



**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

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

**Items to be completed in Proof of Claim form****Court, Name of Debtor, and Case Number:**

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

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

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

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

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

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

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim.**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

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

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9)**

State the value of any goods received by the debtor within 20 days before the date of commencement in which the goods have been sold to the debtor in the ordinary course of the debtor's business.

**7. Credits:**

An authorized signature on this proof of claim serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**8. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS****Debtor**

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

**Creditor**

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

**Claim**

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

**Proof of Claim**

A proof of claim form is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

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

**Unsecured Claim**

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

**Claim Entitled to Priority Under 11 U.S.C. §§ 507(a)**

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

**Redacted**

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

**Evidence of Perfection**

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

**INFORMATION****Acknowledgement of Filing a Claim**

To receive acknowledgement of your filing, please enclose a stamped self-addressed envelope and a copy of this proof of claim. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://www.bmcgroup.com/UrbanBrands>

**Offers to Purchase a Claim**

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

**PLEASE SEND COMPLETED PROOFS OF CLAIM TO:****Via Regular U.S. Mail    Via Overnight Courier**

BMC Group, Inc.	BMC Group, Inc.
Attn: Urban Brands	Attn: Urban Brands
Claims Processing	Claims Processing
P.O. Box 3020	18750 Lake Drive East
Chanhassen, MN 55317	Chanhassen, MN 55317

Attachment to Proof of Claim of Atlantic City Associates, LLC, 10-13005-KJC  
and 10-13041-KJC

UNPAID PRE-PETITION RENT		
	5-11-10 through 9-23-10	
Water	\$56.75	
Operation Costs/CAM	\$4,640.00	
Rent	\$21,327.66	
Late Charges	\$2,156.76	
Real Estate Taxes	\$3,302.78	
Marketing	\$711.94	
		\$31,483.95
LEASE REJECTION DAMAGES		
	One Year of Rent	
Basic Rental	\$123,627.00	
Operating Costs/CAM	\$41,518.68	
Real Estate Taxes	\$19,816.68	
Marketing	\$4,443.12	
		\$189,405.48
<b>TOTAL:</b>		<b>\$220,889.43</b>

\* Claimant reserves the right to amend this Claim. Claimant further reserves all rights as to any administrative claims it may have.

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**LEASE AGREEMENT**

by and between

**ATLANTIC CITY ASSOCIATES, LLC**

(Landlord)

and

**LARGE APPAREL OF NEW JERSEY, INC., a New Jersey corporation (d/b/a "Ashley  
Stewart")**

(Tenant)

**Urban Brands, Inc. (Guarantor)**

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## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease") is made as of May 24, 2007, between ATLANTIC CITY ASSOCIATES, LLC, a Maryland limited liability company ("Landlord") and LARGE APPAREL OF NEW JERSEY, INC., a New Jersey corporation ("Tenant").

### **WITNESSETH:**

THAT FOR AND IN CONSIDERATION of the sum of Ten and 00/100 Dollars (\$10.00) and the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

### **ARTICLE I DEFINITIONS AND ATTACHMENTS**

**Section 1.1 Certain Defined Terms.** As used herein, the term:

"Additional Rent" shall have the meaning ascribed to it in Section 5.1.

"Annual Minimum Rent" means Twenty-eight Dollars (\$28.00) per square foot of Tenant's Floor Area per annum for the first twelve (12) calendar months of the Term commencing on the Rent Commencement Date; provided that the foregoing amount shall be increased on each anniversary of the Rent Commencement Date by multiplying the Annual Minimum Rent then in effect by 1.025.

"Annual Percentage Rent" means a sum equal to the product obtained by multiplying: (a) the Percentage Rent Rate; by (b) the amount by which annual Gross Sales exceed the Breakpoint.

"Associate of Tenant" means any natural person, firm, corporation, association or other entity which has any ownership, participation or other financial interest in Tenant or in which Tenant has any ownership, participation or other financial interest, including, but not limited to, any stockholder, officer, director or partner of Tenant, any subsidiary or parent corporation of Tenant, any person or entity controlling, controlled by or under common control with Tenant, or any franchisor or franchisee of Tenant.

"Breakpoint" means the sum of Four Hundred Dollars (\$400.00) per square foot of Tenant's Floor Area per annum for each Lease Year of the Term.

"Buildings" means the structure or structures constructed or to be constructed by or for Landlord in the locations shown on Exhibit "A", as the same may be altered, reduced, expanded or replaced from time to time. Tenant hereby acknowledges that the plans and layout of the Shopping Center being or to be constructed by Landlord may be in accordance with the depiction set forth on Exhibit "A" and that Landlord reserves the right to alter, reduce, expand or replace same in its sole and absolute discretion.

"Building Floor Area" means the aggregate number of square feet of leasable floor area in the Buildings, which, with respect to any such floor area which has been leased to any rent-

paying tenant, shall be determined in accordance with the provisions of such rent-paying tenant's lease for such space, and which, with respect to any such floor area not so leased, shall consist of all such leasable floor area in the Buildings designed for the exclusive use and occupancy of rent-paying tenants. Building Floor Area shall not include Common Areas, leasable office space, residential areas, outdoor sales areas, outdoor dining areas, non-selling mezzanine and basement areas, storage areas leased separately from retail areas and areas used for management and promotion offices.

**"Common Areas"** means those areas, improvements and facilities which may from time to time be furnished, operated, or managed by Landlord, or by any designee of Landlord, in or near the Shopping Center for the nonexclusive general common use of tenants and other occupants of the Shopping Center, their officers, agents, employees and customers. The Common Areas may include (not to be deemed a representation as to their availability) sidewalks, parking areas, access roads, driveways, landscaped areas, serviceways, tunnels, bridges, loading docks not exclusively serving the Leased Premises, pedestrian malls, stairs, ramps, elevators, escalators, comfort and first aid stations, public washrooms, and other similar areas and improvements.

**"Competing Business"** means each business in which Tenant or any Associate of Tenant has any ownership, participation, or financial interest, directly or indirectly, whether as a stockholder, partner, co-venturer, lender, manager, contractor, employee, consultant, agent or otherwise, and which business (i) is being operated as an Ashley Stewart store, and (ii) is located within a distance of five (5) miles from that point in the outermost boundary of the Shopping Center which is closest to the premises at which such similar or competing business is conducted. The term "Competing Business" shall not apply to any business described in the foregoing sentence which is open and in operation as of the date of this Lease.

