i) lighting, cleaning, painting, paving and striping of the Shopping Center, (ii) removing snow, ice, garbage, trash and debris from the Shopping Center, (iii) operating, maintaining, repairing and replacing ducts, conduits and similar items, fire protection systems, sprinkler systems, security alarm systems, storm and sanitary drainage systems and other utility systems and facilities, signs and markers, on and off site traffic regulation and control signs and devices, (iv) expanding, adding to or reconfiguring the Common Areas (or any portion thereof), (v) all insurance applicable to the Shopping Center with types, amounts, and deductibles determined by Landlord; (vi) interior and exterior planting, replanting and replacing flowers, shrubbery, plants, trees, and other landscaping; (vii) complying with any environmental standards and complying with any other Laws; (viii) all repairs, equipping, operation, maintenance, replacement and improvements of or to the Shopping Center, including, without limitation, floors, ceilings, roofs, windows, escalators, elevators and any other portions of the structure of the Shopping Center and all parking areas and structures (including, without limitation, Shopping Center identification and pylon signs, directional signs, traffic signage and markers), transportation equipment and systems and similar facilities; (ix) the purchase, maintenance, repair and inspection of all machinery and equipment used in the operation or maintenance of the Shopping Center and all personal property taxes and other charges incurred in connection with such machinery and equipment; (x) all license and permit fees and any and all parking surcharges that may result from any Laws, including the cost of obtaining and operating public transportation or shuttle bus systems, if the same are deemed advisable by Landlord or are required by any applicable Laws; (xi) music program services and loudspeaker systems, whether rented or purchased; (xii) personnel, including, without limitation, management, security and maintenance personnel employed in connection with the management, operation, maintenance and repair of the Shopping Center, and other personnel hired to direct traffic and the parking of automobiles in the parking areas, and all costs and expenses relating to the employment of such personnel, including, without limitation, the salaries, benefits and insurance costs of such personnel, provided that Landlord shall make a reasonable allocation of the costs and expenses of any management and maintenance personnel that perform services for properties other than the Shopping Center amongst the properties (including the Shopping Center) for which such personnel perform services; (xiii) all utility costs relating to the Common Areas; and (xiv) Landlord's administrative costs and overhead costs in an amount, in the aggregate, equal to fifteen percent (15%) of the total of all other Landlord's Operating Costs. Landlord's Operating Costs shall not include, however: (a) depreciation; (b) costs of repairs and replacements to the extent that proceeds of insurance or condemnation awards are received therefor; (c) the cost of a "Capital Expenditure" as defined under the Internal Revenue Code Section 263 and the regulations prescribed thereunder, in effect as of the date of this Lease, unless such cost is amortized over the lesser of ten (10) years and the "useful life" of such Capital Expenditure, in which event Landlord's Operating Costs for each year included in the period selected by Landlord shall include the cost of such Capital Expenditure as amortized over such period, plus CAM interest on the portion of such cost which has not been included in Landlord's Operating Costs in any year; (d) fines or penalties resulting from Landlord's breach of this Lease or imposed upon Landlord by any governmental authority as a result of the violation of any Law, by any of the Landlord Related Parties; (e) the cost of any item or service to the extent of any direct reimbursement Landlord actually receives with respect thereto from Tenant or any other tenant or occupant of the Shopping Center (other than reimbursement Landlord receives through payment of a proportionate or other share of Landlord's Operating Costs); (f) the cost of building out leaseable space in preparation for occupancy (excluding any portion of said cost that results from repairs, replacements or maintenance work that would otherwise have been performed or were otherwise required); (g) the amount of brokerage commissions paid by Landlord in connection with the leasing of space by Landlord in the Shopping Center; (h) principal and interest payments to service the debt under any mortgage secured by the Shopping Center; (i) lease rentals under any ground or underlying lease affecting the Shopping Center; (j) Taxes and Tax Rent; and (k) the cost of construction of new gross leaseable Floor Space. Notwithstanding any of the foregoing, Tenant's Proportionate Share of Landlord's Operating Costs shall not increase for any Operating Cost Year by more than five percent (5%) of Tenant's Proportionate Share of Landlord's Operating Costs for the immediately preceding Operating Cost Year.

### SECTION 6.4. TENANT'S PROPORTIONATE SHARE OF LANDLORD'S OPERATING COSTS.

In and for each Operating Cost Year (as hereinafter defined) or partial Operating Cost Year during the Term, Tenant shall pay Landlord, as Additional Rent, a proportionate share of Landlord's Operating Costs ("Tenant's Proportionate Share of Landlord's Operating Costs"), which shall be computed by multiplying the amount of the Landlord's Operating Costs less any Deductible Contributions (hereinafter defined) to Landlord's Operating Costs by a fraction, the numerator of which shall be the Floor Space of the Premises and the denominator of which shall be the Floor Space of the Satellite Store Space (excluding the Floor Space of all Exterior Tenants [as defined in Section 5.8] and all Temporary Tenants [as defined in Section 5.8]) which is leased and occupied, provided, however, that the denominator shall in no event be less than eighty percent (80%) of the leaseable area of the Shopping

Center (and the denominator shall be increased by the Deductible Contributions made by any tenant whose Floor Space is added back to the denominator in order to reach eighty percent). The leased and occupied Satellite Store Space for an Operating Cost Year shall be the average of the leased and occupied Satellite Store Space on the first day of each calendar month in such Operating Cost Year. Tenant's Proportionate Share of Landlord's Operating Costs shall otherwise be paid and adjusted in the same manner the Tax Rent is paid and adjusted pursuant to Section 5.8, but for Operating Cost Years or portions thereof, if the Term does not begin or end at the beginning or end of an Operating Cost Year, and provided that for purposes of this Section 6.4, "Deductible Contributions" shall mean all contributions to Landlord's Operating Costs made by (i) all Exterior Tenants, (ii) all Temporary Tenants, (iii) all Ancillary Tenants (as defined in Section 5.8) and (iv) all Major Stores who are not Exterior Tenants. "Operating Cost Year" shall mean each twelve month period established by Landlord (from time to time) as the Operating Cost Year at the Shopping Center. Landlord warrants that Tenant's CAM costs for the first lease year shall not exceed \$7.40 per square foot. Notwithstanding any of the foregoing, Tenant's Proportionate Share of Landlord's Operating Costs shall not increase for any Operating Cost Year by more than five percent (5%) of Tenant's Proportionate Share of Landlord's Operating Costs for the immediately preceding Operating Cost Year.

## ARTICLE VII

### UTILITIES

#### SECTION 7.1. UTILITY CHARGES.

A. Tenant shall pay all rents and charges for water, sewer, electricity, gas, heat, steam, hot or chilled water, air-conditioning, ventilating, telephone service and other utilities supplied to the Premises, however supplied (the "Utility Charges"), when the same become due. If such utilities are (i) separately metered, Tenant shall pay the applicable Utility Charges directly to the applicable utility company, (ii) submetered, Tenant shall pay the applicable Utility Charges, (unless prohibited under applicable Laws) thirty (30) days after receipt of a bill from Landlord provided that such Utility Charges plus Landlord's reasonable administrative costs shall not exceed the amounts Tenant would be charged, on a direct and individual basis, if billed directly by the utility company servicing the Shopping Center therefor for the same services, and (iii) not separately metered or submetered, Tenant shall pay to Landlord within thirty (30) days after receipt of a bill therefor, at Landlord's option, either (1) Tenant's proportionate share of such Utility Charges which shall be calculated as follows: the Utility Charges for such utilities plus Landlord's reasonable administrative costs (unless prohibited under applicable Laws) shall be multiplied by a fraction, the numerator of which shall be the Floor Space of the Premises and the denominator of which shall be the total Floor Space occupied by tenants using the applicable utility service or (2) Tenant's share of the costs of the applicable utility service plus Landlord's reasonable administrative costs (unless prohibited under applicable Laws) based on reasonable estimates by Landlord's engineers or consultants. Landlord may, at any time, require Tenant, at its sole cost and expense, to install submeters in connection with the utility services furnished to the Premises, in which case, Tenant shall pay the applicable Utility Charges plus Landlord's reasonable administrative costs directly to Landlord as aforesaid. Landlord, in its sole discretion, shall have the right, at all times, to alter any and all utilities, and the equipment relating thereto, serving the Shopping Center or any portion thereof, provided such alteration by Landlord does not result in a diminution of the utility service to the Premises. Tenant shall execute and deliver to Landlord without delay such documentation as may be required to effect such alteration.

B. If Tenant shall require natural gas for the operation of Tenant's business in the Premises, Tenant shall, at its own expense, arrange for such natural gas utility service from the local gas company in a manner approved by Landlord (which approval shall not be unreasonably withheld).

C. Except to the extent prohibited under applicable Laws, all federal, state and local taxes, surcharges, impositions and other additional charges applicable to utility services used by Tenant shall be payable by Tenant in addition to the charges to which they relate.

#### SECTION 7.2. DISCONTINUANCES AND INTERRUPTIONS OF SERVICE.

None of the Landlord Related Parties shall be liable to Tenant in damages or otherwise for the quality, quantity, failure, unavailability, discontinuance or disruption of any utility service (including any discontinuance pursuant to the immediately succeeding sentence) and the same shall not (i) constitute a termination of this Lease; (ii) an actual or constructive eviction of Tenant; or (iii) entitle Tenant to an abatement of Rent or other charges (except as specifically set forth herein). Landlord also reserves the right to discontinue, without notice to Tenant, any heating, ventilation, air-conditioning or other utility services furnished by Landlord at any time if Tenant fails to pay timely any Utility Charges due under this Lease, after notifying Tenant of the same. Notwithstanding the foregoing, if such disruption or interruption of service is due solely to Landlord's negligence and said interruption of service shall continue for more than forty-eight (48) hours after notice thereof from Tenant to Landlord and prohibit Tenant from operating its business in the Premises, Minimum Rent shall abate until the earlier of the date of restoration of service or the reopening of Tenant's business in the Premises.

## ARTICLE VIII

### INDEMNITY AND INSURANCE

#### SECTION 8.1. INDEMNITY BY TENANT.

Except for losses, liabilities, obligations, damages, penalties, claims, costs, charges, and expenses resulting from the negligence of any of the Landlord Related Parties, Tenant shall indemnify, defend and hold the Landlord Related Parties harmless against and from all losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees, which may be imposed upon, incurred by, or asserted against any of the Landlord Related Parties and arising, directly or indirectly, out of or in connection with the use or occupancy or maintenance of the Premises by, through or under Tenant, and (without limiting the generality of the foregoing) any of the following occurring during the Term: (i) any work or thing done in, on or about the Premises or any part thereof by any of the Tenant Related Parties; (ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof; (iii) any act or omission of Tenant or any of the Tenant Related Parties (but as to Tenant's invitees, only to the extent such act or omission occurs within the Premises); (iv) any injury or damage to any person or property occurring in, on or about the Premises or any part thereof; (v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease with which Tenant, on its part, must comply or perform; or (vi) any Transfer (as defined in Section 15.1) or proposed Transfer. In case any action or proceeding is brought against any of the Landlord Related Parties by reason of any of the foregoing, Tenant shall, at Tenant's sole cost and expense, resist or defend such action or proceeding by counsel.

#### SECTION 8.2. MUTUAL INDEMNITY.

A. Tenant will indemnify and hold harmless Landlord, Landlord's managing agent and such other persons who are in privity of estate with Landlord, or to whom Landlord is legally responsible, from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees and costs incurred to defend such claims, in connection with loss of life, personal injury, bodily injury or damage to property (i) arising from or out of any occurrence in, upon or at the Premises or (ii) arising from or out of the occupancy or use by Tenant of the Premises or the Shopping Center or any part thereof occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, or concessionaires. Tenant shall pay to such parties all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord or such parties in enforcing the terms, conditions, covenants and agreements of this indemnity. This indemnity shall exclude, however, any such claims, actions, damages, liabilities and expenses arising out of or resulting from the negligence or willful misconduct of Landlord, Landlord's managing agent and such other persons who are in privity of estate with Landlord, or for whom Landlord is legally responsible.

B. Landlord will indemnify and hold harmless Tenant and such other persons who are in privity of estate with Tenant, or to whom Tenant is legally responsible, from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees and costs incurred to defend such claims, in connection with loss of life, personal injury, bodily injury or damage to property (i) arising from or out of any occurrence in, upon or at the Shopping Center other than the Premises or (ii) arising from or out of any occurrence in, upon or at the Shopping Center or any part thereof occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, employees or tenants. Landlord shall pay to such parties all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Tenant or such parties in enforcing the terms, conditions, covenants and agreements of this indemnity. This indemnity shall exclude, however, any such claims, actions, damages, liabilities and expenses arising out of or resulting from the negligence or willful misconduct of Tenant, and such other persons who are in privity of estate with Tenant, or for whom Tenant is legally responsible.

#### SECTION 8.3. TENANT'S INSURANCE.

At all times commencing on and after the earlier of (i) the Possession Date, (ii) the Commencement Date, or (iii) the date Tenant enters the Premises for any purpose, Tenant shall carry and maintain, at its sole cost and expense:

A. Commercial General Liability Insurance applicable to the Premises and its appurtenances providing, on an occurrence basis, a minimum combined single limit of Two Million Dollars (\$2,000,000) and containing a contractual liability endorsement. Workers' Compensation Insurance: Coverage A: as required by applicable Laws and Coverage B: Employers' Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) each accident, employee and policy limit.

B. Plate glass insurance and causes of loss – special form insurance written at replacement cost value and with a replacement cost endorsement covering all of Tenant's Property in the Premises,

and all Leasehold Improvements installed in the Premises. Notwithstanding the foregoing, Tenant may self-insure for damage to or breakage of any plate glass in the Premises.

C. Notwithstanding anything to the contrary contained herein, Tenant does not have to maintain the Business Interruption Coverage, provided that if Tenant does not maintain such Business Interruption Coverage, any loss or damage to Tenant which would have been covered by such Business Interruption Coverage shall be deemed for the purposes of Section 8.7 below, to be covered by and recoverable by Tenant under a valid and collectible policy of insurance and Tenant shall be deemed to be self insuring with respect thereto.

D. Whenever good business practice, in accordance with industry standards, indicates the need of additional insurance coverage or different types of insurance in connection with the Premises or Tenant's use and occupancy thereof, Tenant shall, upon request, obtain such insurance at Tenant's expense and provide Landlord with evidence thereof.

#### **SECTION 8.4. TENANT'S CONTRACTOR'S INSURANCE.**

Before any alterations, additions, improvements or construction are undertaken, Tenant shall carry and maintain, at its expense, or Tenant shall require any contractor performing work on the Premises to carry and maintain, at no expense to Landlord, in addition to worker's compensation insurance as required by the jurisdiction in which the Shopping Center is located, causes of loss - special form insurance or Builder's Risk Insurance in the amount of the replacement cost of the Tenant Improvements, Commercial General Liability Insurance (including, without limitation, Construction Liability coverage, Contractual Liability coverage, Completed Operations coverage, a Broad Form Property Damage coverage and Owner's Protective liability) written on an occurrence basis with a minimum combined single limit of Four Million Dollars (\$4,000,000); such limit may be accomplished by means of an umbrella policy, and Business Automobile Liability Insurance including owned and non-owned automobiles with limits of liability of not less than Two Million Dollars (\$2,000,000) combined single limit.

#### **SECTION 8.5. POLICY REQUIREMENTS.**

Any company writing any insurance which Tenant is required to maintain or cause to be maintained pursuant to Sections 8.3 and 8.4 (all such insurance, as well as any other insurance carried by Tenant with regard to the Premises, shall be referred to as "Tenant's Insurance") shall at all times be a company with at least a Best's rating of A- and each such company shall be licensed and qualified to do business in the state in which the Premises are located. Tenant's Insurance may be carried under a blanket policy covering the Premises and any other of Tenant's locations. All policies evidencing Tenant's Insurance (other than any worker's compensation insurance) shall (i) specify Tenant and "owner(s) and its (or their) principals, beneficiaries, partners, officers, directors, employees, agents and Mortgagee(s)" (and any other designees of Landlord as the interest of such designees shall appear) as additional insureds, pursuant to the form of additional insured endorsement providing the broadest possible coverage for the additional insured, and (ii) contain endorsements that the insurer(s) will give to Landlord and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination or lapse of said insurance. Tenant shall deliver to Landlord at least ten (10) days prior to the time Tenant's Insurance is first required to be carried by Tenant, and upon renewals at least ten (10) days prior to the expiration of the term of any such Insurance coverage, a certificate of insurance of all policies evidencing Tenant's Insurance. The limits of Tenant's Insurance shall in no event limit Tenant's liability under this Lease, at law or in equity. If Tenant fails to perform its obligations under this Article VIII, then Landlord may, but shall not be required to, perform any such obligations on behalf of Tenant and add the cost of the same as Additional Rent, payable on demand.