**"Consumer Price Index"** means the Consumer Price Index, which is presently announced monthly by the Bureau of Labor Statistics, U.S. Department of Labor, and which index is computed on a base period index of 1982-84 = 100. This index is the overall summary Consumer Price Index entitled "All Items." In the event that the Bureau of Labor Statistics changes the base period index for its summary Consumer Price Index (now 1982-84 = 100), the parties agree to continue to use the 1982-84 = 100 base period index if the Bureau of Labor Statistics continues to announce a consumer price index based on said 1982-84 base period index as well as a later base period index. In any event, the base used by any new index, or as revised on the existing index, shall be reconciled to the 1982-84 base period index. If the Bureau of Labor Statistics shall no longer publish the Consumer Price Index, Landlord shall substitute another index generally recognized as authoritative. If and to the extent this Lease expressly provides that Annual Minimum Rent, Annual Percentage Rent, Additional Rent, Promotion Fund Contribution or any item constituting part of any of the foregoing, is to be adjusted for changes in the Consumer Price Index (any item subject to such adjustment being herein referred to as an "Adjustment Item") such adjustment shall be made as follows. The amount of the Adjustment Item shall be adjusted, as of the beginning of each Lease Year for which the adjustment is to be made ("Adjustment Year"), to equal the amount which is the greater of (a) the amount of such Adjustment Item for the Lease Year immediately preceding the Adjustment Year, or (b) the product obtained by multiplying (i) the amount of such Adjustment Item for the Lease Year immediately preceding the Adjustment Year by (ii) a fraction, the numerator of which is the Current Consumer Price Index and the denominator of which is the Prior Year Consumer Price

Index. As used herein, (A) the term **"Current Consumer Price Index"** means the Consumer Price Index published for the calendar month immediately preceding the calendar month in which the subject Adjustment Year commences, and (B) the term **"Prior Year Consumer Price Index"** means the Consumer Price Index published for the calendar month immediately preceding the calendar month in which the Lease Year immediately preceding the subject Adjustment Year commenced. In each case, if the Consumer Price Index is not published for any calendar month referred to above, then the Consumer Price Index published for the calendar month closest thereto shall apply.

**"CRDA"** means the Casino Reinvestment Development Authority, a public body established in, but not of, the Department of the Treasury of the State of New Jersey, and existing under and by virtue of the laws of the State of New Jersey, including P.L. 1984, c. 218, as amended and supplemented from time to time.

**"Default Rate"** means an annual rate of interest equal to the lesser of (i) the maximum rate of interest permitted by law in the State of New Jersey or (ii) ten percent (10%) per annum over the **"Prime Rate"** from time to time in existence during such period, as published in the Wall Street Journal (Eastern Edition) (or, if the Wall Street Journal is no longer being published, then another similar financial publication). Interest shall be calculated on the basis of a 365-day year, actual days elapsed, from the date any cost or expense is incurred until the amount owing is fully paid).

**"Delivery of Possession"** means the date of substantial completion of Landlord's Work (as defined herein) and delivery of the Premises to Tenant.

**"Drop Dead Date"** means October 15, 2007, which date shall be continued one day for each day that (a) Tenant fails to submit its initial Plans to Landlord after the Submission Date, and (b) Tenant fails to respond to Landlord's request for revisions or information after the third (3<sup>rd</sup>) day after such request.

**"Effective Date"** means the day and year first above written. The words "the date hereof", "the date of this Lease", or words of similar import referring to the date on which this Lease is made shall mean the Effective Date.

**"Event of Default"** shall have the meaning ascribed to it in Section 17.1.

**"Expiration Date"** means the last day of the Term.

**"Force Majeure"** means any labor dispute, Act of God, war, riot, unavailability of services or materials, governmental action or inaction, or complying with governmental order or other occurrence beyond the reasonable control of Landlord or Tenant, as the case may be, which delays such party's performance of any of its obligations under this Lease. Timely performance by such party of its obligations, excluding the delay of the Rent Commencement Date and the timely payment of Rent, which obligations shall in no event be delayed, shall be subject to extension due to any event of Force Majeure.

**"Gross Sales"** has the meaning ascribed to it in Section 5.4.

**"Ground Lease"** means any underlying lease of land and/or buildings affecting the Premises or the Shopping Center between the CRDA, or its successors or assigns, as ground lessor and Landlord, or its successors or assigns, as ground lessee dated July 31, 2003.

**"Guarantor"** means Urban Brands, Inc.

**"Initial Term"** means the period commencing on the Rent Commencement Date and, unless sooner terminated in accordance with the provisions of this Lease, terminating on last day of the fifth (5<sup>th</sup>) Lease Year.

**"Landlord Indemnitees"** means Landlord's lessors, its partners, officers, shareholders, trustees, principals, agents, property managers, employees and any mortgagee(s) and any ground lessor, including but not limited to, the CRDA.

**"Landlord Notice Address"** means Atlantic City Associates, LLC, c/o The Cordish Company, 601 East Pratt Street, 6<sup>th</sup> Floor, Baltimore, Maryland 21202.

**"Landlord's Operating Costs"** shall have the meaning ascribed to it in Section 10.5.

**"Landlord's Work"** means the work to be performed by Landlord to complete the Premises as described on Exhibit "C" hereto.

**"Laws"** means all present or future federal, state and local common law, statutes, rules, codes, ordinances and regulations, and all directions, requirements, rulings and orders of all federal, state and local courts and other governmental and quasi-governmental agencies and authorities having jurisdiction over the Premises, including, without limitation, those of any health officer, fire marshal, building inspector or other officials, of the governmental or quasi-governmental agencies and authorities having jurisdiction over the Premises.

**"Lease Year"** means each twelve (12) consecutive calendar months period or portion thereof occurring during the Term from February 1 through January 31, provided that the first Lease Year shall also include the partial period from the Rent Commencement Date to the immediately following January 31.

**"Mortgage"** means any mortgage, deed of trust or other security interest or title retention interest affecting the Premises, whether in existence on the date hereof or created hereafter.

**"Mortgagee"** means the party or parties having the benefit of any Mortgage, whether as mortgagee, trustee, beneficiary, noteholder or otherwise, including, without limitation, lessors under ground leases, sale-leaseback arrangements and lease-leaseback arrangements.

**"Operating Hours"** means (i) the hours from 10:00 a.m. until 9:00 p.m., Monday through Saturday, and from 11:00 a.m. until 6:00 p.m. Sunday, except Easter Sunday, Thanksgiving Day, Christmas Day and New Year's Day or (ii) such other hours of operation as may from time to time be required by Landlord and during which a majority of the other tenants in the Shopping Center are open for business.

**"Operating Year"** means each twelve (12) consecutive month period or portion thereof occurring during the Term, from time to time designated by Landlord with respect to which Landlord estimates bills to tenants and determines annual Landlord's Operating Costs .

**"Percentage Rent Rate"** means six percent (6%).

**"Permitted Use"** means the operation of a prototypical "Ashley Stewart" store engaging in retail sale of women's apparel in sizes 14 and above, subject to Exhibit "H", and for no other purpose.

**"Plans"** means the plans and specifications for completion of the improvements to the Premises to be prepared by Tenant in accordance with Tenant's obligations under the Work Exhibits and revised as required by Landlord. Upon any final approval by Landlord of such Plans, the term "Final Plans" shall mean the Plans in the form so approved.

**"Premises"** means the portion of the Buildings depicted on Exhibit "B" containing approximately 4,100 square feet of Tenant's Floor Area. The actual Tenant's Floor Area of the Premises shall be determined by measurement pursuant to Section 2.2. For purposes of Sections 5.3 through 5.7 only, the term "Premises" shall include, in addition to the premises referred to above, the premises at which each Competing Business is conducted.

**"Projected Delivery Date"** means the Effective Date.

**"Promotion Fund Contribution"** means the sum of One and 00/100 Dollars (\$1.00) multiplied by Tenant's Floor Area.

**"Promotion Year"** means the period following the Rent Commencement Date and ending at the end of the first Lease Year of the Term and thereafter each year coinciding with each successive Lease Year or portion thereof occurring during the Term.

**"Proportionate Share"** means, with respect to Taxes and Landlord's Operating Costs (including but not limited to insurance costs), an amount equal to a fraction the numerator of which is Tenant's Floor Area and the denominator of which shall be those portions of the Building Floor Area leased to rent paying tenants, as such Buildings may be altered, reduced, expanded or replaced from time to time (but in no event shall the denominator be less than ninety percent (90%) of the Building Floor Area in the Shopping Center). Notwithstanding the foregoing, if any tenant pays taxes pursuant to a separate tax assessment of its premises, maintains its own parcel or insures its own building, the amount of such taxes, maintenance charges or insurance shall be excluded from the calculation of Tenant's Proportionate Share of Taxes or Operating Costs and such tenant's premises shall be deducted in computing the square feet of gross leasable area in the Shopping Center for purposes of computing Tenant's Proportionate Share of such item.

**"Renewal Term"** means one (1) term of five (5) Lease Years.

**"Rent"** shall have the meaning ascribed to it in Section 5.1.

**"Rent Commencement Date"** means the earlier of: (a) sixty (60) days after Delivery of Possession (as defined herein) or (b) the date Tenant opens for business in the Premises.

**"Security Deposit"** / None.

**"Shopping Center"** means the commercial development, consisting of the Common Areas and the Buildings, located or to be located in Atlantic City, New Jersey, more particularly described on **Exhibit "A"** hereto plus, at Landlord's option, all those certain parcels of land, situated in Atlantic City, County of Atlantic, State of New Jersey, owned, leased or operated by Landlord, or by any affiliate of Landlord, as a part of or in support of the Shopping Center.

**"Submission Date"** means the date by which Tenant is required to submit its initial Plans to Landlord, which date shall be the date **thirty (30) days** following the date Tenant receives the Lease Outline Drawing.

**"Taxes"** shall have the meaning ascribed to it in Section 6.1.

**"Tax Year"** means each twelve (12) month period (deemed, for the purpose of Article VI, to have 365 days) established as the real estate tax year by the taxing authorities having lawful jurisdiction over the Shopping Center. In the event of varying tax years being utilized by multiple taxing authorities, Landlord shall be entitled to select the period to be used as the Tax Year.

**"Term"** shall mean the Initial Term and the Renewal Term (if any and only to the extent same is properly exercised).

**"Tenant's Floor Area"** means the aggregate number of square feet contained in the Premises, as measured in accordance with Section 2.2.

**"Tenant's Notice Address"** means Large Apparel of New Jersey, Inc., c/o Urban Brands, Inc., 100 Metro Way, Secaucus New Jersey 07094.

**"Tenant's Trade Name"** means "Ashley Stewart" and no other trade name.

**"Tenant's Work"** means the work to be performed by Tenant to complete the Premises as described in **Exhibit "D"** hereto.

**"Work Schedules"** means, collectively, **Exhibit "C"**, **Exhibit "D"** and **Exhibit "E"** referred to in Section 1.2, including all modifications and amendments thereto agreed to by Landlord and Tenant in writing and all drawings and documents prepared pursuant thereto.

**Section 1.2 Attachments.** The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof: **Exhibit "A"** - Drawing Showing Location of the Buildings; **Exhibit "B"** - Drawing Showing Location of the Premises; **Exhibit "C"** - Description of Landlord's Work; **Exhibit "D"** - Description of Tenant's Work; **Exhibit "E"** - Tenant's Sign Criteria; **Exhibit "F"** - Tenant Estoppel Certificate; **Exhibit "G"** - Confirmation Agreement; **Exhibit "H"** - Prohibited Uses, Exclusives and Restrictions; and **Exhibit "I"** - Guaranty.

## **ARTICLE II**

### **PREMISES**

**Section 2.1 Demised Premises; Quiet Enjoyment.** Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the Premises for the Term and at the Rent hereinafter described upon the terms and conditions set forth in this Lease. Landlord warrants that so long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet use and possession of the Premises, subject to the terms and conditions of this Lease, any Mortgage, the Ground Lease and all matters of record or other agreements to which this Lease is or may hereafter be subordinated, free of all claims of Landlord or anyone claiming by through or under Landlord.

**Section 2.2 Measurement of Premises.** On or before the Rent Commencement Date, Landlord shall cause the Premises to be measured in the manner hereafter provided and shall give Tenant notice of the Tenant's Floor Area so determined. The Premises shall be measured (a) with respect to the front and rear width thereof, from the center of the demising wall of the adjacent tenant premises, or, if not adjoining any other tenant premises, from the exterior face of the adjacent exterior or corridor wall, and (b) with respect to the depth thereof, from the front lease line to the center of the demising wall of the adjacent tenant premises, or, if not adjoining any other tenant premises on the rear wall, to the exterior face of the rear exterior wall, or corridor wall; and in no case shall there be any deduction for columns or other structural elements or mechanical systems (including equipment and related duct work) within any tenant's premises. Within thirty (30) days after the date Landlord delivers its measurement, Tenant may, at its sole cost and expense, request that Landlord's architect or engineer re-measure the Premises and certify the same to the parties. If Tenant fails to notify Landlord of any objections to the Landlord's measurement of the Premises within thirty (30) days after the Delivery of Possession, the Premises shall be conclusively deemed to be the size set forth in the notice from Landlord. At the election of Landlord, the Tenant's Floor Area may be determined from a measurement of Landlord's plans and specifications for the Buildings and the Premises. If Tenant's Floor Area of the Premises is different than that set forth in the Lease, then after such determination is made, at the request of either party, Landlord and Tenant shall execute an appropriate amendment to this Lease, changing the size of the Premises, Annual Minimum Rent and all other charges based on the size of the Premises.

## **ARTICLE III**

### **TERM**

**Section 3.1 Term.** The Term of this Lease shall commence on the Rent Commencement Date and shall terminate on the Expiration Date. Unless this Lease expressly grants any renewal right to Tenant, Tenant shall have no right to renew this Lease beyond the Initial Term. Upon determination of the Rent Commencement Date, Landlord and Tenant agree, within ten (10) days after the demand of the other, to execute a declaration certifying the Rent Commencement Date and the Expiration Date of the Term in the form attached hereto as Exhibit "G".

**Section 3.2 Expiration.** This Lease shall expire on the Expiration Date without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives notice to vacate or quit the Premises and agrees that Landlord shall be entitled to the benefit of all Laws respecting the summary recovery of possession of the Premises from a tenant holding over to the same extent as if statutory notice had been given. For the period of three (3) months prior to the expiration of the Term, Landlord shall have the right to display on the exterior of the Premises a "For Rent" sign and during such period Landlord may show the Premises and all parts thereof to prospective tenants during normal business hours.