#### **SECTION 8.6. INCREASE IN INSURANCE PREMIUMS.**

Neither Tenant nor any of the other Tenant Related Parties shall do or fail to do anything which will (i) violate the terms of or increase the rate of, any of Landlord's or any other tenant or occupant's insurance policies; (ii) prevent Landlord from obtaining such policies of insurance acceptable to Landlord or any Mortgagee; or (iii) contravene the rules, regulations and recommendations of Landlord's insurance companies, the Fire Insurance Rating Organization or any similar body having jurisdiction over the Premises or the National Board of Fire Underwriters or any similar body exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions. In the event of the occurrence of any of the events set forth in this Section 8.6, Tenant shall pay Landlord upon demand, as Additional Rent, the cost of the amount of any increase in any such Insurance premium.

#### **SECTION 8.7. WAIVER OF RIGHT OF RECOVERY.**

Notwithstanding anything set forth in this Lease to the contrary, Landlord and Tenant do hereby waive any and all right of recovery, claim, action or cause of action against the other and their respective Related Parties for any loss or damage that may occur to Landlord or Tenant or any party claiming by through or under Landlord or Tenant, as the case may be, their respective property, the Shopping Center

or the Premises or any addition or improvements thereto, or any contents therein, by reason of fire, the elements or any other cause, regardless of cause or origin, including the negligence of Landlord or Tenant, or their respective Related Parties, which loss or damage is covered by valid and collectible policies of insurance, to the extent of the insurance proceeds that are recoverable under such insurance policies. All insurance policies carried by either party with respect to the Shopping Center or the Premises, whether or not required to be carried by this Lease and if such policies can be so written and either do not result in additional premium or the other party agrees to pay upon demand any resulting additional premium, shall permit the waiving of any right of recovery on the part of the insured against the other party for any loss or damage to the extent such rights have been waived by the insured prior to the occurrence of such loss or damage. In the event that Tenant is permitted to and self-insures any risk which would have been covered by the insurance required to be carried by Tenant pursuant to Section 8.3 of this Lease or Tenant fails to carry any insurance required to be carried by Tenant pursuant to Section 8.3 of this Lease, then all loss or damage to Tenant, its business, its property, the Premises or any additions or improvements thereto or contents thereof that would have been covered by such insurance had Tenant maintained it shall, for purposes of the waiver set forth in this Section 8.7, be deemed covered and recoverable by Tenant under valid and collectible policies of insurance.

## **ARTICLE IX**

### **CONSTRUCTION**

#### **SECTION 9.1. CONDITION OF LEASED PREMISES.**

By taking possession of the Premises, Tenant is deemed to have (i) inspected the Premises; (ii) accepted the Premises "AS IS" with no representation or warranty by or on behalf of Landlord as to the condition or suitability of the Premises or of the Shopping Center for Tenant's proposed improvements thereto or use thereof; and (iii) agreed that Landlord has no obligation to improve or repair the Premises or the Shopping Center unless said obligation is specifically set forth in this Lease.

#### **SECTION 9.2. TENANT IMPROVEMENTS.**

Any and all other improvements to and remodeling of the Premises required pursuant to this Lease or otherwise (the "Tenant Improvements") including, without limitation, the Initial Tenant Improvements (hereinafter defined), shall be performed by (i) Tenant at Tenant's sole cost and expense, (ii) in accordance with applicable Laws and in accordance with plans and specifications approved by Landlord and the terms of this Lease (including, without limitation, Exhibit B), (iii) in a first-class workmanlike manner with first-class materials, (iv) by duly qualified or licensed persons and (v) without interference with the operation of Landlord or other occupants of the Shopping Center. Upon receipt of Landlord's written approval of such plans and specifications, Tenant shall promptly commence and diligently pursue to completion the construction of the Initial Tenant Improvements by the Commencement Date. If Tenant shall enter the Premises prior to the Commencement Date, then Tenant shall perform all duties and obligations imposed by this Lease including, without limitation, the obligation to pay all Utility Charges (including, without limitation, Premises HVAC Charges), but excepting its obligation to pay Minimum Rent, Percentage Rent, Tax Rent, Tenant's Proportionate Share of Landlord's Operating Costs, Marketing Fund Dues, all of which shall accrue from and after the Commencement Date.

The initial Tenant Improvements shall mean and include, without limitation, all improvements, remodeling and redecorating required by Landlord in connection with Tenant's initial occupancy of the Premises, which shall include, but not be limited to, the furnishing and installation of a construction barricade, if required, new wall, floor and ceiling treatments and finishes, new electrical and lighting systems, new HVAC system, new storefront construction and finishes with display window(s), new internally illuminated storefront signage and new store displays and interior fixturing and furnishing all in accordance with Landlord's specifications, set forth in Exhibit B, together with all necessary modifications to the mechanical, plumbing, and electrical and lighting systems, fire protection systems and HVAC systems within the Premises and providing service to the Premises, as required by all applicable Laws or necessary to accommodate the initial Tenant Improvements.

Subject to any applicable Law, in the event of a direct conflict between the final plans and specifications for the initial Tenant Improvements, as finally approved by Landlord, and the construction provisions contained in this Lease (including, without limitation, Exhibit B), the final Landlord approved plans and specifications shall control Tenant's construction of the Initial Tenant Improvements and shall supersede any directly inconsistent construction provisions contained in this Lease (including, without limitation, Exhibit B), but only to the extent the approved plans and specifications deal with an item specifically.

#### **SECTION 9.3. INITIAL TENANT IMPROVEMENT PLANS.**

A. Tenant's Initial Improvement Plans dated April 25, 2006, as prepared by Tricarico Architects, have been approved by Landlord.

B. Notwithstanding anything contained in this Lease to the contrary, Tenant is required to complete the initial Tenant Improvements on or before the date Tenant opens for business in the Premises and Tenant is required to open for business to the public in the Premises on or before September 1, 2006.

#### **SECTION 9.4. OWNERSHIP OF IMPROVEMENTS.**

All present and future alterations, additions or improvements made in, on or to the Premises, by either party, including, without limitation, all equipment and non-trade fixtures, light fixtures, roof-top air-conditioning units, pipes, ducts, conduits, plumbing, wiring, paneling, partitions, mezzanines, floors, floor and wall coverings, and similar items (the "Leasehold Improvements") shall be deemed the property of Landlord and unless Landlord directs otherwise, shall remain upon and be surrendered with the Premises as part thereof in good order, condition and repair, ordinary wear and tear excepted, upon Tenant's vacation or abandonment of the Premises. If Landlord directs, Tenant shall remove all or a portion of the Leasehold Improvements (including, without limitation, any electronic, fiber, phone and data cabling and related equipment) in the Premises on or immediately prior to the Termination Date or the termination of Tenant's right to possession and shall restore the Premises to the same condition as existed prior to the installation of such property, all in accordance with applicable Laws. All movable goods, inventory, furniture, trade fixtures and other movable personal property belonging to Tenant which are installed or stored in the Premises by Tenant and are not permanently affixed to the Premises, shall remain Tenant's property ("Tenant's Property") and shall be removed by Tenant on or prior to the Termination Date (or the termination of Tenant's right to possession of the Premises, whichever is applicable) provided that: (i) Tenant is not in default under this Lease; and (ii) Tenant shall immediately repair any damage to the Premises caused by the removal of any of Tenant's Property and restore the Premises to the same condition as existed prior to the installation of such property.

#### **SECTION 9.5. MECHANIC'S LIENS.**

No mechanic's or other lien shall be allowed against the Shopping Center or the estate of Landlord. If any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to or for the benefit of Tenant or anyone claiming by, through or under Tenant, Tenant shall forthwith cause the same to be discharged of record or bonded to the satisfaction of Landlord. If Tenant shall fail to cause such lien to be so discharged or bonded within thirty (30) days after notice of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same, by paying the amount claimed to be due without inquiring as to the validity of any such lien, and the amount so paid by Landlord, including attorneys' fees incurred by Landlord in connection therewith, shall be due and payable by Tenant to Landlord upon demand as Additional Rent.

#### **SECTION 9.6. IMPROVEMENT ALLOWANCE.**

To the extent Tenant constructs the initial Tenant Improvements in the Premises in accordance with the plans and specifications approved by Landlord and in accordance with Exhibit B (attached hereto and made a part hereof) and provided Tenant has furnished Landlord with the following documents in a form and substance acceptable to Landlord: (i) a certificate of occupancy or other documentation if required for the permanent occupancy of the Premises and if Tenant is not in default under this Lease, Landlord shall reimburse Tenant the Improvement Allowance. Provided Tenant is not then in default, Landlord shall reimburse Tenant said Improvement Allowance within thirty (30) days after the date which is the later to occur of: (aa) the date Tenant has completed the initial Tenant Improvements in the Premises, (bb) the date Tenant has opened for business in the Leased Premises and (cc) the date Tenant has provided Landlord with copies of the documents referred to in (i) above. Notwithstanding anything to the contrary contained herein, all documents which Tenant submits to Landlord under clause (iv) above must be notarized originals. Nothing contained herein shall be deemed to obligate Landlord to pay Tenant any portion of the Improvement Allowance with respect to the cost of any initial Tenant Improvements which may not have been completed in accordance with the plans and specifications approved by Landlord and Exhibit B. Notwithstanding anything to the contrary contained herein, in no event shall Landlord reimburse Tenant said Improvement Allowance prior to the execution of this Lease by both Landlord and Tenant nor prior to the time Tenant begins paying Landlord Minimum Rent. All documents required to be submitted to Landlord under this Section 9.7 shall be mailed to:

FMP Northgate LLC  
c/o Feldman Mall Properties, Inc.  
3225 North Central Ave., Suite 1205  
Phoenix, Arizona 85012  
Attention: Lease Administration

If Landlord does not refund said Improvement Allowance within 30 days, Tenant can offset against rent until receipt of refund.

## **ARTICLE X**

### **REPAIRS, MAINTENANCE, LANDLORD'S ACCESS AND ALTERATIONS**

#### **SECTION 10.1. REPAIRS BY LANDLORD.**

Subject to the terms and conditions set forth in Articles XI, XII and Sections 4.6 and 17.16, Landlord shall make, or cause to be made all necessary repairs (structural or otherwise) to the Common Areas (excluding, however, any areas any tenant or any other occupant of the Shopping Center is obligated to repair), provided Landlord has actual knowledge of the necessity for such repair.

#### **SECTION 10.2. ALTERATIONS, REPAIRS, MAINTENANCE AND DISPLAYS BY TENANT.**

A. Any alterations or improvements made by Tenant in or to the Premises or any part thereof shall (i) be subject to Landlord's prior written approval thereof (which approval shall not be unreasonably withheld), and (ii) performed in accordance with the provisions of Article IX. Tenant shall, at its sole expense, cause plans and specifications therefor to be prepared by an architect or other duly qualified person for Landlord's approval. In addition, Tenant shall not paint or decorate any part of the exterior of the Premises, or any part of the interior visible from the exterior thereof, without first obtaining Landlord's written approval.

Notwithstanding the provisions contained in this Section 10.2 and provided Tenant is not in default under this Lease, Tenant shall have the right to make non-structural interior alterations to the Premises without obtaining Landlord's prior written consent provided that: (i) such interior alterations shall be completed in a good and workmanlike manner in accordance with Landlord's design criteria for the Shopping Center and the plans and specifications for the Premises originally approved by Landlord; and (ii) the cost of any such interior alterations shall not exceed in the aggregate Twenty Five Thousand Dollars (\$25,000.00) per occurrence.

B. Tenant shall at all times during the Term, from and after the Possession Date, at its own cost and expense, maintain the Premises in good order, condition and repair and make all necessary replacements and repairs to the Premises (other than any repairs required to be made by Landlord pursuant to Sections 10.1, 11.2 or 12.1). Tenant's obligations shall include, without limitation, repairing, maintaining, and making replacements to items such as the following, but only to the extent the same are located within or exclusively serving the Premises: floors (other than structural floors); walls (other than the exterior face or service corridor walls); ceilings; utility meters; pipes and conduits; fixtures; subject to Section 4.6, electrical, plumbing, heating, ventilating and air-conditioning equipment and systems (whether such electrical, plumbing, heating, ventilating and air-conditioning equipment and systems are located inside the Premises or on the roof of the Shopping Center) which are installed by Tenant or which exclusively serve the Premises; sprinkler equipment and other equipment within the Premises; the storefront(s); security grilles or similar enclosures; locks and closing devices; window sashes, casements and frames; glass; and doors and door frames.

C. Tenant shall initiate and carry out a program of regular maintenance and repair of the Premises, including the painting or refinishing of all areas of the interior and the storefront of the Premises, so as to impede, to the extent possible, deterioration by ordinary wear and tear and to keep the same in attractive condition. Tenant shall, at its expense and with its reasonable discretion, refurbish the Premises to the extent necessary so that (i) the furnishings, floor covering, wall covering, fixtures, equipment and surfaces visible to customers in the interior of the Premises shall be substantially in the same condition and appearance as at the commencement of the Term and (ii) the exterior of the Premises (including the storefront and storefront sign) shall be neat, presentable and attractive. Tenant shall not be required, pursuant to this Section 10.2(C) to reconstruct the Premises nor to reconstruct the storefront of the Premises. Tenant shall submit plans and specifications to Landlord for its approval covering said refurbishing within thirty (30) days after the start of the refurbishment and Tenant agrees to make such changes thereto as Landlord may request (acting reasonably). Tenant shall remain open for business during the refurbishing and shall complete the refurbishing within ninety (90) days after Landlord has approved said plans and specifications.

D. Tenant shall install and maintain, at all times, displays of merchandise in the show windows (if any) of the Premises. All articles and the arrangement, style, color and general appearance thereof, shall be in keeping with the character and standards of the Shopping Center, as determined by Landlord.

#### **SECTION 10.3. INSPECTIONS AND ACCESS BY LANDLORD.**

Tenant shall permit Landlord, its agents, employees and contractors to enter all parts of the Premises during the Normal Mall Hours (and in emergencies at any time) to inspect or exhibit the same or to make any repairs or alterations thereto as Landlord may see fit and with notice provided to Tenant, provided that Landlord agrees to use its reasonable efforts not to unreasonably disturb Tenant's conduct of business in the Premises.

## ARTICLE XI

### CASUALTY

#### SECTION 11.1. RIGHT TO TERMINATE.

A. In the event of a fire or other casualty ("Casualty"), if (i) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof; or (ii) the proceeds of Landlord's insurance recovered or recoverable as a result of a Casualty and retained by Landlord shall be insufficient to pay fully for the cost of replacement of the Premises or the building or buildings damaged; or (iii) the Premises or the building in which the Premises is located shall be damaged as a result of any cause which is not covered by Landlord's insurance; or (iv) the Premises shall be damaged in whole or in part during the last twenty four (24) calendar months at the end of the Term; or (v) either or both of the Premises or the building in which the Premises is located shall be damaged to the extent of twenty-five percent (25%) or more of the cost of replacement thereof; or (vi) the Shopping Center is damaged to such extent that in the sole judgment of Landlord, it cannot be operated as an economically viable unit; then, in any such event, Landlord or Tenant may terminate this Lease by notice given to Tenant within one hundred eighty (180) days after the settlement of the loss resulting from the Casualty between Landlord and Landlord's insurer(s) (or within one hundred eighty [180] days after the determination by Landlord's insurers that such loss was not covered by Landlord's insurance, if applicable). If Landlord terminates this Lease as aforesaid, then the Termination Date shall be the date set forth in the notice to Tenant, which date shall not be less than thirty (30) days after the date of said notice. The "cost of replacement" shall be determined by the company or companies selected by Landlord's insurers, or if there shall be no such determination, by a person selected by Landlord qualified to determine such "cost of replacement." Landlord agrees that whenever in this Section 11.1(A) it has the right to cancel Tenant's Lease it will not do so unless it shall likewise endeavor to cancel the leases of other Satellite Store Space tenants similarly situated in Tenant's building whose leases grant Landlord such a right to cancel.