**Section 3.3 Holding Over.** It shall be a default under this Lease if Tenant remains in possession of the Premises after the Expiration Date without the written permission of Landlord, and without the execution and delivery of a new lease. In the event of such default by Tenant, Landlord, at its option, may, in addition to any other remedies available to Landlord at law, in equity or under this Lease, (i) immediately re-enter and take possession of the Premises without process, or by any legal process in force in the jurisdiction in which the Shopping Center is located, and hold Tenant liable for any and all damages incurred as a result of such holdover, and for the reasonable value of the use of the Premises which is hereby agreed to be a monthly amount equal to 1.5 times the Rent required under this Lease at the amounts in effect during the last month of the Term or (ii) treat Tenant as occupying the Premises as a tenant at will, subject to all the conditions, provisions and obligations of this Lease (but without any right of Tenant hereunder to extend the Term) insofar as the same are applicable to an at-will tenancy. During any such holdover period, monthly Rent shall be 1.5 times the Minimum Rent plus all other Rent required under this Lease at the amounts in effect during the last month of the Term.

**Section 3.4 Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Rent Commencement Date has not occurred by January 1, 2023, this Lease shall automatically terminate on such date. The sole purpose of this provision is to avoid any possible interpretation of this Lease as violating the Rule Against Perpetuities or other rule of Law against restraints on alienation.

**Section 3.5 Renewal Term.** Tenant shall be entitled to extend the Term for the Renewal Term, which Renewal Term shall commence at the expiration of the Initial Term, by and only by giving to Landlord express, written notice of Tenant's desire to exercise such renewal option (the "Renewal Notice"). The Renewal Notice must be given at least nine (9) months (but not more than twelve (12) months) prior to the expiration of the Initial Term (time being of the essence); provided, however, that, in the sole discretion of Landlord, such renewal shall not be effective: (i) if an Event of Default exists on the date Landlord receives the Renewal Notice or when the Renewal Term otherwise is to commence; or (ii) unless Tenant then is in possession of the Premises and doing business therein in accordance with the terms and provisions of this Lease on the date Landlord receives the Renewal Notice or when the Renewal Term otherwise is to commence; or (iii) unless during the last twelve (12) months of the Initial Term Tenant has refurbished the Premises with new paint and carpet to the satisfaction of Landlord to the end that the Premises is in first class condition on the scheduled first day of the Renewal Term. Such renewal shall be upon the terms and subject to the conditions set forth herein, except that after the proper exercise of the Renewal Term, Tenant shall no longer have the right to extend the Term.



## **ARTICLE IV**

### **USE**

**Section 4.1 Prompt Occupancy and Use.** Tenant shall open for business for the Permitted Use in the entire Premises fully stocked and staffed no later than the Rent Commencement Date. Tenant shall occupy the entire Premises from and after the Rent Commencement Date and thereafter will continuously use the entire Premises fully stocked and staffed for the Permitted Use and for no other purpose or trade name whatsoever. Tenant will sell all merchandise from the Premises at discount prices that are at least thirty percent (30%) less than prices charged by other retailers in the greater Philadelphia, Pennsylvania metropolitan area that sell the same or similar merchandise at full retail mark-up, regardless of the label of clothing, and regardless of whether the merchandise is manufactured by Tenant or by other manufacturers under a license from Tenant. Tenant acknowledges that Tenant does not have any exclusive rights in the Shopping Center with respect to the sale of merchandise or the provisions of services or otherwise, and other tenants or occupants of the Shopping Center (i) may sell the same or similar items as Tenant is permitted to sell under this Lease or (ii) may provide the same or similar services as Tenant is permitted to provided under this Lease. Tenant shall obtain and maintain all appropriate or required licenses and permits required for the operation of the Premises. In addition, Tenant shall not (i) cause or knowingly permit objectionable odors to emanate or be dispelled from the Premises; (ii) knowingly permit any use of the Premises which is in violation of laws; (iii) permit undue accumulations of garbage, trash, rubbish, or any other refuse, fail to remove the same at regular intervals, fail to keep such refuse in proper containers as designated by Landlord, (iv) fail to keep the Premises free of rodents, roaches, or other pests; (v) use or permit any use to be made of the Premises that constitutes a nuisance; (vi) commit waste, or knowingly permit any party to commit waste, upon the Premises; or (vi) generate Hazardous Substances at, to, or from the Premises.

**Section 4.2 Storage and Office Areas.** Tenant shall use no more than ten percent (10%) of Tenant's Floor Area for storage and office purposes and such storage and office use shall be incidental to the Permitted Use.

**Section 4.3 Tenant's Trade Name.** Tenant shall conduct business in the Premises only in Tenant's Trade Name.

**Section 4.4 Operating Hours.** Tenant shall cause its business to be conducted and operated in such manner as shall assure the transaction of a maximum amount of Gross Sales at the Premises. The continuous occupancy and use of the Premises by Tenant is of the essence to this Lease. Tenant shall cause the Premises to be open daily for business during all Operating Hours. If Tenant shall fail to cause its business to be operated during the hours required by the preceding sentence, or as otherwise required by Landlord, in addition to any other remedy available to Landlord under this Lease, at law or in equity: (i) Landlord may elect to terminate this Lease on three (3) days notice and/or (ii) Tenant shall pay to Landlord, as liquidated damages for such breach, a sum equal to One Hundred Dollars (\$100.00) for day or portion thereof during which Tenant shall fail to so operate. If Tenant requests Landlord's approval of the operation of the Premises for periods differing from the Operating Hours, and if Landlord

approves such request, Tenant shall pay for all additional costs incurred by Landlord in connection with Tenant's operation of the Premises during such different hours.

**Section 4.5 Sale of Alcoholic Beverages.** Tenant shall not sell or serve alcoholic beverages in the Premises.

## **ARTICLE V**

### **RENT**

**Section 5.1 Rent Payable.** Tenant covenants and agrees to pay to Landlord as rent ("Rent") for the Premises, the sum of the following: (a) Annual Minimum Rent; (b) Annual Percentage Rent; (c) all additional sums, charges or amounts of whatever nature which Tenant is required to pay to Landlord in accordance with the provisions of this Lease, whether or not such sums, charges or amounts are referred to as additional rent (collectively referred to as "Additional Rent"); and (d) all sales tax imposed on payments due Landlord under this Lease, should any governmental taxing authority levy, assess or impose any tax, excise or assessment (other than income or franchise tax) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise. Tenant shall be responsible for and shall pay any tax, excise or assessment or shall reimburse the Landlord for the amount thereof, as the case may be. Annual Minimum Rent and the Breakpoint shall be reduced proportionately for any Lease Year of less than twelve (12) calendar months.

**Section 5.2 Annual Minimum Rent.** Annual Minimum Rent shall be payable, beginning on the Rent Commencement Date, in twelve (12) equal installments in advance on the first day of each calendar month during the Term.

**Section 5.3 Annual Percentage Rent.** Annual Percentage Rent shall be determined and paid by Tenant in accordance with the provisions of this Section 5.3. During each Lease Year, commencing with the calendar month that follows the calendar month that Gross Sales for such Lease Year first exceeds the Breakpoint for such Lease Year, on or before the twentieth (20<sup>th</sup>) day of such calendar month and each calendar month thereafter during such Lease Year (and the first calendar month of the next twelve month period), Tenant shall furnish to Landlord the monthly Gross Sales statement required by Section 5.5 below and pay Landlord, as a monthly installment of Percentage Rent, an amount equal to the product obtained by multiplying the Percentage Rent Rate by the Gross Sales made during such previous calendar month, to the extent such year-to-date Gross Sales exceed the Breakpoint for such Lease Year and to the extent such installment of Percentage Rent for such Gross Sales had not been previously paid by Tenant to Landlord. As soon as practicable but, in any event, no later than sixty (60) days after the end of each Lease Year, Tenant shall furnish the annual Gross Sales statement required by Section 5.5 below setting forth the Annual Percentage Rent payable for such Lease Year. If the Annual Percentage Rent so determined differs from the amount actually paid by Tenant for such Lease Year, the deficiency shall be paid with the annual Gross Sales statement, and any overpayment shall, at Landlord's sole election, either be credited against future payments of Percentage Rent or refunded to Tenant within thirty (30) days after Landlord's receipt of such annual Gross Sales statement. If any Lease Year is less than a full calendar year or if Tenant is open for less than an entire Lease Year, the Breakpoint shall be computed by multiplying the Breakpoint by a fraction the numerator of which is the actual number of days during the Lease Year Tenant was open for

business and the denominator of which is 365. If the Minimum Rent is abated for any reason, then the Breakpoint shall be computed for such Lease Year, after any adjustment as provided for in the immediately preceding sentence, by multiplying the Breakpoint by a fraction, the numerator of which shall be the Minimum Rent payable after the abatement for such Lease Year and the denominator of which shall be the total Minimum Rent that would have been payable for the Lease Year exclusive of the abatement.

**Section 5.4 "Gross Sales" Defined.** "Gross Sales" means the actual sales prices of all goods, wares and merchandise and food and beverages sold, leased, licensed or delivered and the actual charges for all services performed by Tenant or by any subtenant, licensee or concessionaire in, at, from, or arising out of the use of the Premises, whether for wholesale, retail, cash or credit, redemption of gift card, or otherwise, without reserve or deduction for inability or failure to collect. Gross Sales shall include, without limitation, sales and services (a) where the orders therefor originate in, at, from, or arising out of the use of the Premises (including catalogue and Internet sales), whether delivery or performance is made from the Premises or from some other place; (b) made or performed by mail, telephone, telecopy, telegraph or other form of order; (c) made or performed by means of any permitted mechanical or other vending devices in the Premises; (d) which Tenant or any subtenant, licensee, concessionaire or other person in the normal and customary course of its business, would credit or attribute to its operations at the Premises or any part thereof. Any deposit not refunded shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of whether or when Tenant receives payment therefor. No franchise or capital stock tax and no income or similar tax based on income or profits shall be deducted from Gross Sales.

The following shall not be included in Gross Sales: (i) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at, or from the Premises, or for the purpose of depriving Landlord of the benefit of a sale made in, at, or from the Premises, or for the purposes of depriving Landlord of the benefit of a sale which would otherwise be made in or at the Premises; (ii) returns to shippers or manufacturers; (iii) cash or credit refunds to customers or transactions (not to exceed the actual selling price of the item returned), otherwise included in Gross Sales; (iv) sales of trade fixtures, machinery and equipment after use thereof by Tenant in the conduct of Tenant's business but which sale is not otherwise in the normal course of Tenant's business; (v) separately stated amounts collected and paid by Tenant to any government for any sales or excise tax; and (vi) the amount of any discount on sales to bona fide employees of Tenant employed at the Premises, not to exceed one percent (1%) of annual Gross Sales.

**Section 5.5 Statements of Gross Sales.**

(a) Within twenty (20) days after the close of each calendar month of the Term (time being of the essence), beginning with the first full calendar month after the Rent Commencement Date, Tenant shall deliver to Landlord a written report signed by Tenant's chief financial officer, certifying the Gross Sales made in such calendar month. All Gross Sales statements furnished under this paragraph (a) or paragraph (b) below shall separately state the Gross Sales and the amount of exclusions from Gross Sales, by category of exclusion.

(b) Within sixty (60) days after the close of each Lease Year (time being of the essence) and after the Expiration Date of the Lease, Tenant shall deliver to Landlord a statement of Gross Sales for the preceding Lease Year, or portion thereof, which shall reflect all Gross Sales for such Lease Year or portion thereof. The annual statement shall be accompanied by the signed certificate of the chief financial officer of Tenant stating that: (i) he has examined the report of Gross Sales for such Lease Year; (ii) his examination included such tests of Tenant's books and records as necessary or appropriate under the circumstances to account for all Gross Sales; (iii) such report presents accurately and completely all Gross Sales for such Lease Year; and (iv) the Gross Sales as so reported conform with and are computed in compliance with the definition of Gross Sales contained in Section 5.4 hereof. Such annual report and accompanying certification are hereinafter referred to as the "Annual Certified Statement."

(c) If Tenant fails to prepare and deliver any statement of Gross Sales required by this Section 5.5, within the time or times specified above and such failure continues for more than fifteen (15) days after receipt of Landlord's notice of such failure, Landlord may elect to do one or more of the following:

- (i) Landlord may elect to treat Tenant's failure as an Event of Default.
- (ii) Landlord may elect to cause an audit of all original books and records of Tenant and its subtenants, licensees or concessionaires as required to be preserved by Tenant under Section 5.6 for the two (2) Lease Years immediately prior to date Landlord requests such audit and prepare the statement or statements which Tenant has failed to prepare and deliver. The statement or statements prepared by Landlord or its agents shall be conclusive and binding on Tenant. Tenant shall pay all expenses of such audit and of the preparation of any such statement and any and all such sums shown by such audit to be due as Percentage Rent.
- (iii) Landlord may elect to estimate Tenant's annual Gross Sales for such Lease Year. In making such estimate Landlord may take into account such factors, as Landlord deems relevant; provided that in any event Landlord may base its estimate on the highest monthly Gross Sales previously reported by Tenant, or determined by prior examination under Section 5.6 (b). Landlord's estimate shall be binding on Tenant and determinative of annual Gross Sales and Annual Percentage Rent due for the Lease Year in question.

In addition to the above, if Tenant fails to prepare and deliver any statement of Gross Sales required by this Section 5.5, within the time or times specified above, within ten (10) days of Landlord's demand therefor, Tenant shall pay Landlord a late charge equal to One Hundred Dollars (\$100.00) for each such late statement to reimburse Landlord for its additional administrative costs.