B. If the Casualty shall render the Premises untenantable, in whole or in part, and provided that the Casualty or the occurrence causing the untenability of the Premises is not caused by or primarily attributable to Tenant or Tenant Related Parties, all Rent and additional rent shall abate proportionately during the period of such untenability on the basis of the ratio which the amount of Floor Space of the Premises rendered untenantable bears to the total Floor Space of the Premises. Such abatement of Rent shall terminate on the earlier of (i) the date any repair and restoration work is substantially completed by Landlord pursuant to its obligations, if any, under Section 11.2, or thirty (30) days after such date in the event Tenant is required to perform repair work pursuant to Section 11.3, or (ii) the date Tenant reopens for business in the portion of the Premises previously rendered untenantable. Notwithstanding anything to the contrary contained herein, in the event as a result of a Casualty only a portion of the Premises is damaged which results in Tenant being unable to operate its business within that portion of the Premises not so damaged or destroyed, the Premises shall be deemed to be completely untenantable for purposes of this Section 11.1(B). Except to the extent specifically set forth in this Section 11.1, neither the Rent nor any other obligations of Tenant under this Lease shall be affected by any Casualty, and Tenant hereby specifically waives all other rights it might otherwise have under law or by statute.

#### SECTION 11.2. LANDLORD'S DUTY TO RECONSTRUCT.

Provided this Lease is not terminated pursuant to Section 11.1 or any other provision of this Lease, and subject to Landlord's ability to obtain the necessary permits therefor and the availability of insurance proceeds, Landlord shall repair or reconstruct or demolish and rebuild the Premises to a substantially similar condition as existed prior to the Casualty. Notwithstanding anything to the contrary contained herein, in no event shall any of the Landlord Related Parties be liable for interruption of Tenant's business or for damage to or repair of any of those items which Tenant is required to insure, including all Tenant's Property and Leasehold Improvements.

#### SECTION 11.3. TENANT'S DUTY TO RECONSTRUCT.

Provided this Lease is not terminated pursuant to any provision of this Lease, Tenant shall promptly commence and diligently pursue to completion the repair and refixturing of the Premises to a substantially similar condition as existed prior to the Casualty, and otherwise in accordance with the terms and conditions of this Lease. Tenant shall reopen for business in the Premises as soon as practicable after the occurrence of the Casualty.

#### SECTION 11.4. INSURANCE PROCEEDS.

All proceeds of insurance carried by Tenant covering the Leasehold Improvements and Tenant's Property shall belong to and be payable to Tenant. If this Lease is terminated by Landlord or Tenant pursuant to Section 11.1 of this Lease, or if this Lease is terminated pursuant to any other Section hereof, or if Tenant does not repair, redecorate and refixture the Premises pursuant to Section 11.3 of this Lease,

the proceeds covering the Leasehold Improvements shall belong to and be payable to Landlord and any such proceeds received by Tenant shall be paid by Tenant to Landlord.

Should this Lease be terminated as a result of a Casualty and to the extent Landlord receives insurance proceeds from Tenant with respect to the Leasehold Improvements installed in the Premises by or at the direction of Tenant ("Allocated Insurance Proceeds"), Landlord shall pay Tenant an amount equal to the lesser of: (a) the Allocated Insurance Proceeds and (b) an amount equal to the portion of the cost actually incurred by Tenant (excluding any portion of such cost paid by or on behalf of Landlord either directly or indirectly as reimbursement to Tenant in cash or a credit against Rent or otherwise) for its permanent Leasehold Improvements as reported to Landlord (accompanied by supporting bills, invoices, paid receipts or other evidence of the cost of such improvements reasonably acceptable to Landlord) calculated by dividing such cost by the number of Lease Years (including a fractional amount representing any Partial Lease Year(s)) in the initial Term of this Lease and multiplying the resulting quotient by the number of Lease Years (including a fractional amount representing any Partial Lease Year(s)) remaining in the initial Term of this Lease as of the effective date of the cancellation (the "Unamortized Improvement Cost").

## ARTICLE XII

### CONDEMNATION

#### SECTION 12.1. TAKING OF LEASED PREMISES.

A. If the whole or any portion of the Premises shall be taken under the power of eminent domain by any public or quasi-public authority (a "taking"), either party shall have the right to terminate this Lease as of the date physical possession of the property taken is delivered to the condemning authority (hereinafter referred to as the "effective date of the taking") by giving notice to the other party of such election within thirty (30) days after the effective date of the taking.

B. If there is a taking of a portion of the Premises and this Lease shall not be terminated pursuant to Section 12.1(A), then (i) as of the effective date of the taking, this Lease shall terminate only with respect to the portion taken; (ii) after the effective date of the taking and during the balance of the Term, the Minimum Rent, and the Full and Partial Year Breakpoints, if any, shall be reduced by multiplying the same by a fraction, the numerator of which shall be the Floor Space not so taken and the denominator of which shall be the Floor Space of the Premises immediately prior to the taking; and (iii) as soon as reasonably possible after the effective date of the taking, Landlord shall, at its expense and to the extent feasible, restore the remaining portion of the Premises to a complete unit; provided, however, that Landlord shall not be required to expend more on such alteration or restoration work than an amount equal to the net proceeds of the condemnation award actually received and retained by Landlord which is allocable to the Premises.

#### SECTION 12.2. TAKING OF SHOPPING CENTER.

If there is a taking of twenty-five percent (25%) or more of the leasable Floor Space within the Shopping Center or if there is a taking of any portion of the Shopping Center so as to render, in Landlord's judgment, the remainder unsuitable for use as a shopping center, regardless in either case as to whether or not there is a taking of the Premises, Landlord shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant.

#### SECTION 12.3. CONDEMNATION AWARD.

All compensation awarded for any taking of the Premises (including, without limitation, the Leasehold Improvements) or the Shopping Center or any interest in either shall belong to and be the property of the Landlord, and Tenant hereby assigns to Landlord all its right, title and interest in any such award, except to the extent that this Lease is terminated and Tenant files a claim, at its sole cost and expense, and the condemning authority specifically awards to Tenant or specifically allocates a portion of the award to Tenant for the Unamortized Improvement Cost calculated as set forth in Section 11.4 as of the effective date of the taking, and Tenant's relocation expenses and lost goodwill; provided, however, the filing of such claim by Tenant or allocation by the condemning authority to Tenant does not adversely affect or diminish the award which would otherwise have been received by Landlord had Tenant not filed such a claim and received such award.

## **ARTICLE XIII**

### **MARKETING FUND**

#### **SECTION 13.1. MARKETING FUND.**

Landlord may establish, or has established, a Marketing Fund (the "Fund") for the purpose of promoting the Shopping Center. Tenant shall participate in advertising programs designated by Landlord in connection with the Fund and shall comply with all other reasonable rules and regulations established by Landlord in connection with the Fund.

#### **SECTION 13.2. TENANT'S CONTRIBUTION TO MARKETING FUND.**

Tenant shall contribute to the Fund one-twelfth (1/12th) of the annual amount set forth in Section 1.1(G) (as adjusted at the time and in the manner provided below) on the Commencement Date and on the first day of each calendar month thereafter throughout the Term. The Marketing fee shall remain the same amount as set forth in 1.1(G) for the first five Lease Years. Beginning with the sixth (6<sup>th</sup>) Lease Year and through the expiration of the tenth (10<sup>th</sup>) Lease Year, the Marketing Fund shall be increased once by ten percent (10%).

#### **SECTION 13.3. LANDLORD'S PARTICIPATION.**

The amounts collected by Landlord in connection with the Fund shall be used by Landlord to pay all costs and expenses associated with programs for the promotion of the Shopping Center, which programs may include, without limitation, the following (but which shall not be deemed a representation as to the actual provision of such programs): special events, displays, signs, decor, seasonal events, advertising for the Shopping Center, visual merchandising services for tenants, and the distribution of promotional literature designed to attract customers. In addition, Landlord may use the Fund dues to defray the cost of administration of the Fund, including, without limitation, the salary and related costs and benefits of a manager and related administrative personnel, and rent allocable to any management office within the Shopping Center devoted to use by such personnel. Landlord shall have the right and option to employ or cause to be employed the Marketing Manager and other personnel of the Fund, and to provide or cause to be provided promotional services, which, in Landlord's reasonable judgment, are desirable to administer the Fund and promote the activities of the Shopping Center. All such personnel shall be under the exclusive control and supervision of Landlord. Tenant hereby authorizes the Fund to reimburse Landlord for providing such personnel and any other costs incurred by Landlord in assisting the Fund or providing services thereto.

## **ARTICLE XIV**

### **SUBORDINATION AND ATTORNMEN**

#### **SECTION 14.1. SUBORDINATION.**

Tenant's rights under this Lease are and shall remain subject and subordinate to the operation and effect of: (i) all present and future ground or underlying leases involving all or any part of the Shopping Center; or (ii) any mortgage, deed of trust or other security instrument now or hereafter affecting the Premises or the Shopping Center; or (iii) all renewals, modifications, replacements, consolidations and extensions of or participations in those transactions evidenced by documents referred to in (i) and (ii) above, whether the same shall be in existence on the date hereof or created hereafter (any such lease, mortgage, deed of trust or other instrument being referred to as a "Mortgage" and the person or persons having the benefit of same being referred to as a "Mortgagee"). Tenant's acknowledgment and agreement of subordination provided for in this Section 14.1 is self-operative and no further instrument of subordination shall be required; however, Tenant shall execute such further assurances thereof as may be requested, from time to time, by Landlord.

#### **SECTION 14.2. MORTGAGEE'S UNILATERAL SUBORDINATION.**

If and as a Mortgagee shall so elect, this Lease and Tenant's rights hereunder shall be superior and prior in right to its Mortgage, with the same force and effect as if this Lease had been executed, delivered and recorded prior to the execution, delivery and recording of such Mortgage.

#### **SECTION 14.3. ATTORNMEN.**

If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, and if

and as so requested or required by such successor-in-interest, Tenant shall, without charge, attorn to such successor-in-interest.

#### **SECTION 14.4. QUIET ENJOYMENT.**

Landlord covenants that it has full right, power and authority to make this Lease and that Tenant, on paying all of the Rent and performing all of Tenant's other obligations in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the Term without hindrance, ejection or molestation by any person lawfully claiming by, through or under Landlord, subject, however, to all Mortgages, encumbrances, easements and underlying leases to which this Lease may be or become subject and subordinate, from time to time.

#### **SECTION 14.5. ESTOPPEL CERTIFICATE.**

A. As often as may be requested by Landlord, Tenant shall promptly and without cost to Landlord duly execute and deliver to Landlord or to any other person designated by Landlord a written instrument certifying: (i) that this Lease is unmodified and in full force and effect (or if there has been a modification, that the same is in full force and effect as modified, and stating the modification); (ii) the dates, if any, to which the Rent, and other sums and payments due under this Lease have been paid; (iii) whether Landlord has breached the performance of any covenants, terms and conditions on Landlord's part to be performed under this Lease, and the nature of Landlord's breach, if any; and (iv) such other relevant information as Landlord or any Mortgagee may reasonably request. Landlord may prepare said document for Tenant's signature and send the same to Tenant for Tenant's signature.

### **ARTICLE XV**

#### **ASSIGNMENT AND SUBLETTING**

##### **SECTION 15.1. LANDLORD'S CONSENT REQUIRED.**

A. Without first obtaining Landlord's prior written consent (which consent Landlord may withhold in its sole and absolute discretion), Tenant shall not sublet all or any portion of the Premises, nor shall Tenant pledge, hypothecate or assign all or any of its interest in this Lease, whether for collateral purposes or otherwise. Any such subletting or assignment shall be referred to as a "Transfer," and the person to whom Tenant's interest is transferred shall be referred to as a "Transferee." For purposes of this Article XV, a Transfer shall include any change in the control of Tenant or any guarantor, if the same is a corporation (other than a corporation listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934), a limited liability company or a partnership. For purposes of this Article XV, "control" shall mean the possession (directly or indirectly) of the power to direct or cause the direction of management and policies of the Tenant (or the guarantor, as the case may be) whether by ownership of securities or otherwise, provided that the issuance of shares in a public offering registered under the Securities Exchange Act of 1933 shall not be deemed a change in control for purposes of this Article XV.

Notwithstanding anything to the contrary contained herein, Tenant may assign its entire interest under this Lease or sublet the entire Premises (but not a part thereof) to a wholly owned corporation or controlled subsidiary or parent of the Tenant or to any successor to Tenant by purchase, merger, consolidation or reorganization (hereinafter collectively referred to as "Corporate Transfer") without the consent of Landlord, provided (i) Tenant is not in default under this Lease; (ii) at the time of the proposed Transfer, Tenant owns at least thirty (30) stores operating under the same trade name as Tenant is then operating under pursuant to this Lease and if such proposed Transferee is a successor to Tenant by purchase said proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (iii) such proposed Transferee shall have a net worth which is at least equal to the greater of (a) the net worth of Tenant at the date of this Lease plus the net worth of the Guarantor (if any) at the date of this Lease, and (b) Five Million Dollars (\$5,000,000); and (iv) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose. Tenant shall give Landlord written notice at least thirty (30) days prior to the effective date of such Corporate Transfer. As used herein, the term "controlled subsidiary" shall mean a corporate entity wholly owned by Tenant or at least fifty-one percent (51%) of whose voting stock is owned by Tenant.

B. Any Transfer by Tenant consented to by Landlord (or permitted under this Article XV without Landlord's consent) shall be only for the Permitted Use and for no other purpose, and in no event shall any Transfer (including a Corporate Transfer) release or relieve Tenant from any of its obligations under this Lease. If Landlord consents to a Transfer (or if such Transfer is permitted under this Article XV without Landlord's consent), the permitted Transferee shall assume Tenant's obligations under this Lease and such Transferee, at least thirty (30) days prior to the effective date of the permitted Transfer, shall deliver to Landlord the proposed sublease, assignment and assumption agreement or other instrument

evidencing the Transfer, which shall be subject to Landlord's approval, which shall not be unreasonably withheld. In the event of a Transfer (i) in the nature of an assignment, Tenant shall pay as Additional Rent to Landlord all monies and other consideration of every kind whatsoever paid or payable to Tenant for such Transfer and for all property transferred to the Transferee as part of the consideration including, without limitation, non-trade fixtures and other Leasehold Improvements, but excluding Tenant's Property (collectively, all of the foregoing shall be referred to as the "Transfer Consideration"); provided, however, Tenant shall be entitled to exclude from the Transfer Consideration the Unamortized Improvement Cost calculated as set forth in Section 11.4 as of the effective date of the Transfer; and (ii) in the nature of a sublease, Tenant shall pay as Additional Rent to Landlord along with the monthly payments of Rent due under this Lease, the Transfer Consideration less the Rent (exclusive of Rent attributable to a default of Tenant hereunder) reserved under this Lease as reasonably determined by Landlord; provided, however, Tenant shall be entitled to exclude from the Transfer Consideration the Unamortized Improvement Cost calculated as set forth above. For purposes of this Section 15.1(B) only, the term "Tenant's Property" shall be deemed to include goodwill and any other intangible personal property associated with Tenant's business, but in no event shall it be deemed to include Tenant's interest under this Lease. If said Transfer requires the consent of Landlord pursuant to this Article XV, Tenant shall pay to Landlord upon demand as Additional Rent Landlord's reasonable attorneys' fees and administrative expenses incurred in connection with any Transfer.

C. Any Transfer without Landlord's consent shall not be binding upon Landlord, and shall confer no rights upon any third person. Each such unpermitted Transfer shall, without notice or grace period of any kind, constitute a default by Tenant under this Lease. The acceptance by Landlord of the payment of Rent following any Transfer prohibited by this Article XV shall not be deemed to be either a consent by Landlord to any such Transfer or a waiver by Landlord of any remedy of Landlord under this Lease. Consent by Landlord to any one Transfer shall not constitute a waiver of the requirement for consent to any other Transfer. No reference in this Lease to assignees, Concessionaires, subtenants or licensees shall be deemed to be a consent by Landlord to the occupancy of the Premises by any such assignee, Concessionaire, subtenant or licensee.

D. Tenant shall be granted the exclusive right to go public without any restrictions.

#### **SECTION 15.2. INTENTIONALLY DELETED**

### **ARTICLE XVI**

#### **DEFAULT AND REMEDIES**

#### **SECTION 16.1. INTENTIONALLY DELETED**

#### **SECTION 16.2. INTENTIONALLY DELETED**

#### **SECTION 16.3. INTENTIONALLY DELETED**

#### **SECTION 16.4. LEGAL EXPENSES.**

A. In the event that Landlord should retain counsel /or institute any suit against Tenant for violation of or to enforce any of the covenants or conditions of this Lease, or should Tenant institute any suit against Landlord for violation of any of the covenants or conditions of this Lease, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interest or rights hereunder, the prevailing party in any such suit shall be entitled to all of its costs, expenses and reasonable fees of its attorney(s) in connection therewith.