#### **Section 5.6 Tenant's Records; Examination.**

(a) For the purpose of permitting verification by Landlord of any amounts due as Annual Percentage Rent, Tenant will (i) cause the business upon the Premises to be operated so that a duplicate sales slip, invoice or non-resettable cash register receipt, serially numbered, or such other device for recording sales as Landlord approves, shall be issued with each sale or transaction, whether for cash, credit or exchange; and (ii) keep and preserve, at the Tenant Notice Address, for at least three (3) years after each Lease Year, a general ledger, receipt and

disbursement journals, and such sales records and other supporting documentation, together with original or duplicate books and records, which shall disclose all information required to determine Gross Sales.

(b) At any time and from time to time after ten (10) days notice to Tenant, Landlord or any Mortgagee or ground lessor, their agents and accountants shall have the right to examine at Tenant's home office in the United States any and all of the books and records relating to Gross Sales and operations at the Premises. If any portion of the Gross Sales is by any subtenant, licensee or concessionaire of Tenant, then Tenant shall cause such records to comply with the requirements of subparagraph (a) and to be available for examination under this subparagraph (b). If such examination reveals that the Gross Sales reported by Tenant for any period was less than the actual Gross Sales for such period, Tenant shall pay to Landlord within ten (10) business days after demand any deficiency in Annual Percentage Rent together with interest at the Default Rate from the date such portion of Annual Percentage Rent was due until paid in full. Furthermore, if the examination reveals that actual Gross Sales for any period vary by more than three percent (3%) from the Gross Sales reported by Tenant for such period, or if in the judgment of Landlord Tenant's records are inadequate to accurately and completely reflect Gross Sales: (i) Landlord may estimate Tenant's Gross Sales, in the manner provided in Section 5.5, for any period or periods with respect to which Tenant's records are inadequate and Tenant shall pay within ten (10) business days after demand any deficiency in Annual Percentage Rent together with interest at the Default Rate from the date such portion of annual Percentage Rent was due until paid in full; (ii) Tenant shall pay within ten (10) business days after demand all costs incurred by Landlord in connection with the examination of Tenant's records (provided Tenant shall in any event pay such costs if the examination results from Tenant's failure to timely submit any Annual Certified Statement); and (iii) within fifteen (15) days after notice from Landlord, Tenant shall demonstrate to Landlord's absolute satisfaction that it has implemented a record keeping system adequate to reflect and to permit Landlord to verify Gross Sales. Notwithstanding anything herein to the contrary, if Landlord determines that any deficiency in Tenant's records or discrepancies in Gross Sales reported by Tenant is a result of any bad faith by Tenant, or if Tenant fails to timely deliver its monthly statement of Gross Sales on more than five (5) occasions during the Term, Landlord shall have the right immediately to declare an Event of Default.

#### **Section 5.7 Payment of Rent.**

(a) Tenant shall pay all Rent to Landlord when due and payable, without any setoff, deduction or prior demand therefor whatsoever. If Tenant shall fail to pay any Rent within seven (7) days after the same is due, then in addition to all other remedies which Landlord may have, Tenant shall be obligated to pay a late charge equal to the greater of Two Hundred Fifty Dollars (\$250.00) or five percent (5%) of any Rent payment not paid when due to reimburse Landlord for its additional administrative costs. In addition, any Rent not paid within three (3) days after the same is due shall bear interest at the Default Rate from the first day due until paid. All Additional Rent which shall be due shall be payable, unless otherwise provided herein, with the next installment of Annual Minimum Rent.

(b) Rent, reports and statements required of Tenant shall be paid and delivered to Landlord at the Landlord Notice Address or at such other place as Landlord may from time to time designate in a notice to Tenant. Any payment by Tenant or acceptance by Landlord of Rent

in a lesser amount than due shall be treated as a payment on account. Any endorsement or statement on the check or upon any letter accompanying such check that such lesser amount is payment in full shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. If on more than one (1) occasion during the Term any check for Rent shall not be honored by the bank on which it is drawn, Landlord may thereafter require that all future payments from Tenant be made by certified check.

**Section 5.8 Intentionally Omitted.**

**Section 5.9 Competing Business.** Neither Tenant nor any Associate of Tenant shall open a Competing Business. In the event a Competing Business is opened, then in addition to all other remedies which Landlord may have at law or inequity, the gross sales generated from such Competing Business shall be included in Gross Sales as defined in Section 5.4 of this Lease. Tenant shall have the same obligations with respect to the Gross Sales of the Competing Business as if said Gross Sales were Gross Sales from the Premises (including, without limitation, record-keeping, record retention, monthly and annual statements, and availability for inspection). Upon the opening for business of a Competing Business, Landlord or Landlord's authorized representative or agent shall have the same rights and remedies under Section 5 of this Lease as if the Gross Sales of the Competing Business were Gross Sales from the Premises (including, without limitation, inspection rights and late payment charges).

**Section 5.10 Intentionally deleted.**

**Section 5.11 Landlord's Expenses.** If Landlord pays any monies or incurs any expense to correct a breach of this Lease by Tenant or to do anything in this Lease required to be done by Tenant, or incurs any expense (including, but not limited to, attorneys' fees and court costs), as a result of Tenant's failure to perform any of Tenant's obligations under this Lease, all amounts so paid or incurred shall, on notice to Tenant, be considered Additional Rent payable in full by Tenant with the first monthly installment of Annual Minimum Rent thereafter becoming due and payable.

**ARTICLE VI  
TAXES**

**Section 6.1 Tenant to Pay Proportionate Share of Taxes.** Tenant shall pay for each Tax Year during the Term, as Additional Rent, its Proportionate Share of all Taxes. "Taxes" means, collectively, all real estate taxes, ad valorem taxes and assessments, general and special assessments, taxes on real estate Rent receipts, taxes on Landlord's gross receipts, taxes and other impositions imposed by the State of New Jersey or any subdivision thereof which are in replacement of or in addition to all or any part of ad valorem taxes as sources of revenue, or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Landlord, payable with respect to or allocable to the Shopping Center, including all land, the Buildings, and all other buildings and improvements situated thereon, whether such Taxes be measured by way of rents, sales, use, usage, square footage, traffic counts, car counts, parking usage, value or cost of land or improvements, sale or transfer price or measured in any other way, together with the reasonable cost (including fees of attorneys, consultants and appraisers)

of any negotiation, contest or appeal pursued by Landlord in an effort to reduce any such tax, assessment or charge, or any payments made by CRDA (or any ground lessor) or Landlord in lieu of any of the foregoing in this Section 6.1, and all of Landlord's reasonable administrative costs in relation to the foregoing in this Section 6.1. For the Tax Year in which the Term commences or terminates, the provisions of this Section shall apply, but Tenant's Proportionate Share of Taxes for such year shall be subject to a pro rata adjustment based upon the number of days such Tax Year falling within the Term.