B. In the event that a bankruptcy proceeding is filed by or against Tenant under any chapter of the Bankruptcy Code, or Tenant makes an assignment for the benefit of creditors or commences or otherwise becomes the subject of any insolvency, receivership or similar proceeding, Landlord shall be entitled to recover its reasonable attorneys' fees and costs incurred in or in connection with any such proceeding from Tenant or any trustee, custodian, receiver, assignee or other representative acting on its behalf, all of which fees and expenses shall constitute, in addition to any other sums due and owing under this Lease (i) an obligation of Tenant hereunder, and (ii) a component of any cure claim assertable by Landlord under 11 U.S.C. § 365(b) of otherwise.

#### **SECTION 16.5. REMEDIES CUMULATIVE.**

No reference to any specific right or remedy in this Lease shall preclude Landlord from exercising any other right, from having any other remedy, or from maintaining any action to which it may otherwise be entitled under this Lease, at law or in equity.

#### **SECTION 16.6. WAIVER.**

A. Neither Landlord nor Tenant shall be deemed to have waived any breach of any term, covenant, or condition herein contained unless the same has been specifically waived by such party in writing. Any such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

B. Tenant hereby waives any and all rights of redemption and all rights to relief from forfeiture granted by or under any applicable Law. To the fullest extent permitted by law, Tenant waives the right to a trial by jury and the right to file any counterclaims or cross-claims other than compulsory counterclaims or cross-claims in actions for recovery of possession of the Premises and in actions for breach of monetary obligations under this Lease only.

#### **SECTION 16.7. LANDLORD DEFAULT.**

If Landlord fails to observe or perform any material covenant, agreement, or obligation to be performed by Landlord under this Lease, and if such failure shall continue for more than thirty (30) days after notice thereof from Tenant to Landlord (unless such failure requires work to be performed, acts to be done, or conditions to be removed which, by their nature, cannot reasonably be performed, done, or removed, as the case may be, within such period, in which event, if Landlord shall have commenced curing or correcting the same within such period and shall have diligently prosecuted such cure, or correction, such thirty [30] day period shall be extended by such additional time period as may be required for Landlord to cure or correct such failure), then Tenant shall be able to for monetary defaults offset rent..

### **ARTICLE XVII**

#### **MISCELLANEOUS PROVISIONS**

#### **SECTION 17.1. NOTICES.**

A. Whenever any demand, request, approval, consent or notice ("Notice") shall or may be given to either of the parties by the other, each such Notice shall be in writing and shall be sent by registered or certified mail with return receipt requested, or sent by overnight courier service (such as Federal Express) at the respective addresses of the parties as set forth in Section 1.1(K). Any Notice under this Lease delivered by registered or certified mail shall be deemed to have been given and effective on the earlier of (a) the third (3rd) day following the day on which the same shall have been mailed with sufficient postage prepaid or (b) the delivery date indicated on the return receipt; Notice sent by overnight courier service shall be deemed given, and effective upon the day after such notice is delivered to or picked up by the overnight courier service. Either party may, at any time, change its Notice Address by giving the other party Notice in accordance with the above, stating the change and setting forth the new address.

B. If any Mortgagee shall notify Tenant that it is the holder of a Mortgage affecting the Premises, no Notice thereafter sent by Tenant to Landlord shall be effective unless and until a copy of the same shall also be sent to such Mortgagee in the manner prescribed in this Section 17.1 and to such address as such Mortgagee shall designate.

C. Any notice from Landlord may be given by Landlord, Landlord's Managing Agent for the Shopping Center or Landlord's attorneys.

#### **SECTION 17.2. SHORT FORM LEASE.**

This Lease shall not be recorded without the express written consent of Landlord. A "short form lease" may be recorded only if Landlord requests or consents in writing to such recording. Recording, filing and like charges shall be paid by the requesting party.

### **SECTION 17.3. INTEREST AND ADMINISTRATIVE COSTS.**

If (i) Tenant fails to make any payment under this Lease when due, (ii) Landlord performs or causes the performance of any obligation of Tenant under this Lease, or (iii) Landlord incurs any costs or expenses as a result of Tenant's default under this Lease, then Tenant shall pay, upon demand, the amount due under (i), or the amount of such costs and expenses incurred under (ii) or (iii) above, plus interest (as defined in Section 1.2[F] above) from the date such payment was due or from the date Landlord incurs such costs or expenses plus Landlord's administrative costs in connection therewith.

### **SECTION 17.4. SUCCESSORS AND ASSIGNS.**

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, and Tenant and their respective permitted successors and assigns. Upon any sale or other transfer by Landlord of its interest in the Premises, Landlord shall be relieved of any obligations under this Lease occurring subsequent to such sale or other transfer. Notwithstanding the foregoing, if Tenant is a single individual and dies or becomes incapacitated, Landlord reserves the right to terminate this Lease upon thirty (30) days advance Notice to Tenant or Tenant's legal representative.

### **SECTION 17.5. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD.**

It is specifically understood and agreed that none of the Landlord Related Parties shall be personally liable for any of the covenants, conditions or provisions of this Lease and in no event shall any of the Landlord Related Parties be liable to Tenant for any lost profit, damage to business or any form of special, indirect or consequential damages. In the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of the Landlord in the Shopping Center for the satisfaction of Tenant's remedies. The limitations on Tenant's right of recovery against the Landlord Related Parties set forth in this Section 17.5 shall survive the expiration of the Term of this Lease (whether by lapse of time or otherwise).

### **SECTION 17.6. RELATIONSHIP OF THE PARTIES.**

Nothing contained in this Lease shall be deemed to be construed as creating the relationship of principal and agent or of partnership or joint venture between Landlord and Tenant, it being understood and agreed that neither the method of computing Rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of Landlord and Tenant.

### **SECTION 17.7. CO-TENANCY PROVISIONS.**

In the event that either Dillard's ceases operating or two of the following department stores (Macy's, J.C. Penneys, Sears) cease their retail operations ("Co-tenancy Event"), and provided Tenant (i) is not in default under the terms and provisions of this Lease beyond any applicable grace, notice or cure periods, and (ii) is open and operating its business in the Premises, then one-half (1/2) Tenant's Minimum Annual Rent and Percentage Rent obligations shall be abated from the first day following the date of such Co-tenancy Event until either Dillard's reopens, or the two department stores (referenced above) are replaced. During the period of such Co-Tenancy Event, Tenant shall pay to Landlord one-half (1/2) of the Minimum Annual Rent and Percentage Rent. If the Co-Tenancy Event continues for a total period of more than twelve (12) months, then Tenant may, at its option, terminate the Lease upon thirty (30) days notice to Landlord and the Lease shall be terminated effective thirty (30) days after Landlord's receipt of Tenant's notice..

### **SECTION 17.8. INTERPRETATION.**

Whenever used herein, the singular shall include the plural and the plural shall include the singular, as necessary, and the use of any gender shall include either gender, as necessary. This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the state in which the Shopping Center is located.

### **SECTION 17.9. NO MODIFICATION.**

This Lease is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. Acceptance of a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings,

agreements, warranties or promises with respect to the Premises or the building or Shopping Center of which they are a part or with respect to past, present or future tenancies, rents, expenses, operations or any other matter have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a written instrument signed by Landlord and Tenant.

#### **SECTION 17.10. SEVERABILITY.**

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

#### **SECTION 17.11. TENANT LIABILITY.**

If two or more individuals, corporations, partnerships or other persons (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other persons to pay the Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with or to any one of such individuals, corporations, partnerships or other persons shall be deemed to have been given or made by, with or to all of them.

#### **SECTION 17.12. BROKER'S COMMISSION.**

Each of the parties represents and warrants to the other that except as expressly set forth in this Section 17.12, such party has not dealt with any broker in connection with this Lease and that such party has no knowledge of any claims for brokerage commissions or finders' fees in connection with this Lease. Each party agrees to indemnify and defend the other against, and hold it harmless from, all liability arising from any claim for brokerage commissions or finders' fees of any kind (including, without limitation, attorneys' fees incurred in connection therewith) in connection with this Lease, any amendment hereto or any Transfer, which claim arises (directly or indirectly) out of an agreement, contract, course of dealings or relationship between such a party and the claiming party.

#### **SECTION 17.13. OTHER TENANTS.**

Landlord reserves the absolute right to effect other tenancies in the Shopping Center as Landlord shall determine in the exercise of its sole business judgment. Notwithstanding anything to the contrary contained herein, Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant, Major Store or occupant, or the number of tenants, Major Stores or occupants, shall occupy any space in the Shopping Center during the Term. A vacation of premises or cessation of operations by any other tenant(s) in the Shopping Center shall not in any way release Tenant from its obligations under this Lease.

#### **SECTION 17.14. RULE AGAINST PERPETUITIES.**

If the Term of this Lease shall not have commenced within five (5) years from the date of this Lease, then this Lease shall thereupon become null and void and have no further force and effect.

#### **SECTION 17.15. IRREVOCABLE OFFER, NO OPTION.**

In consideration of Landlord's administrative expense in considering this Lease, Tenant's submission to Landlord of this Lease, duly executed by Tenant, shall constitute Tenant's irrevocable offer to continue for fourteen (14) days from and after receipt by Landlord or until Landlord shall deliver to Tenant written notice of rejection of Tenant's offer, whichever shall first occur. If within said fourteen (14) day period Landlord shall neither return this Lease duly executed by Landlord nor so advise Tenant of Landlord's rejection of Tenant's offer, then Tenant shall be free to revoke its offer. Although Tenant's execution of this Lease shall be deemed an offer irrevocable by Tenant, the submission of this Lease by Landlord to Tenant for examination shall not constitute a reservation of or option for the Premises. This Lease shall become effective only upon execution thereof by both parties and delivery thereof to Tenant.

#### **SECTION 17.16. INABILITY TO PERFORM.**

If Landlord or Tenant is delayed or prevented from performing any of its obligations under this Lease, except for Tenant's obligation for payment of money, by reason of strike or labor troubles or any cause whatsoever beyond its control, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by either party. Notwithstanding

the foregoing, Tenant's obligation to open initially may be deferred only by an industry-wide strike or act of God. For purposes of this Section 17.16, a cause or event shall not be deemed to be beyond a party's control, if it is within the control of such party's agents, employees or contractors.

#### **SECTION 17.17. SURVIVAL.**

Notwithstanding anything to the contrary contained in this Lease, the expiration of the Term of the Lease, whether by lapse of time or otherwise, shall not relieve either party from their respective obligations accruing during or attributable to any portion of the Term, subject to the provisions of Section 17.5.

#### **SECTION 17.18. LANDLORD'S SELF-HELP.**

In addition to Landlord's rights of self-help set forth elsewhere in this Lease or as provided by law or in equity, if Tenant at any time fails to perform any of its obligations under this Lease in a manner satisfactory to Landlord, Landlord shall have the right but not the obligation, with ten (10) days prior notice (except in the case of any dangerous condition or emergency, in which case no notice shall be required) to perform or cause to be performed such obligations on behalf and at the expense of Tenant. In such event, Landlord's costs and expenses incurred with respect thereto shall, upon demand, be paid for by Tenant as Additional Rent. The performance by Landlord of any such obligation shall not constitute a release or waiver of any of Tenant's obligations under this Lease.

#### **SECTION 17.19. DUE AUTHORIZATION.**

If Tenant is a corporation, a partnership or limited liability company, the person(s) executing this Lease on behalf of Tenant hereby covenant and warrant that: Tenant is a duly formed corporation or limited liability company or a duly created partnership (as the case may be) in good standing, qualified to do business in the state in which the Shopping Center is located; such persons are duly authorized by such corporation, partnership or limited liability company to execute and deliver this Lease on behalf of such corporation, partnership or limited liability company; and this Lease constitutes a valid and binding agreement of Tenant in accordance with the terms hereof.

#### **SECTION 17.20. CONFIDENTIALITY.**

It is agreed and understood that Tenant may acknowledge only the existence of this Lease by and between Landlord and Tenant, and that Tenant may not disclose any of the terms and provisions contained in this Lease to any tenant or other occupant in the Shopping Center or to any agent, employee, subtenant or assignee of such tenant or occupant. Tenant acknowledges that any breach by Tenant of the agreements set forth in this Section 17.20 shall cause Landlord irreparable harm. The terms and provisions of this Section 17.20 shall survive the termination of this Lease (whether by lapse of time or otherwise).

#### **SECTION 17.21. INTENTIONALLY DELETED**

#### **SECTION 17.22. ASBESTOS ABATEMENT.**

In the event Landlord desires or is required by any applicable Law to remove, encapsulate, enclose, remediate or otherwise abate asbestos-containing materials located within the Premises ("abatement work"), then Landlord agrees to perform or cause the performance of such work at Landlord's sole cost. If Tenant is required to cease its operation at the Premises or interrupt or delay its construction or opening at the Premises in order for such abatement work to be performed, then Tenant's Minimum Rent and all other Rent (excluding Percentage Rent and any past due Rent or charges due as a result of any default of Tenant under this Lease) shall abate for the period of time beginning on the commencement of the abatement work and ending upon the completion of the abatement work. Notwithstanding anything to the contrary herein, in the event the abatement work is required before, during or after the Term as a result of: (i) anything done by Tenant, its agents, employees or contractors; or (ii) any activities of Tenant, its agents, employees or contractors in, on or about the Premises, then the abatement work shall be performed by or at the direction of Landlord at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of such abatement work within thirty (30) days after written demand by Landlord from time to time during the performance of such work and Tenant shall not be entitled to any abatement of Minimum Rent or any other Rent as a result of the abatement work. Landlord shall use reasonable efforts to not perform such asbestos abatement work during the months of October, November or December of any year and Landlord shall notify Tenant at least thirty (30) days prior to commencement of the abatement work, unless the governmental authority requiring the abatement work requires the abatement work to be performed in October, November or December or sooner than thirty (30) days from the time Landlord is required by such governmental body to perform

such work. Landlord warrants that at the time Tenant accepts possession of the Premises the space shall be free and clear of any hazardous or asbestos substances.

The Rent abatement provided in the preceding paragraph shall constitute Landlord's sole obligations with respect to asbestos or asbestos-containing material at the Shopping Center and Tenant's sole and exclusive remedy therefor and, except for any claims resulting from the negligence of any of the Landlord Related Parties, Tenant hereby waives any and all claims Tenant may now or hereafter have based upon any inconvenience, interruption of Tenant's business or any other loss, cost, damage, claim or expense which may be suffered or incurred as a result of the presence of asbestos or asbestos-containing materials within the Premises or the removal or abatement of the same.

At all times during the Term of this Lease and except for the abatement work described above, Tenant shall comply with and conform its activities to (i) all applicable Laws respecting the handling of asbestos-containing materials or performing of routine maintenance activities in the vicinity of asbestos-containing materials and (ii) any asbestos operation and maintenance program initiated by Landlord. Tenant's obligations under this Section 17.22 shall survive the expiration of the Term of this Lease whether by lapse of time or otherwise.

#### SECTION 17.23. EARLY TERMINATION RIGHT.

Tenant shall have the right to terminate this Lease if (a) Tenant's Gross Sales do not equal or exceed Eight Hundred and Fifty Thousand and NO/100 Dollars (\$850,000.00) during the time period from September 1, 2008 to August 31, 2009 (the "First Measurement Period") or (b) if Tenant's Gross Sales do not equal or exceed Nine Hundred and Fifty Thousand and NO/100 Dollars (\$950,000.00) at any time after September 1, 2012 (the "Second Measurement Period"). If Tenant desires to exercise such termination right under (a) or (b), Tenant shall give notice of termination no later than thirty (30) days following the end of the First or Second Measurement Period. If a termination notice is timely given by Tenant, the Lease shall terminate ninety (90) days following such notice. This paragraph shall not apply to a Tenant termination and Tenant shall have no right of termination hereunder if Tenant is not open for business during any portion of the Measurement Period during which a majority of Tenants are open for business in the Shopping Center. Notwithstanding the foregoing, if Tenant exercises its early termination right, Tenant agrees that Tenant shall reimburse Landlord the unamortized amount (using a straight line depreciation) of any Tenant Allowance Landlord has paid to Tenant.

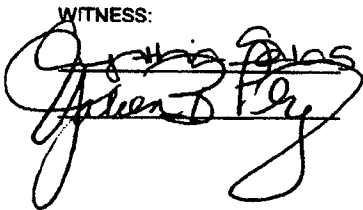
#### SECTION 17.24. GUARANTY.

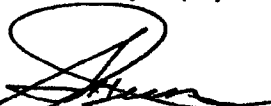
Landlord's obligations under this Lease are conditioned on Tenant obtaining the Guarantor's execution and delivery to Landlord of the Guaranty attached to this Lease as Exhibit D. If the Guaranty is not executed and delivered to Landlord, Landlord shall have the right to terminate this Lease by notice to Tenant at any time prior to delivery of the Guaranty.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have executed this Lease under their respective hands and seals as of the day and year first above written.

#### LANDLORD:

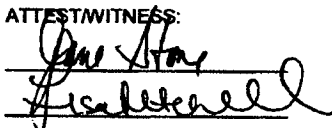
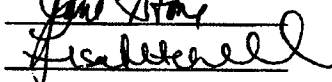
FMP NORTHGATE LLC,  
a Delaware limited liability company

WITNESS:  


By:   
Name: SCOTT (JENSEN)  
Title: VICE PRESIDENT

#### TENANT:

LARGE APPAREL OF OHIO, INC.,  
a Delaware corporation

ATTEST/WITNESS:  
  


By:   
Name: Ethan Shapiro  
Title: PRESIDENT/CEO

STATE OF ARIZONA )  
 ) SS  
COUNTY OF MARICOPA )

BE IT REMEMBERED, that on the 26<sup>th</sup> day of MAY, 2006, before me, a Notary Public in and for said County, personally appeared FMP Northgate LLC, a Delaware limited liability company, by SCOTT JENSEN, its VICE PRESIDENT the LANDLORD in the foregoing Lease Agreement, who acknowledged that the signing thereof was the duly authorized act and deed on behalf of said partnership for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

My Commission Expires:  
AUGUST 20, 2008

  
Notary Public



STATE OF NEW JERSEY )  
 ) SS  
COUNTY OF HUDSON )

BE IT REMEMBERED, that on the 17<sup>th</sup> day of MAY, 2006, before me, a Notary Public in and for said County, personally appeared LARGE APPAREL OF OHIO, INC., a Delaware corporation, the TENANT in the foregoing Lease Agreement, by ETHAN SHAPIRO, its President, who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his/her free and voluntary act and deed as said officer for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

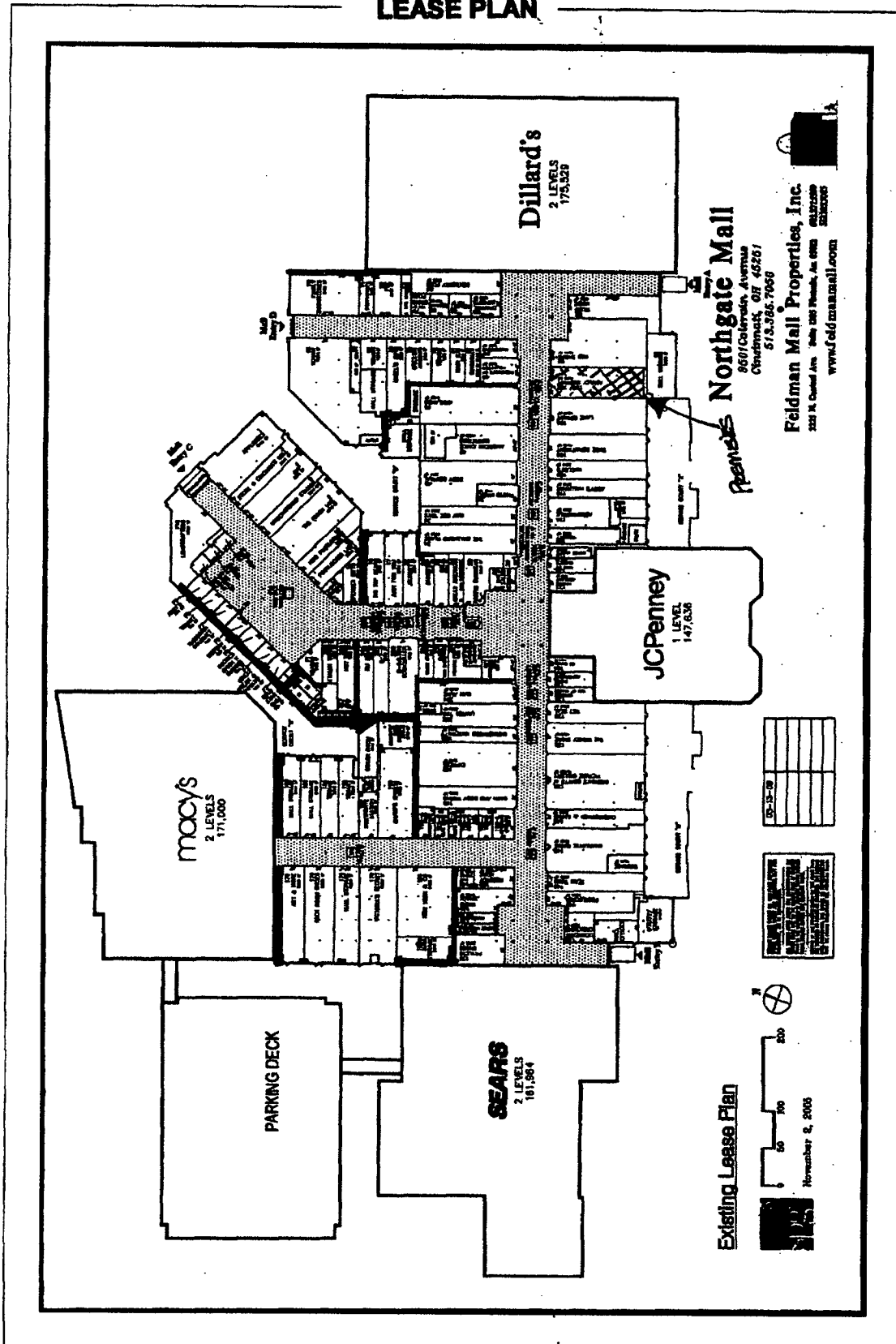
My Commission Expires:  
11-22-10

  
Notary Public

**Susan D. Stead**  
State of New Jersey  
My Commission Expires 11/22/10  
My L.D. Number is 2337372

# EXHIBIT A

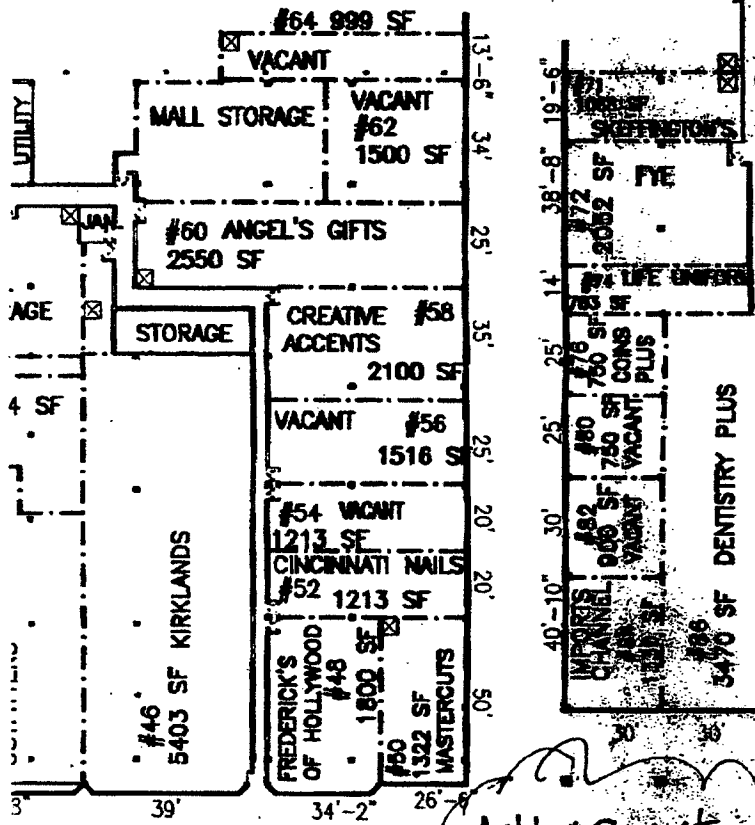
## LEASE PLAN



VACANT  
#68  
11074 SF

# EXHIBIT A

## LEASE PLAN



CELL PHONES/  
BEEPER VIBES

Ashley Stewart

Dallas

Northgate

**EXHIBIT B**

**CONSTRUCTION**

**EXHIBIT**

**(General Criteria)**

**NORTHGATE MALL**

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All capitalized terms used herein that are defined in the body of the Lease to which this Exhibit is attached shall have the meanings provided for them in the body of the Lease. The term "Tenant's Work" shall mean any work performed by Tenant, whether Tenant's initial Tenant Improvements or improvements subsequent thereto.

## ARTICLE 1

### TENANT'S WORK

#### **A. GENERAL CRITERIA FOR TENANT'S WORK**

- (1) Subject to the provisions of this Lease, including this Exhibit, Tenant shall remodel the Premises as provided in Article 9 of the Lease.
- (2) Tenant shall perform Tenant's Work in accordance with all Laws including, without limitation, the building code of the jurisdiction in which the Shopping Center is located and all requirements of the Americans with Disabilities Act.
- (3) Tenant shall prepare its plans and specifications for Tenant's Work in accordance with this Exhibit, as the same may be revised or supplemented from time to time, and such other criteria as Landlord may furnish Tenant.
- (4) The initial Tenant's Work and, except to the extent as may be specifically otherwise provided in the Lease, all subsequent Tenant's Work in the Premises which Tenant may wish to perform shall be subject to the advance written approval by Landlord.
- (5) Tenant shall, prior to commencement of Tenant's Work, obtain all required building and other permits at Tenant's expense and post said permits at the Premises as required.
- (6) The loads imposed by Tenant's Work and the Premises (including dead and live loads) shall not exceed the allowable load capacity of the existing structural systems and components thereof.
- (7) Tenant shall use only new materials for Tenant's Work, including improvements, equipment, trade fixtures and all other fixtures. Notwithstanding the foregoing, Tenant may reuse portions of existing improvements subject to Landlord's prior written approval, provided that said approval shall in no manner relieve Tenant from the requirement that all Tenant's Work comply with the Lease, Approved Drawings (hereinafter defined), and all Laws. Reuse of existing improvements shall be clearly indicated on Tenant's Drawings (as defined below). Landlord makes no warranty or representation as to the condition or suitability of existing improvements reused by Tenant.
- (8) Tenant shall make no marks or penetrations into the roof, upper floor decks, exterior walls, or floors, unless approved by Landlord in advance.
- (9) If any Tenant's Work is being performed by Tenant to connect to Landlord's utilities requires access through the premises of any other tenant or otherwise will affect any other tenant and Landlord has approved such Tenant's Work, Tenant shall be responsible for coordinating such Tenant's Work with such other tenant, restoring said tenant's premises to its original condition following Tenant's Work, and compensating said other tenant for any costs incurred by it on account of such Tenant's Work.
- (10) If any of Tenant's Work necessitates any special work outside the Premises, such as, but not limited to, increasing the size of electric conduit or adding or relocating water service or sanitary service, Landlord, at Landlord's election may perform such work and Tenant shall reimburse Landlord the cost thereof plus 15% thereof for administration, or require Tenant perform the work at Tenant's cost.
- (11) Tenant shall retain Landlord's identification signs or, at Tenant's cost, provide new signs for Landlord's utilities, valves and other such devices in the Premises.
- (12) Landlord may at its election require any aspect of Tenant's Work to be tested, and Tenant shall cooperate with any such testing procedure.
- (13) No approval from Landlord with respect to any aspect of Tenant's Work shall be valid unless in writing.
- (14) Tenant is responsible for site verifying all dimensions and conditions for all existing and/or new construction.
- (15) Tenant shall pay the Landlord for the architectural and engineering review of the Tenant Drawings (hereinafter defined) the sum of Two Thousand Dollars (\$2,000.00). All sit-down restaurant tenants shall pay the sum of Three Thousand Dollars (\$3,000.00) for the architectural and engineering review of the Tenant Drawings.
- (16) In all cases where a utility meter is required and not existing, Tenant shall provide a meter at Tenant's sole cost and expense as directed by the Shopping Center Management.

**B. CERTAIN SPECIFIC CRITERIA FOR TENANT'S WORK**

**(1) Demolition**

- (i) Unless otherwise specified by the terms of the Lease, Tenant is responsible for demolition and removal of all interior construction, equipment and material finishes within the Premises.
- (ii) Prior to demolition of any Leasehold Improvement that affects the Landlord's building structure, Tenant's architect shall consult with the Landlord's Tenant Coordinator and/or Engineer for approval.

**(2) Walls: Partitions: Doors: Floors**

- (i) All partitions within the interior of the Premises shall be of metal stud construction, and shall extend to the structure with the gypsum board to the ceiling (except if required as a rated wall in which case the gypsum board shall extend to the structure), and shall have gypsum board finish on all sides with taped and sanded joints. Any combustible materials applied to partitions shall be covered with a fire retardant coating.
- (ii) Tenant shall install and finish gypsum board at the demising walls for the Premises and, if the Premises have a service corridor, at the service corridor walls. If the Premises have existing walls and Landlord consents to Tenant retaining said walls, Tenant shall be responsible for causing the walls to comply with the fire rating requirements of any and all applicable jurisdictional authorities.
- (iii) Where the Premises have been previously occupied, Tenant shall repair all structural fireproofing to comply with the fire rating requirements.
- (iv) Commercial grade finish hardware, labeled where required, shall be used throughout.
- (v) Tenant shall install appropriate waterproofing material to make the Premises watertight, and shall properly maintain said material during the Term. If any part of the floor of the Premises may be exposed to liquids, either accidentally or for cleaning purposes, Tenant shall provide adequate waterproofing protection beneath its finished flooring. Tenant shall sleeve, fire stop, flash and caulk all penetrations of floors so that odors or liquids will not penetrate the slab at openings. Such sleeves shall extend two (2) inches above the finished floor. All floor shaft openings to be installed by Tenant, if any, shall have six (6) inch high enclosing curbs integral with Tenant's floor and partition construction.
- (vi) Tenant shall not use flooring or tile at the Premises containing vinyl or similar material, nor use any flooring, tile or adhesives containing asbestos.
- (vii) If Tenant has a door leading to a service corridor, Tenant shall install on the door an identification sign setting forth Tenant's name and address number. Landlord may furnish said sign at a cost to Tenant of \$50.00.

**(3) Ceilings**

- (i) Ceilings shall be non-combustible construction, and shall be gypsum board or acoustical tile of concealed suspension type, or, at a minimum, a tegular type regressed metal grid lay-in type incorporating a 2' x 2' tegular type acoustical tile. 2' x 4' grid systems shall be permitted only in stock areas not visible to the public. The color of the gypsum board or tile shall match the grid. Other ornamental or acoustical tile ceilings may be permitted only if Landlord shall so approve in writing.
- (ii) Ceilings shall be of the accessible type, or access panels shall be provided as required by Landlord.
- (iii) Furring, framing, and blocking above ceiling shall be of non-combustible materials meeting codes.
- (iv) No wood (even if fire treated) or any other combustible material shall be permitted above the ceiling.
- (v) Tenant shall attach its ceiling wires to the structural members only; attachment to the roof deck is strictly prohibited.

**(4) Structural**

- (i) Without limitation, any alterations, additions or reinforcements to Landlord's structure, piping, conduit or duct work to accommodate Tenant's Work, or any work that may otherwise affect Landlord's structure, including mezzanines, shall not be performed without, in each instance, the prior written approval of Landlord.