**Section 6.2 Payment of Proportionate Share of Taxes.** Tenant's Proportionate Share of Taxes shall be paid by Tenant in equal monthly installments in such amounts as are estimated and billed for each Tax Year by Landlord, each such installment being due on the first day of each calendar month, commencing on the Rent Commencement Date. Landlord estimates that Tenant's Proportionate Share of Taxes for the first Tax Year is \$1.50 per square foot of floor area in the Premises. At any time (but not more than once) during a Tax Year, Landlord may re-estimate Tenant's Proportionate Share of Taxes and adjust Tenant's monthly installments payable thereafter during the Tax Year to reflect more accurately Tenant's Proportionate Share of Taxes as re-estimated by Landlord. Within one hundred twenty (120) days after Landlord's receipt of the final tax bill for each Tax Year, Landlord will deliver to Tenant a statement of the amount of Taxes with respect to such Tax Year and the amount of Tenant's Proportionate Share thereof. Any overpayment or deficiency in Tenant's payment of its Proportionate Share of Taxes for such Tax Year shall be adjusted within thirty (30) days after Tenant's receipt of such statement. With respect to any overpayment, at Landlord's sole election, the amount of such overpayment may be applied against future installments of Tenant's Proportionate Share of Taxes or refunded to Tenant. The failure of the Landlord to provide such certification within the time prescribed above shall not relieve Tenant of any of its obligations under this Article VI.

**Section 6.3 Other Taxes Payable by Tenant.** In addition to Tenant's Proportionate Share of Taxes, Tenant shall pay, prior to the time the same become delinquent, to the appropriate taxing authority, any and all sales, excise and other taxes levied, imposed or assessed with respect to the operation of Tenant's business and with respect to its inventory, furniture, trade fixtures, apparatus, equipment, and all leasehold improvements installed by Tenant or by Landlord on behalf of Tenant (except to the extent such leasehold improvements shall be covered by Taxes referred to in Section 6.1) and any other property of Tenant.

**Section 6.4 Tax Reporting Requirements.** Tenant agrees to comply with such reporting requirements in order to enable CRDA and Landlord to meet the reporting requirements of the Urban Revitalization Act (the "Act"). Tenant's contractors purchasing materials and supplies for use in constructing any improvements in the Shopping Center shall complete such procedure(s) or certification(s) prescribed by the Director of the Division of Taxation of the State of New Jersey (the "Director") or the CRDA identifying the materials, supplies, purchase price and New Jersey sales or use tax paid, if any, and such other information, receipts and other documentation as the Director or the CRDA may require. The forms or certificates shall be filed with the CRDA (or Landlord if directed by CRDA) as documentation for revenue certification purposes.

Tenant and Tenant's vendors shall complete such forms, procedures or certifications as may be prescribed by the Director or the CRDA, reporting the sales tax collected from sales made by Tenant or Tenant's vendors for each quarter. The forms or certificates shall be filed

with the CRDA (or Landlord if directed by Landlord) as documentation for revenue certification purposes.

Tenant, and its agents, employees, contractors and invitees shall comply with all rules and regulations promulgated by the Director pursuant to the Act and to complete such forms, procedures or certifications required by the Director or the CRDA in furtherance of the provisions of the Act.

## **ARTICLE VII** **IMPROVEMENTS**

**Section 7.1 Landlord's Improvements.** Subject to Landlord obtaining all building and other permits required under all applicable Laws to perform Landlord's Work, upon final approval of Tenant's Plans as hereafter provided, and subject to delays due to any Force Majeure or due to Tenant's employees, agents, contractors or representatives, Landlord will, as promptly as reasonably possible perform Landlord's Work. Failure of Landlord to complete Landlord's Work within any deadline therefor will not give rise to any claim for damages by Tenant against Landlord or against Landlord's contractor or permit Tenant to rescind or terminate this Lease.

### **Section 7.2 Tenant's Improvements.**

(a) Not later than the Submission Date, Tenant shall provide Landlord with its initial Plans for Landlord's review and approval. The initial Plans shall be prepared in conformance with the Work Schedules and with Laws. Landlord shall promptly review the initial Plans and any revisions thereof and shall notify Tenant of any required changes. If Tenant fails to submit its initial Plans by the Submission Date or fails to submit any revised Plans by the dates required by Landlord, then, in any of such events, if such failure continues for more than ten (10) days after notice from Landlord, Landlord may at its option terminate this Lease by notice to Tenant in which event this Lease shall terminate as of the date fifteen (15) days after Landlord's notice. Upon any such termination, Tenant shall reimburse Landlord on demand for all costs incurred by Landlord in reviewing the Plans and in connection with any of Landlord's Work. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans. In performing Tenant's Work, Tenant shall not deviate from the Final Plans approved by Landlord without Landlord's prior written consent. Approval of the Plans by Landlord shall not constitute the assumption of any responsibility by Landlord or Landlord's architect for their accuracy, efficiency, sufficiency or compliance with any Laws, and Tenant shall be solely responsible for such items.

(b) Upon Delivery of Possession, Tenant shall, at its sole cost and expense, complete all of Tenant's Work using new materials in accordance with the approved Plans and Laws prior to the Rent Commencement Date. After Delivery of Possession, Tenant will be permitted by Landlord to enter the Premises for the purpose of performing Tenant's Work and for the purpose of installing its fixtures and other equipment, provided Tenant shall have (a) obtained Landlord's written approval of the Final Plans, and (b) deposited with Landlord all policies or certificates of insurance required by this Lease, Tenant's Work shall be conducted so as not to unreasonably interfere with Landlord's construction activities or with the activities and



operations of other tenants and occupants of the Shopping Center, and Tenant shall otherwise comply, at its expense, with all rules that Landlord may adopt and promulgate from time to time (such as rules concerning construction staging, construction vehicle parking, barricades, dust abatement and construction trash), and shall perform all other duties and obligations imposed by this Lease. At Landlord's request, Tenant shall attend construction meetings with representatives of Landlord in connection with the completion of the Tenant's Work.

(c) In performing Tenant's Work or other alterations to the Premises, Tenant shall employ only such labor as will not result in jurisdictional disputes with any labor unions or strikes against or involving the Premises, Landlord or the Shopping Center and which shall not cause any conflict with any union contract to which Landlord or its contractor or subcontractors may be a party. Tenant will not, and will not allow of its contractors or vendors, to take any action that will result in any work stoppage, picketing, labor disruption, dispute or a violation of Landlord's union contracts affecting the Shopping Center (collectively "Labor Problem"). If a Labor Problem occurs, Tenant shall, immediately end the action giving rise to such condition. Tenant shall pay prevailing wage rates to workers of all crafts and trades employed in connection with Tenant's Work.

**Section 7.3 Effect of Opening For Business.** By opening the Premises for business, Tenant shall be deemed to have accepted the Premises as then constructed in its AS IS condition, without any representations or warranties, either express or implied, and Tenant shall be deemed to have agreed that all of Landlord's Work has been fully performed, except for any written "punchlist" items submitted by Tenant no later than seven (7) days after Delivery of Possession and agreed to by Landlord to be performed after Delivery of Possession. Notwithstanding the foregoing, Landlord represents and warrants that Landlord's Work shall be free of Hazardous Materials on the date Landlord delivers possession of the Premises to Tenant.