- (ii) Following completion of Tenant's Work, Tenant shall leave Landlord's structure as strong or stronger than the original design and with finishes unimpaired. Landlord may elect to require that structural modifications be performed by Landlord's contractor at Tenant's cost.
  - (iii) Tenant shall submit detailed and certified engineering documents to show any proposed work involving Landlord's structure, and Landlord may require said documents to be reviewed by Landlord's structural engineer at Tenant's cost. Further, Landlord may require Tenant to use, at Tenant's cost, Landlord's structural engineer to design Tenant's structural modifications.
  - (iv) No welding to building structure shall be permitted.
  - (v) Channeling or cutting of the suspended structural slabs shall not be permitted (except coring of the slab shall be permitted subject to Landlord's prior written approval of core size and location). Tenant may channel or cut slabs on grade with Landlord's prior written approval.
  - (vi) Support of all mechanical equipment shall be subject to Landlord's advance written approval. If in Landlord's opinion structural analysis of the method of support is necessary, Tenant shall, at Tenant's expense, utilize Landlord's structural engineer to evaluate the support.
  - (vii) Should an expansion joint occur in the Premises, Tenant is responsible to maintain its integrity by designing and constructing the floor, walls, or ceiling to accommodate the expansion joint.
- (5) Roofs
- (i) All work affecting or pertaining to the roof, including roof penetration and installation of structural supports, curbing and flashing on or to the roof, shall be subject to Landlord's prior written consent and, if consented to, shall be performed only in the manner specifically approved by Landlord. All such approved work (including repair or maintenance of such work) shall be performed by Landlord's designated roofing contractor at Tenant's expense.
  - (ii) Tenant must remove any abandoned HVAC roof-top equipment and close roof openings to match existing adjacent construction and roofing. Tenant shall dispose of abandoned equipment as directed by Shopping Center Management.
- (6) Fire Protection
- (i) All modifications to the existing fire protection equipment and sprinkler systems within the Premises shall be by Tenant, at Tenant's expense. Tenant accepts the existing systems in "as is" condition.
  - (ii) Landlord's fire insurance underwriter shall from time to time during the Term have the right to inspect the fire protection system and its component parts. Said system shall at all times comply with the reasonable requirements of said underwriter, and any alterations, improvements, repairs, or maintenance required by such underwriter shall be Tenant's sole responsibility and shall be performed promptly at Tenant's expense upon notice of the necessity for such work.
  - (iii) Tenant shall install fire dampers as required by Law and the Approved Drawings.
  - (iv) Battery operated emergency exit and directional signs shall be provided as required by applicable Laws.
- (7) Plumbing
- (i) All modifications to the existing system within the Premises shall be by Tenant at Tenant's expense. Tenant accepts the existing system in "as-is" condition. Tenant may relocate any existing stub-ins, at Tenant's expense, with the prior written approval of Landlord.
  - (ii) Where there is no existing plumbing system, Tenant must install a complete system required by applicable Laws. The plumbing system shall conform to Landlord's standards and all applicable Laws. The domestic water service piping feeding the Premises shall be equipped with an accessible shut-off valve.
  - (iii) The size and number of the toilet facilities shall be as required by applicable Laws.
  - (iv) Tenant shall provide at least one (1) toilet room within the Premises which adheres to handicapped accessibility requirements as specified by all applicable Laws.

- (v) Tenant shall install only commercial quality plumbing fixtures as required by applicable Laws, including a properly sized water submeter. Water closets shall be tank type unless otherwise approved. Tenant shall make required utility deposits. The water submeter (if any) shall be installed by Tenant at Tenant's expense in an area easily accessible for meter readings no more than 5'-0" A.F.F.
- (vi) Tenant shall provide domestic hot water using electric storage type water heaters.
- (vii) Install accessible sanitary drain cleanouts which terminate within the Premises.
- (viii) Insulate all hot and cold water piping and all piping and connections for refrigeration or cold condensate water waste in the Premises and all above ground horizontal waste piping.

(8) Electrical

- (i) Tenant shall provide and install Tenant electrical service and all Tenant required electrical work, which includes, but is not limited to, fused disconnect switch, meter pan and socket, meter, conduit and wire from the central distribution point to the Premises, and all wiring and connections from the central distribution point in the Premises. In addition, the Tenant shall furnish all distribution panels, lighting panels, all feeder conductors, any required transformers, all conduit and wiring for power distribution within the Premises, lighting fixtures, power outlets, switches and miscellaneous devices within the Premises.
- (ii) When there is no electrical system, Tenant must install a complete electrical system. The electrical system shall conform to Landlord's standards and all applicable Laws. Modifications of either new or existing equipment that violates the UL label will not be permitted.
- (iii) If there is an existing electrical system, the Tenant accepts existing such system in "as is" condition, and is responsible for determining the adequacy of any equipment or system which Tenant chooses to reuse. Tenant may use and modify the existing electrical system rather than providing a new system provided that the Tenant's electrical engineer has certified, at Tenant's sole cost and expense, that the existing electrical system is in good working order and in like-new condition, will function at 100% operational capacity, and will comply with Landlord's specifications (if any) as shown on the Approved Drawings).
- (iv) Installation shall conform to the following:
  - (A) Dry type transformers shall be used for all 120/208 volt requirements
  - (B) Panel boards shall be designed for a minimum of twenty-five percent (25%) excess capacity (based on connected load) and shall provide twenty percent (20%) spare breaker space.
- (v) Aluminum wiring shall not be permitted. All wiring by Tenant must be solid copper only or as provided by applicable Laws.
- (vi) Tenant's electrical plans shall include riser diagrams, circuit breaker panel description and layout, and electrical load calculations as noted below. Tenant's plans must also include a tabulation of the electrical loads including quantities and sizes of lamps, appliances, signs, water heaters, etc., total connected load and KW demand for each installed item. Complete electrical panel, lighting fixture and equipment schedules are required.
- (vii) Tenant shall arrange for installation of electrical meter, if required. Location of metering equipment shall be verified with Shopping Center Management.
- (viii) Tenant shall provide a separate night lighting circuit for after hours illumination, and circuit shall be limited to two sales area and one stock room fixtures, subject to applicable Laws.

(9) Heating, Ventilating, and Air Conditioning

- (i) Tenant shall provide and install a completely new heating, ventilation and air-conditioning system within the Premises as shown on the Approved Drawings.
- (ii) Tenant shall provide and install a complete and operational toilet room exhaust system at a ventilation rate complying with applicable Laws. Tenant shall connect up to Landlord's common toilet exhaust main duct or, alternatively, shall install a Landlord-approved toilet exhaust duct with fan through the roof as shown on the Approved Drawings.

- (iii) If odors, excessive heat, moisture, smoke or other air contaminants, can be expected to emanate from the Premises when Tenant's business is in operation, then Tenant shall provide a separate exhaust system for the Premises such that no odors or other contaminants emanate beyond the Premises. In the event of a dispute, Landlord's reasonable determination that a separate exhaust system is needed shall govern. Without limitation, Landlord may require a separate exhaust system for restaurants, beauty salons, nail salons, tenants that do film developing, and pet stores. All exhaust systems shall comply with NFPA standards and applicable Laws.
- (iv) The support Tenant intends to use for its mechanical equipment shall be subject to Landlord's prior written approval.
- (v) Tenant shall not permit any rooftop ducts, piping or equipment with respect to the Premises to be visible from the exterior of the Shopping Center.
- (vi) All modifications to any existing systems within the Premises will be by Tenant at Tenant's expense. Tenant accepts the existing systems in "as-is" condition.
- (vii) Tenant may use and modify the existing HVAC system rather than providing a new system provided that Tenant's mechanical engineer has certified, at Tenant's sole cost and expense, that the existing HVAC system is in good working order and in like-new condition, will function at 100% operational capacity, and will comply with Landlord's specifications (if any) as shown on the Approved Drawings. If during the Term the HVAC system becomes non-operational, then Tenant, at its sole cost and expense, shall perform any necessary repairs or replacements thereto, and, if necessary, install a new system.

(10) Security Devices

Tenant's freestanding security devices, if any, shall not be installed or placed in operation unless the size, location and design of such security devices are shown on the Working Drawings (hereinafter defined) and have specifically been approved by Landlord. Any such devices installed without such prior consent shall be subject to removal by Landlord without notice to Tenant or liability therefore. Landlord's approval of the Working Drawings shall not be deemed as its approval of such security devices unless such devices are specifically shown as approved on said Working Drawings.

(11) Telephone

Tenant shall make arrangements with Landlord's designated telephone company and provide all telephone system panels, outlets, and conduits in the Premises and wire to the distribution point outside the Premises. All telephone wire in the ceiling shall be installed to conform to applicable requirements of Law for ceiling return air plenum if one exists.

(12) Storefront

Tenant shall install a new storefront in accordance with the Approved Drawings.

(13) Grease Traps

Food service or other tenants who produce grease to any extent shall install a grease trap in accordance with the Approved Drawings.

(14) Gas Service

Subject to Landlord's advance written approval, if Landlord has gas service available at the Shopping Center, and if Tenant desires gas service at the Premises, Tenant shall at Tenant's sole expense arrange for connecting up the Premises to Landlord's gas service at Landlord's designated connection point and arrange with the local gas company for gas service to the Premises.

(15) Special Exhaust Systems

The special exhaust system(s) shall operate in accordance with the Landlord's "special exhaust" requirements as outlined below:

- (A) A total negative pressure of 10% minimum must be maintained during all hours that Tenant is operating its business in the Premises.
- (B) The HVAC system must be modified to provide additional make-up supply air to offset the quantity of air exhausted.
- (C) A commercial roof-mounted exhaust fan must be used. Toilet exhaust fans are not sufficient.

- (D) Air filtration systems are not an acceptable solution.
- (E) The exhaust fan must be ducted to ceiling grilles located approximately in the center and rear of the Premises. The system shall be designed to cause the exhaust air to gravitate from the Common Areas to the odor producing area and then to the exhaust.
- (F) The exhaust fan must be interlocked with the light switches for the store customer service area.
- (G) Tenant must have a certified air balancing contractor test the completed system and verify its operation according to these specifications. A copy of the air balancing report must be submitted to the Shopping Center Manager for review and approval prior to opening for business.
- (H) The combined HVAC and exhaust system per the above-noted specifications must be in operation during all hours that Tenant is operating its business in the Premises.

(16) Exhaust Systems for Food Preparation Tenants

- (i) Vapor exhaust/kitchen ventilation systems shall conform in total to all applicable Laws, notwithstanding anything in this criteria to the contrary. In case of conflict, the most stringent requirements shall apply.
- (ii) Tenant shall furnish tempered make-up air equal to 90% of total amount of air exhausted (10% will be make-up from the Shopping Center area).
- (iii) Makeup air for exhaust systems from kitchen, food kitchen, food preparation areas, dining areas, and cafeteria areas must be furnished by Tenant-provided and installed makeup air system.
- (iv) Tenant is required to run exhaust fans so that no odors are allowed to enter the Common Areas or any adjacent Tenant spaces. Tenant must provide a copy of a certified air balance report for Landlord's review, prior to opening of the Premises for business.
- (v) Tenant shall provide an electrical interlock so that kitchen exhaust fan shall run at all times that the lights in the kitchen are on.
- (vi) Tenant shall clean its filter and duct system on a regular basis so that grease is not deposited on the roof. Any grease damage to roof shall be corrected at Tenant's expense.

**ARTICLE 2**

**PROCEDURES AND SCHEDULES FOR THE  
COMPLETION OF PLANS AND SPECIFICATIONS**

**A. PLANS GENERAL: INTENTIONALLY DELETED**

**B. WORKING DRAWING PHASE (Submittal II): INTENTIONALLY DELETED**

**C. SIGN SHOP DRAWING SUBMITTAL REQUIREMENTS**

- (1) Tenant shall submit to Landlord for Landlord's review and approval one (1) reproducible set and one (1) print set of sign drawings prior to sign fabrication. ***ALL PLANS MUST BE DIMENSIONED AND SCALED.*** The complete sign shop drawing submittal *must* include:
  - (i) Elevation of the storefront showing design, location, size and layout of sign drawn to scale indicating dimensions and attachment devices. Sign and storefront construction details should also be shown.
  - (ii) Photograph of similar sign showing colors and materials including fascia, letter faces, returns, caps, etc.
  - (iii) Section through letter and sign panel showing the dimensioned projection of the face of the letter and sign panel from the storefront fascia, openings for conduit sleeves, P-K housings, mounting details and supports in sign fascia.
- (2) The Tenant Coordinator will review the sign shop drawings for conformity with this General Criteria and make any necessary corrections or suggestions. Fabrication of the Tenant's signage shall not commence until the sign shop drawings have been approved in writing by Landlord.

### ARTICLE 3

#### LANDLORD'S PUNCHLISTS

##### **A. PRELIMINARY PUNCHLIST**

- (1) Upon Landlord's review of the Premises, Landlord shall send to Tenant and Tenant's contractor, prior to completion of the construction and/or opening of the Premises for business, a Preliminary Punchlist and Preliminary Punchlist Letter outlining deficiencies in construction that must be remedied prior to removal of the storefront construction barricade and opening of Premises for business. At the Landlord's sole discretion, the deadline for the resolution of "minor" punchlist items may be extended.
- (2) Tenant must agree in writing to the terms of the Preliminary Punchlist Letter prior to opening for business. The storefront construction barricade shall remain in place until Landlord has issued and Tenant has received and accepted the Preliminary Punchlist and Letter. In no case may Tenant open the Premises for business until said Preliminary Punchlist Letter has been issued and accepted. The issuing of said Letter must also be contingent upon Tenant having substantially completed Tenant's work in accordance with the plans and specifications as approved by Landlord.
- (3) Failure to qualify for or accept such Preliminary Punchlist letter shall result in the storefront construction barricade remaining in place. Within thirty (30) days of receipt of the Preliminary Punchlist, Tenant must complete all work as noted on the Punchlist unless otherwise agreed upon in writing by Landlord and Tenant. All deficiencies contained on the Preliminary Punchlist must be remedied by Tenant to the satisfaction of the Landlord by the respective dates set forth in the Preliminary Punchlist Letter. Failure to do so by the date set forth shall constitute a default by Tenant and, at Landlord's option, may require the Tenant to close its store if it is already open.

##### **B. FINAL PUNCHLIST**

- (1) Following the issuance of the Preliminary Punchlist Letter, removal of the barricade and subsequent opening of the Premises for business, Landlord will inspect the Premises in order to issue a Final Punchlist. The Final Punchlist will include incomplete or unresolved issues from the Preliminary Punchlist and any new deficiencies that were revealed after removal of the construction barricade and store opening. Within thirty (30) days of receipt of the Final Punchlist, Tenant must complete all work as noted on the Punchlist unless otherwise agreed upon in writing by Landlord and Tenant. Failure to do so by the date set forth shall constitute a default by Tenant and, at Landlord's option, may require Tenant to close its store if it is already open. The Final Punchlist Letter also identifies the following regulations for final Landlord acceptance of the Tenant Improvements:
  - (i) The satisfactory completion by Tenant of Tenant's Work to be performed by Tenant in accordance with the Approved Drawings.
  - (ii) Tenant furnishing Landlord with all final Waivers of Lien and affidavits from all persons performing labor and/or supplying materials in connection with Tenant's Work showing that all of said persons have been paid in full.
  - (iii) Submittal by Tenant to Landlord of warranties for not less than one (1) year against defects in workmanship, materials and equipment. A copy of the Tenant/Contractor Agreement stipulating the Contractor's Warranty is sufficient.
  - (iv) Payment in full by Tenant of all sums due Landlord for items of work performed by Landlord on behalf of Tenant as specified elsewhere in the Lease.
  - (v) The submission of Tenant's completed inspection card by the Building Department or permanent Certificate of Occupancy and all other permits and/or licenses required by the municipality or any other agencies having jurisdiction.
  - (vi) One (1) set of "as-built" drawings, signed and dated by the Tenant contractor.

### ARTICLE 4

#### INSURANCE REQUIREMENTS FOR TENANT CONSTRUCTION PROJECTS

##### **A. GENERAL REQUIREMENTS**

- (1) The insurance requirements set forth in this section shall supplement and in no event limit the indemnification and insurance requirements contained in the body of the Lease.
- (2) Tenant shall secure, pay for and maintain, or cause its Contractor(s) to secure, pay for and maintain during construction and fixturing work, insurance in the amounts set forth herein. Tenant and Landlord shall not permit Contractor to commence any work until all required

Insurance has been obtained and original certificates of insurance have been delivered to Landlord.

**B. GENERAL CONTRACTOR'S AND SUBCONTRACTOR'S REQUIRED MINIMUM COVERAGES**

- (1) Worker's Compensation, as required by Law, including Employer's Liability Insurance with a limit of no less than \$1,000,000 and any insurance required by an Employee Benefit Act, or other statutes applicable where the work is to be performed which will protect the contractor and subcontractors from any and all liability under the aforementioned acts.
- (2) Causes of Loss – Special Form Insurance or Builder's Risk Insurance in the amount of the replacement cost of the Tenant's Work.
- (3) Commercial General Liability Insurance (including, without limitation, Construction Liability coverage, Contractual Liability coverage, Completed Operations coverage, a Broad Form Property Damage coverage and Owner's Protective liability) written on an occurrence basis with a minimum combined single limit of Four Million Dollars (\$4,000,000); such limit may be accomplished by means of an umbrella policy.
- (4) Commercial Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment that is owned, hired and non-owned, with limits of liability not less than Two Million Dollars (\$2,000,000) combined single limit.
- (5) All insurance required hereunder shall comply with the requirements set forth in Section 8.5 of the Lease.
- (6) Such insurance shall insure the contractor and/or subcontractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others caused by accident and arising from any work performed at the Premises or the Shopping Center and whether any such work is performed by contractor, subcontractors or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

**C. SPECIFIC INSURANCE POLICY REQUIREMENTS**

- (1) All insurance certificates must indicate the Tenant name, the space number, the Shopping Center name and the Shopping Center address.
- (2) All such insurance policies shall list additional insureds exactly as follows:  
  
FMP Northgate LLC, Feldman Equities Management, LLC, Feldman Mall Properties, Inc. and Column Financial, Inc.
- (3) Worker's Compensation Insurance shall contain an endorsement waiving all rights of subrogation against Landlord and its (or their) principals, beneficiaries, partners, officers, directors, employees, agents and Mortgagees (and any other designees of Landlord as the interest of such designee shall appear).
- (4) Cancellation Notices shall be sent to Shopping Center Management at least 30 days prior to the date insurance is no longer in effect. Additional insured information shall be included on the Certificate of Insurance.

## EXHIBIT B-1

### SIGNAGE CRITERIA

A creative store sign can be effective in providing identification and in separating a storefront design from other Tenant storefronts in the Shopping Center. The size, proportion, color, type and location of Tenant's sign must be carefully considered by Tenant.

A signband has not been included as an architectural feature of the Shopping Center in order to provide opportunities for creativity and individuality in the design of tenant storefronts and signs. All signs for the Premises are subject to Landlord's prior written approval.

Sign types and materials need not be limited to those recommended. It is the intent of these Criteria to encourage varied and interesting sign design through the use of quality materials. The following Sign Criteria shall apply to all stores except as otherwise permitted in writing by the Landlord.

#### A. Requirements

Tenant shall install all signage in accordance with the following requirements:

##### 1. General

- a. One (1) sign (Store Identification Sign) is allowed on each storefront elevation. Under special conditions, based on Lease Line configuration, more than one (1) sign may be permitted by Landlord.
- b. Store Identification Signs shall be limited to Tenant's trade name as approved in its Lease. The use of a crest, shield, logo or other established corporate insignia shall be permitted only if used in context with the storefront and sign design and specifically approved in writing by Landlord.
- c. Lettering of the Store Identification Sign must be well proportioned. The design, spacing and appearance of the sign will be the first criteria for approval.
  - i. If all upper-case letters are used, the maximum height of the sign letters is fourteen (14) inches.
  - ii. If a combination of upper and lower-case or script is used, lower-case letters without ascenders or descenders may have a maximum height of eleven (11) inches. Upper-case letters and ascenders or descenders may have a maximum height of eighteen (18) inches.
- d. No part of any Store Identification Sign shall be located less than three (3) feet above the Mall finished floor, nor less than two (2) feet from the edge of a neutral pier, nor less than six (6) inches from the top of the storefront.
- e. No Tenant sign other than a Store Identification Sign shall be permitted in the Mall or in any portion of the common area.
- f. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of or within two (2) feet of any storefront except as specifically approved in writing by Landlord.
- g. All attachment devices, wiring, clips, transformers, lamps, tubes (except exposed neon) and other mechanisms required for all signs shall be concealed.
- h. A seven-day, calendar-type, time device shall be provided by Tenant for the control of the illumination of Tenant's sign, storefront, and show window during the required hours designated by Landlord (see Electrical Criteria).
- i. Supplemental light fixtures for signs which are not internally illuminated shall not be located in Landlord's ceiling and must be located within the Lease Line of the Premises.
- j. The maximum projection of storefront mounted signs shall be four (4) inches.
- k. Landlord will provide and install service door identification signs.
- l. Repetitive safety logo, circle or dot non-dimensional signs may be used on glass storefronts as required, and these shall be indicated on the storefront elevational drawings for Landlord's review and approval.
- m. Interior exit signs shall be installed as required by Code.

- n. The names, stamps, or decals of manufacturer, installers or maintainers shall not be visible.

2. Non-Illuminated Individual Letter Signs

- a. This type includes non-dimensional letters or graphics painted or applied directly to the face of glass storefront areas. Techniques include silk-screening, the application of pressure sensitive vinyl, metal applique, or glass etching. Also included are dimensional wood, metal or acrylic letters or graphics.
- b. Signs shall not be placed on clear glass or plexiglass if the background surfaces or objects within the store will detract from the legibility of the sign.
- c. Supplemental lighting may be required for signs mounted on opaque surfaces.
- d. Signs applied directly to the storefront glass shall have matching letters on both sides of the storefront glass to create a finished look when viewed from either side.

3. Self-Illuminated Individual Letter Signs

- a. Light sources in all sign letters shall be of the same type, color and intensity. All lamps shall be positioned for uniform illumination within the letter.
- b. All transformers must be remotely located and concealed, i.e., not located within letters; and no noise from transformers shall be audible within the Mall.

4. Self-Illuminated Panel Signs

- a. Signs shall be fully recessed.
- b. Letters and graphics shall be translucent and background sign surfaces shall be opaque.
- c. Painted signs must be silk-screened.
- d. To prevent light leaks, seams shall not be permitted in the illuminated areas of the sign face.

5. Silhouette (Halo Type) Illuminated Signs

- a. The background surface for signs must be opaque and it shall not be a surface which will reflect the image of lamps contained within letters.
- b. All lamps must be fully concealed within letter so as not to be visible from any location accessible to the public.
- c. The rear face of each letter shall be no more than two (2) inches from the background surface.
- d. Standoff brackets shall be center mounted so as not to be visible to the public.

6. Neon Illuminated Signs

- a. Signs shall be installed on Tenant's side of the storefront or must be enclosed within a protective glass or plexiglass shield if within eight (8) feet of the Mall finished floor.
- b. All standoffs, PK-type housings, and crossovers must be painted to match the sign background color.
- c. All elements of the sign shall have the same lighting intensity.
- d. A neon-type rheostat shall be provided in a concealed location.
- e. PK-type housings must be used when mounted on an opaque surface.
- f. All transformers must be concealed.
- g. For suspended signs, exposed conductors to the neon shall be routed through a plastic tube painted to match the general background of the Premises.
- h. All neon signs shall be of the highest quality, having a minimal number of crossovers and having support backgrounds which are carefully designed to integrate with the architecture of the store.

**B. Signs, Components and Devices Not Permitted.**

1. Exposed box or cabinet type.
2. Cloth, paper, cardboard and similar stickers or decals around or on storefront surfaces
3. Freestanding.
4. Moving, rotating or flashing.
5. Noise making.
6. Odor producing.

**EXHIBIT C**  
**CENTER RIDER**  
**(NORTHGATE MALL)**

**1. GENERAL PROVISIONS.**

- A. This Exhibit C sets forth certain provisions particular to the Shopping Center and the state in which the Premises are located.
- B. If there are any inconsistencies between the Lease and the provisions of this Exhibit C, the provisions of this Exhibit C shall prevail.
- C. Unless otherwise expressly defined in this Exhibit C, all capitalized words shall have the meanings specified in the Lease.

**2. AMENDMENTS AND SUPPLEMENTS.** The following articles and sections of the Lease are amended and supplemented as follows:

- A. Article VII (Utilities) is amended by adding the following new section to the end thereof:

Section 7.4 (Premises HVAC Charge). During such period as Landlord shall furnish or cause to be furnished either (a) hot and chilled water or (b) conditioned (that is, heated and/or cooled) air to the Premises from an on-site central plant or distribution facility, Tenant agrees to purchase the same from Landlord, and Tenant shall pay, directly to the Landlord, in the manner described below, charges for the HVAC service supplied to the Premises ("Premises HVAC Charge"). The Premises HVAC Charge for the calendar year 2006 shall be a rate per annum equal to One and 96/100 Dollars (\$1.96) per square foot of Floor Space in the Premises (the "Initial Premises HVAC Charge"). Such amount shall be increased annually, as of the first day of each subsequent calendar year, to an amount determined by multiplying the then current Premises HVAC Charge by a fraction, the numerator of which is Landlord's HVAC Cost (hereinafter defined) payable in the immediately preceding calendar year and the denominator of which is Landlord's HVAC Cost for the second calendar year immediately preceding such current calendar year. "Landlord's HVAC Cost" shall mean all costs incurred by Landlord in providing hot and chilled water service and/or conditioned air, which costs shall include but shall not be limited to: utilities, labor, depreciation, maintenance and repair, replacement parts, water treatment, insurance and an allowance for overhead and administrative expenses of fifteen percent (15%) of all other HVAC Costs as well as a reasonable reserve for replacement of the components of the central system or allowance for depreciation of the components thereof. In no event shall the Premises HVAC Charge for any calendar year be less than the Initial Premises HVAC Charge.

For the purpose of illustration only, the following is an example of how the 2005 Premises HVAC Charge would be calculated:

$$\begin{array}{rclcl} \text{2004 Premises HVAC Charge} & \times & \frac{\text{2004 Landlord's HVAC Costs}}{\text{2003 Landlord's HVAC Costs}} & = & \text{2005 Premises HVAC Charge} \end{array}$$

The Premises HVAC Charge shall be paid in equal monthly installments in such amounts as are estimated and billed by Landlord for each year during the Term, with the first installment being due on the Commencement Date and each succeeding installment being due on the first day of each calendar month thereafter. If at any time it shall appear that Landlord has underestimated the Premises HVAC Charge, Landlord may adjust the amount of the monthly installments and bill Tenant for any deficiency which may have accrued during such year. Payment of any such deficiency shall be due within ten (10) days after receipt of a bill therefor from Landlord. All federal, state and local taxes which may from time to time be imposed upon or payable in connection with charges for utility services pursuant to this Lease shall be payable by Tenant in addition to the charges to which they relate.

- B. Section 9.6 (Mechanic's Liens) is amended by adding the following to the end thereof:

Tenant shall not be deemed the agent of Landlord for purposes of Chapter 1311, Ohio Revised Code.

EXHIBIT D

GUARANTY (THE "GUARANTY") OF LEASE DATED \_\_\_\_\_, 2006,  
BETWEEN FMP NORTHGATE LLC,  
A DELAWARE LIMITED LIABILITY COMPANY ("LANDLORD"),  
AND  
LARGE APPAREL OF OHIO, INC. A DELAWARE CORPORATION,  
D/B/A ASHLEY STEWART, ("TENANT")

FOR VALUE RECEIVED and in consideration for and as an inducement to Landlord to lease certain real property to Tenant, pursuant to a lease of even date (the "Lease"), URBAN BRANDS, INC., a Delaware corporation, ("Guarantor") does hereby unconditionally and irrevocably guarantee to Landlord the punctual payment of all rent, including without limitation, all Minimum Rent, Percentage Rent, and additional rent (as such terms are defined in the Lease) and all other sums payable by the Tenant under the Lease and the due performance of all the other terms, covenants and conditions contained in the Lease to be paid or performed by Tenant thereunder during or with respect to the first five (5) Lease Year[s] (as defined in Section 1.2[H] of the Lease) of the Term (event if any such amounts are finally determined and/or billed after the fifth [5th] Lease Year) in accordance with and subject to the provisions of the Lease (collectively, the "Guaranteed Obligations"), and if any event of default on the part of Tenant shall occur under the Lease, Guarantor does hereby covenant and agree to pay to Landlord in each and every instance such sum or sums of money as Tenant is and shall become liable for or obligated to pay under the Lease to the extent the same are Guaranteed Obligations and fully to satisfy and perform all other terms, covenants and conditions of the Lease to be performed by Tenant thereunder to the extent the same are Guaranteed Obligations, together with the costs reasonably incurred in connection with collection under this Guaranty, including, without limitation, reasonable attorneys' fees, such payments of rent and other sums to the extent the same are Guaranteed Obligations to be made monthly or at such other intervals as the same shall or may become payable under the Lease, including any accelerations thereof, and such performance of said other terms, covenants and conditions to be made when due under the Lease, all without requiring any notice from Landlord (other than any notice required by the Lease) of such non-payment, non-performance or non-observance or proof of notice or demand, all of which Guarantor hereby expressly waives. Notwithstanding anything to the contrary contained herein, this Guaranty shall apply to the Guaranteed Obligations regardless of whether the undersigned's obligations are enforced within the first five (5) Lease Year or at any time thereafter (including, without limitation, after the expiration of the Term of the Lease).

The maintenance of any action or proceeding by Landlord to recover any sum or sums that may be or become due under the Lease or to secure the performance of any of the other terms, covenants and conditions of the Lease shall not preclude Landlord from thereafter instituting and maintaining subsequent actions or proceedings for any subsequent default or defaults of Tenant under the Lease. Guarantor does hereby consent that without effecting the liability of the undersigned under this Guaranty and without notice to the undersigned, time may be given by Landlord to Tenant for payment of rent and such other sums and performance of said other terms, covenants and conditions, or any of them, and such time extended and indulgency granted, from time to time, or Tenant may be dispossessed or Landlord may avail itself of or exercise any or all of the rights and remedies against Tenant provided by law or in equity or by the Lease, and may proceed either against Tenant alone or jointly against Tenant or any other guarantors of the Lease or of any obligations thereunder ("Additional Guarantor[s]") and Guarantor or against the undersigned alone without first prosecuting or exhausting any remedy or claim against Tenant or any Additional Guarantor(s).

Except as expressly set forth below, Guarantor does hereby further consent to any subsequent change, modification or amendment of the Lease in any of its terms, covenants or conditions, or in the rent payable thereunder, or in the premises demised thereby, or in the term thereof, and to any assignment or assignments of the Lease, and to any subletting or sublettings of the premises demised by the Lease, and to any renewals or extensions thereof, or to the release of Tenant or any Additional Guarantor or make substitutions of the same or any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person, all of which may be made without notice to or consent of Guarantor and without in any manner releasing or relieving the undersigned from liability under this Guaranty. Notwithstanding anything to the contrary contained herein, if Guarantor's written consent is not obtained to an amendment to the Lease which materially increases the obligations guaranteed hereby, this Guaranty shall not apply to the increase in such obligations, provided that this Guaranty shall continue to apply to such obligations as the same existed (including any prior increases in such obligations consented to by Guarantor in writing) prior to such increase.

Guarantor hereby waives and agrees not to assert to take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

Guarantor does hereby agree that the bankruptcy of Tenant shall have no effect on the obligations of the undersigned hereunder. Guarantor does hereby further agree that in respect of any payments made by Guarantor hereunder, Guarantor shall not have any rights based on suretyship, subrogation or otherwise to stand in the place of Landlord so as to compete with Landlord as a creditor of Tenant. Guarantor hereby waives, releases and forever discharges any and all rights of subrogation (whether contractual, statutory or arising under common law), to claims of Landlord against Tenant, as well as any and all rights of contribution, reimbursement, indemnification, and similar rights and "claims" (as that term is defined in the United States Bankruptcy Code) against Tenant which arise under or in connection with the Guaranty.

Neither this Guaranty nor any of the provisions hereof can be modified, waived or terminated, except by a written instrument signed by Landlord. The provisions of this Guaranty shall apply to, bind and inure to the benefit of Guarantor and Landlord and their respective heirs, legal representatives, successors and assigns. Guarantor, if there be more than one, shall be jointly and severally liable hereunder, and for purposes of such several liability the word "Guarantor" wherever used herein shall be construed to refer to each of the undersigned parties separately, all in the same manner and with the same effect as if each of them had signed separate instruments, and this Guaranty shall not be revoked or impaired as to any of such parties by the death or another party or by revocation or release of any obligations hereunder of any other party. Upon any merger or acquisition of the stock or assets of Guarantor whereby the surviving entity is other than Guarantor, or such surviving entity is known by a name other than that which Guarantor is presently known, or another entity acquires all or substantially all of the assets or a controlling percentage of the issued and outstanding shares of stock of Guarantor then, in any of such events, as a condition of any such merger or acquisition, the successor entity shall deliver to Landlord all information reasonably required by Landlord to confirm the name, ownership structure and financial strength of the successor, together with a duly executed and acknowledged assumption of this Guaranty; provided, however, failure to comply with any of the foregoing provisions shall not revoke or nullify this Guaranty which shall remain fully enforceable against any such successor but, at Landlord's option, any such failure shall constitute a default under the Lease entitling Landlord to exercise its remedies therein provided for a default of the Tenant thereunder. If at any time (or from time to time) there shall be Additional Guarantors(s), Guarantor and such Additional Guarantor(s) shall be jointly and severally liable for Tenant's obligations under the Lease. This Guaranty shall be governed by and construed in accordance with the internal laws of the state where the premises demised by the Lease (the "Premises") are located. For the purpose solely of litigating any dispute under this Guaranty, the undersigned submits to the jurisdiction of the courts of said state.

If Guarantor executes this Guaranty as a partnership, each individual executing this Guaranty on behalf of the partnership represents and warrants that he or she is a general partner of the partnership and that his Guaranty is binding upon the partnership in accordance with its terms. If Guarantor executes this Guaranty as a corporation, each of the persons executing this Guaranty on behalf of the corporation covenants and warrants that the corporation is a duly authorized and existing corporation, that the corporation has and is qualified to transact business in the state where the Premises are located, that the corporation has full right, authority and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the corporation is authorized to do so and that this Guaranty is binding upon the corporation in accordance with its terms. If Guarantor executes this Guaranty as a limited liability company, each of the persons executing this Guaranty on behalf of the limited liability company covenants that the limited liability company is a duly authorized and validly existing limited liability company which is qualified to transact business in the state where the Premises are located, that the limited liability company has full right, authority, and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the limited liability company is authorized to do so, and that this Guaranty is binding upon the limited liability company in accordance with its terms.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date of the Lease.

ATTEST/WITNESS:

URBAN BRANDS, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS

BE IT REMEMBERED, that on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public in and for said County personally appeared URBAN BRANDS, INC., a Delaware corporation, by \_\_\_\_\_, its \_\_\_\_\_ President, the GUARANTOR in the foregoing Guaranty of Lease, who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his/her free and voluntary act and deed as said officer for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

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

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

**GUARANTY (THE "GUARANTY") OF LEASE DATED \_\_\_\_\_, 2006,  
BETWEEN FMP NORTHGATE LLC,  
A DELAWARE LIMITED LIABILITY COMPANY ("LANDLORD"),  
AND  
LARGE APPAREL OF OHIO, INC. A DELAWARE CORPORATION,  
D/B/A ASHLEY STEWART, ("TENANT")**

FOR VALUE RECEIVED and in consideration for and as an inducement to Landlord to lease certain real property to Tenant, pursuant to a lease of even date (the "Lease"), URBAN BRANDS, INC., a Delaware corporation, ("Guarantor") does hereby unconditionally and irrevocably guarantee to Landlord the punctual payment of all rent, including without limitation, all Minimum Rent, Percentage Rent, and additional rent (as such terms are defined in the Lease) and all other sums payable by the Tenant under the Lease and the due performance of all the other terms, covenants and conditions contained in the Lease to be paid or performed by Tenant thereunder during or with respect to the first five (5) Lease Year[s] (as defined in Section 1.2[H] of the Lease) of the Term (event if any such amounts are finally determined and/or billed after the fifth [5th] Lease Year) in accordance with and subject to the provisions of the Lease (collectively, the "Guaranteed Obligations"), and if any event of default on the part of Tenant shall occur under the Lease, Guarantor does hereby covenant and agree to pay to Landlord in each and every instance such sum or sums of money as Tenant is and shall become liable for or obligated to pay under the Lease to the extent the same are Guaranteed Obligations and fully to satisfy and perform all other terms, covenants and conditions of the Lease to be performed by Tenant thereunder to the extent the same are Guaranteed Obligations, together with the costs reasonably incurred in connection with collection under this Guaranty, including, without limitation, reasonable attorneys' fees, such payments of rent and other sums to the extent the same are Guaranteed Obligations to be made monthly or at such other intervals as the same shall or may become payable under the Lease, including any accelerations thereof, and such performance of said other terms, covenants and conditions to be made when due under the Lease, all without requiring any notice from Landlord (other than any notice required by the Lease) of such non-payment, non-performance or non-observance or proof of notice or demand, all of which Guarantor hereby expressly waives. Notwithstanding anything to the contrary contained herein, this Guaranty shall apply to the Guaranteed Obligations regardless of whether the undersigned's obligations are enforced within the first five (5) Lease Year or at any time thereafter (including, without limitation, after the expiration of the Term of the Lease).

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Except as expressly set forth below, Guarantor does hereby further consent to any subsequent change, modification or amendment of the Lease in any of its terms, covenants or conditions, or in the rent payable thereunder, or in the premises demised thereby, or in the term thereof, and to any assignment or assignments of the Lease, and to any subletting or sublettings of the premises demised by the Lease, and to any renewals or extensions thereof, or to the release of Tenant or any Additional Guarantor or make substitutions of the same or any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person, all of which may be made without notice to or consent of Guarantor and without in any manner releasing or relieving the undersigned from liability under this Guaranty. Notwithstanding anything to the contrary contained herein, if Guarantor's written consent is not obtained to an amendment to the Lease which materially increases the obligations guaranteed hereby, this Guaranty shall not apply to the increase in such obligations, provided that this Guaranty shall continue to apply to such obligations as the same existed (including any prior increases in such obligations consented to by Guarantor in writing) prior to such increase.

Guarantor hereby waives and agrees not to assert to take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

Guarantor does hereby agree that the bankruptcy of Tenant shall have no effect on the obligations of the undersigned hereunder. Guarantor does hereby further agree that in respect of any payments made by Guarantor hereunder, Guarantor shall not have any rights based on suretyship, subrogation or otherwise to stand in the place of Landlord so as to compete with Landlord as a creditor of


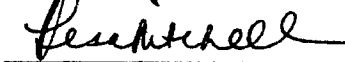
Tenant. Guarantor hereby waives, releases and forever discharges any and all rights of subrogation (whether contractual, statutory or arising under common law), to claims of Landlord against Tenant, as well as any and all rights of contribution, reimbursement, indemnification, and similar rights and "claims" (as that term is defined in the United States Bankruptcy Code) against Tenant which arise under or in connection with the Guaranty.

Neither this Guaranty nor any of the provisions hereof can be modified, waived or terminated, except by a written instrument signed by Landlord. The provisions of this Guaranty shall apply to, bind and inure to the benefit of Guarantor and Landlord and their respective heirs, legal representatives, successors and assigns. Guarantor, if there be more than one, shall be jointly and severally liable hereunder, and for purposes of such several liability the word "Guarantor" wherever used herein shall be construed to refer to each of the undersigned parties separately, all in the same manner and with the same effect as if each of them had signed separate instruments, and this Guaranty shall not be revoked or impaired as to any of such parties by the death or another party or by revocation or release of any obligations hereunder of any other party. Upon any merger or acquisition of the stock or assets of Guarantor whereby the surviving entity is other than Guarantor, or such surviving entity is known by a name other than that which Guarantor is presently known, or another entity acquires all or substantially all of the assets or a controlling percentage of the issued and outstanding shares of stock of Guarantor then, in any of such events, as a condition of any such merger or acquisition, the successor entity shall deliver to Landlord all information reasonably required by Landlord to confirm the name, ownership structure and financial strength of the successor, together with a duly executed and acknowledged assumption of this Guaranty; provided, however, failure to comply with any of the foregoing provisions shall not revoke or nullify this Guaranty which shall remain fully enforceable against any such successor but, at Landlord's option, any such failure shall constitute a default under the Lease entitling Landlord to exercise its remedies therein provided for a default of the Tenant thereunder. If at any time (or from time to time) there shall be Additional Guarantors(s), Guarantor and such Additional Guarantor(s) shall be jointly and severally liable for Tenant's obligations under the Lease. This Guaranty shall be governed by and construed in accordance with the internal laws of the state where the premises demised by the Lease (the "Premises") are located. For the purpose solely of litigating any dispute under this Guaranty, the undersigned submits to the jurisdiction of the courts of said state.


If Guarantor executes this Guaranty as a partnership, each individual executing this Guaranty on behalf of the partnership represents and warrants that he or she is a general partner of the partnership and that his Guaranty is binding upon the partnership in accordance with its terms. If Guarantor executes this Guaranty as a corporation, each of the persons executing this Guaranty on behalf of the corporation covenants and warrants that the corporation is a duly authorized and existing corporation, that the corporation has and is qualified to transact business in the state where the Premises are located, that the corporation has full right, authority and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the corporation is authorized to do so and that this Guaranty is binding upon the corporation in accordance with its terms. If Guarantor executes this Guaranty as a limited liability company, each of the persons executing this Guaranty on behalf of the limited liability company covenants that the limited liability company is a duly authorized and validly existing limited liability company which is qualified to transact business in the state where the Premises are located, that the limited liability company has full right, authority, and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the limited liability company is authorized to do so, and that this Guaranty is binding upon the limited liability company in accordance with its terms.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date of the Lease.

ATTEST/WITNESS

URBAN BRANDS, INC., a Delaware corporation

By:   
Name: Eitan Shapiro  
Title: President/CEO

STATE OF New Jersey ) SS  
COUNTY OF Hudson

BE IT REMEMBERED, that on the 17th day of May, 2006, before me, a Notary Public in and for said County personally appeared URBAN BRANDS, INC., a Delaware corporation, by ETMAN SAPIRO, its \_\_\_\_\_ President, the GUARANTOR in the foregoing Guaranty of Lease, who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his/her free and voluntary act and deed as said officer for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

Susan D. Stead  
Notary Public

My Commission Expires:

11-22-10

**Susan D. Stead**  
**State of New Jersey**  
**My Commission Expires 11/22/10**  
**My I.D. Number is 2337372**

**GUARANTY (THE "GUARANTY") OF LEASE DATED \_\_\_\_\_, 2006,  
BETWEEN FMP NORTHGATE LLC,  
A DELAWARE LIMITED LIABILITY COMPANY ("LANDLORD"),  
AND  
LARGE APPAREL OF OHIO, INC. A DELAWARE CORPORATION,  
D/B/A ASHLEY STEWART, ("TENANT")**

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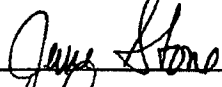
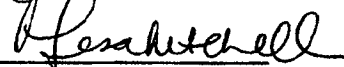
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Neither this Guaranty nor any of the provisions hereof can be modified, waived or terminated, except by a written instrument signed by Landlord. The provisions of this Guaranty shall apply to, bind and inure to the benefit of Guarantor and Landlord and their respective heirs, legal representatives, successors and assigns. Guarantor, if there be more than one, shall be jointly and severally liable hereunder, and for purposes of such several liability the word "Guarantor" wherever used herein shall be construed to refer to each of the undersigned parties separately, all in the same manner and with the same effect as if each of them had signed separate instruments, and this Guaranty shall not be revoked or impaired as to any of such parties by the death or another party or by revocation or release of any obligations hereunder of any other party. Upon any merger or acquisition of the stock or assets of Guarantor whereby the surviving entity is other than Guarantor, or such surviving entity is known by a name other than that which Guarantor is presently known, or another entity acquires all or substantially all of the assets or a controlling percentage of the issued and outstanding shares of stock of Guarantor then, in any of such events, as a condition of any such merger or acquisition, the successor entity shall deliver to Landlord all information reasonably required by Landlord to confirm the name, ownership structure and financial strength of the successor, together with a duly executed and acknowledged assumption of this Guaranty; provided, however, failure to comply with any of the foregoing provisions shall not revoke or nullify this Guaranty which shall remain fully enforceable against any such successor but, at Landlord's option, any such failure shall constitute a default under the Lease entitling Landlord to exercise its remedies therein provided for a default of the Tenant thereunder. If at any time (or from time to time) there shall be Additional Guarantor(s), Guarantor and such Additional Guarantor(s) shall be jointly and severally liable for Tenant's obligations under the Lease. This Guaranty shall be governed by and construed in accordance with the internal laws of the state where the premises demised by the Lease (the "Premises") are located. For the purpose solely of litigating any dispute under this Guaranty, the undersigned submits to the jurisdiction of the courts of said state.

If Guarantor executes this Guaranty as a partnership, each individual executing this Guaranty on behalf of the partnership represents and warrants that he or she is a general partner of the partnership and that his Guaranty is binding upon the partnership in accordance with its terms. If Guarantor executes this Guaranty as a corporation, each of the persons executing this Guaranty on behalf of the corporation covenants and warrants that the corporation is a duly authorized and existing corporation, that the corporation has and is qualified to transact business in the state where the Premises are located, that the corporation has full right, authority and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the corporation is authorized to do so and that this Guaranty is binding upon the corporation in accordance with its terms. If Guarantor executes this Guaranty as a limited liability company, each of the persons executing this Guaranty on behalf of the limited liability company covenants that the limited liability company is a duly authorized and validly existing limited liability company which is qualified to transact business in the state where the Premises are located, that the limited liability company has full right, authority, and power to enter into this Guaranty and to perform its obligations hereunder, that each person signing this Guaranty on behalf of the limited liability company is authorized to do so, and that this Guaranty is binding upon the limited liability company in accordance with its terms.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date of the Lease.

ATTEST/WITNESS:

URBAN BRANDS, INC., a Delaware corporation

By:   
Name: Ethan Shapiro  
Title: President/CEO

STATE OF New Jersey)  
COUNTY OF Hudson) SS

BE IT REMEMBERED, that on the 17th day of May, 2006, before me, a Notary Public in and for said County personally appeared URBAN BRANDS, INC., a Delaware corporation, by ETWAN SHAPIRO, its \_\_\_\_\_ President, the GUARANTOR in the foregoing Guaranty of Lease, who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his/her free and voluntary act and deed as said officer for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

Susan D. Stead  
Notary Public

My Commission Expires:

11/22/10  
Susan D. Stead  
State of New Jersey  
My Commission Expires 11/22/10  
My I.D. Number is 2337372

1/18/2011  
ser: RBELL

2:24:14PM  
Page 2 of

# Aging Report (Detailed)

Property: NORTHGATE MALL  
6000 CINCINNATI, OH 45251

as of 01/18/2011

Unit Type	Unit Reference Number	Occupant Name	Deposits Held	Balance Due	AGED 1 - 30 DAYS	AGED 31 - 60 DAYS	AGED 61-90 DAYS	AGED OVER 90 DAYS
URR	00100	(Continued)						
		CHARGE CODE	CHARGE DESCRIPTION	CHARGE DATE				
		CAM	Common Area Maintenance	07/01/2010				3,619.31
		HVA	Monthly HVAC	07/01/2010				952.45
		MIN	Minimum rents	07/01/2010				6,000.00
		MKT	Marketing Charge	07/01/2010				211.25
		RET	Real Estate Tax	07/01/2010				3,068.52
		WTS	WATER/SEWER	07/01/2010				41.00
		ELE	ELECTRICITY 6/3-7/3/10	07/08/2010				151.33
		CAM	Common Area Maintenance	08/01/2010				3,619.31
		HVA	Monthly HVAC	08/01/2010				952.45
		MIN	Minimum rents	08/01/2010				6,000.00
		MKT	Marketing Charge	08/01/2010				211.25
		RET	Real Estate Tax	08/01/2010				3,068.52
		WTS	WATER/SEWER	08/01/2010				41.00
		ELE	ELECTRICITY 7/3-8/3/10	08/18/2010				146.17
		CAM	Common Area Maintenance	09/01/2010				3,619.31
		HVA	Monthly HVAC	09/01/2010				952.45
		MIN	Minimum rents	09/01/2010				6,000.00
		MKT	Marketing Charge	09/01/2010				211.25
		RET	Real Estate Tax	09/01/2010				3,068.52
		WTS	WATER/SEWER	09/01/2010				41.00
		ELE	ELECTRICITY 8/3-9/3/10	09/29/2010				147.95
		CAM	Common Area Maintenance	10/01/2010				172.34
		HVA	Monthly HVAC	10/01/2010				172.34
		RET	Real Estate Tax	10/01/2010				25.42
		ELE	ELECTRICITY 9/3-10/3/10	10/14/2010				1,758.77
		CAM	Common Area Maintenance	11/01/2010				131.02
		HVA	Monthly HVAC	11/01/2010				
		RET	Real Estate Tax	11/01/2010				
		ELE	ELECTRICITY 10/3-11/3/10	11/24/2010				
		CAM	Common Area Maintenance	12/01/2010				
		HVA	Monthly HVAC	12/01/2010				
		RET	Real Estate Tax	12/01/2010				
		ELE	ELECTRICITY 11/3-12/3/10	12/21/2010				
		CAM	Common Area Maintenance	01/01/2011				
		HVA	Monthly HVAC	01/01/2011				
		MIN	Minimum rents	01/01/2011				
		MKT	Marketing Charge	01/01/2011				
		RET	Real Estate Tax	01/01/2011				
		WTS	WATER/SEWER	01/01/2011				

13,892.57  
- 12,133.81

1,758.76 January 2011

22,045.38



Douglas Wilson Companies

450 B Street, Suite 1900  
San Diego, California 92101  
Phone: 619.641.1141 Fax: 619.641.1150  
www.douglaswilson.com

## TRANSMITTAL



DATE: January 21, 2011

TO: BMC Group, Inc.  
Attn: Urban Brands Claims Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

FROM: Krista Freitag

RE: **Northgate Ashley Stewart Store No. 405**

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Las Vegas

San Diego

San Francisco

ENCLOSURE(S): Please find enclosed two (2) separate claims for the above-referenced store:

Washington, DC

- 1) Urban Brands, Inc.
- 2) Large Apparel of Ohio, Inc.