**Section 7.4 Mechanic's Liens.** No work performed by Tenant pursuant to this Lease, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall be allowed against the estate of Landlord by reason of any consent given by Landlord to Tenant to improve the Premises. Tenant shall place such contractual provisions as Landlord may request in all contracts and subcontracts for Tenant's improvements assuring Landlord that no mechanic's liens will be asserted against Landlord's interest in the Premises or the property of which the Premises are a part. In addition, Landlord shall be entitled to post upon the Premises any notices that may be required to avoid any mechanics' or other lien from being allowed against the estate of Landlord. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises. In the event any mechanic's or other lien shall at any time be entered, or any petition or proceeding therefor filed, against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record to the satisfaction of Landlord. If Tenant shall fail to cause such lien forthwith to be so discharged within ten (10) days after the filing thereof (or such earlier time as may be necessary to avoid a default under any ground lease or Mortgage), then, in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord, including reasonable attorneys' fees incurred by Landlord either in defending against such lien or in procuring the bonding or discharge of such lien,

together with interest thereon at the Default Rate, shall be due and payable by Tenant to Landlord as Additional Rent. Tenant agrees to deliver to Landlord executed lien waivers from its contractors for all work performed in and all materials supplied to the Premises within fifteen (15) days after Tenant opens for business. Tenant shall, upon notice and request in writing by Landlord, defend for Landlord, at Tenant's sole cost and expense, any action or proceeding which may be brought on or for the enforcement of any such lien or order for payment of money, and will pay any damages and satisfy and discharge any judgment entered in such action or proceeding and indemnify and save harmless Landlord from any liability, claim or damage resulting therefrom.

#### **Section 7.5 Tenant's Leasehold Improvements and Trade Fixtures.**

(a) All leasehold improvements installed in the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, and all trade fixtures and apparatus installed in the Premises and initially paid for by Landlord, shall not be removed from the Premises at any time, unless such removal is consented to in advance by Landlord; and at the expiration of this Lease (either on the Expiration Date or upon such earlier termination as provided in this Lease), all such leasehold improvements and such trade fixtures and apparatus shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant. Notwithstanding the foregoing, if leasehold improvements were installed in the Premises at any time by or on behalf of Tenant and not as part of the Final Plans for Tenant's Work, then Landlord may require Tenant to remove the same at Tenant's sole cost and expense and repair all damage caused by such removal.

(b) All trade fixtures and apparatus (as distinguished from leasehold improvements and trade fixtures and apparatus initially paid for by Landlord) paid for by Tenant and installed in the Premises shall remain the property of Tenant and shall be removable at any time, including upon the Expiration of the Lease; provided Tenant shall not at such time be in default of any terms or covenants of this Lease, and provided further, that Tenant shall repair any damage to the Premises caused by the removal of said trade fixtures and apparatus and shall restore the Premises to substantially the same condition as existed prior to the installation of said trade fixtures and apparatus. If Tenant is in default, Landlord shall have the benefit of any applicable lien that may now or at any time hereafter be provided by Law on Tenant's property located in the Premises.

### **ARTICLE VIII OPERATIONS**

#### **Section 8.1 Operations by Tenant.**

(a) Tenant will at its expense (i) keep the inside and outside of all glass in the doors and windows of the Premises clean; (ii) keep all the walls and interior and exterior store surfaces of the Premises clean; (iii) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (iv) maintain the Premises in a clean, orderly and sanitary condition and free of insect, rodents, vermin and other pests; (v) keep all garbage, trash, rubbish and other refuse in rat-proof containers within the interior of the Premises until removed;

(vi) deposit such garbage, trash, rubbish and refuse, on a daily basis, in designated receptacles provided by Landlord; (vii) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (viii) light the show windows of the Premises and exterior signs and turn the same off to the extent required by Landlord of at least seventy-five percent (75%) of the other retail tenants in the Shopping Center; (ix) maintain sufficient and seasonal inventory and have sufficient number of personnel to maximize sales volume in the Premises; (x) comply with and observe all rules and regulations established by Landlord from time to time which apply generally to all retail tenants in the Shopping Center; and (xi) conduct its business in all respects in a manner consistent with the quality and standards of operation of the Shopping Center as determined by Landlord.

(b) Tenant will not: (i) place or maintain any merchandise, trash, refuse or other articles in any vestibule or entry of the Premises, on the footwalks or corridors adjacent thereto or elsewhere on the exterior of the Premises so as to obstruct any driveway, corridor, footwalk, parking area, mall or any other Common Areas; (ii) use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Shopping Center, which is in any manner audible or visible outside of the Premises; (iii) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (iv) cause or permit odors, which are in Landlord's opinion objectionable, to emanate or to be dispelled from the Premises; (v) solicit business in the parking area or any other Common Areas; (vi) distribute handbills or other advertising matter to, in or upon any automobiles parked in the parking areas or in any other Common Areas; (vii) permit the parking of vehicles so as to unreasonably interfere with the use of any driveway, corridor, footwalk, parking area, mall or other Common Areas; (viii) receive or ship articles of any kind outside the designated loading areas for the Premises; (ix) use the mall, sidewalks, corridor or any other Common Area adjacent to the Premises for the sale or display of any merchandise or for any other business, occupation or undertaking; (x) conduct or permit to be conducted any auction, fictitious fire sale, going out of business sale, bankruptcy sale, unless directed by a court order, or other similar type of sale in or connected with the Premises (but this provision shall not restrict the absolute freedom of Tenant in determining its own selling prices, subject to the discount requirement stated herein, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales); (xi) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for regional factory outlet discount centers conducted in accordance with good and generally accepted standards of operations; (xii) place a load upon any floor which exceeds the floor load which the floor was designed to carry; (xiii) operate its heating or air-conditioning in such a manner as to overload systems or drain from the Common Areas or from the premises of any other tenant or other occupant of the Shopping Center; (xiv) use or operate any vending devices or machines, video games, or electronic amusement devices or equipment; or (xv) sell, distribute, display or offer for sale any roach clip, water pipe, bong, toke, coke spoon, cigarette papers, hypodermic syringe or other paraphernalia commonly used in the ingestion of illicit drugs, or any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, representation or merchandise of any kind.

**Section 8.2 Signs and Advertising.** Tenant will not place or suffer to be placed or maintained on the exterior of the Premises any sign, advertising matter or any other thing of any kind ("Signage"), and will not place or maintain any decoration, letter or advertising matter on

the glass of any window or door of the Premises unless the same is placed and maintained in accordance with the terms of the Work Schedules. Tenant shall, at its own expense and prior to opening for business in the Premises, install and at all times thereafter maintain in good condition and repair an exterior sign of such size, color, design, illumination and location, all as designated and approved by Landlord, which approval may be given or withheld in Landlord's sole and absolute discretion. The sign must conform to all governmental requirements and be in compliance with all Laws and Tenant's Sign Criteria as set forth in Exhibit "E" hereto. Landlord hereby approves the design of Tenant's signage set forth on Exhibit "E-1" attached hereto, subject to compliance with governmental requirements. Tenant will, at its sole cost and expense, maintain, repair and replace, when reasonably required, its sign, decoration, lettering, advertising matter or other thing that are permitted hereunder, in good condition and repair at all times. Tenant, at its sole cost and expense, shall contract for periodic maintenance of its Signage with a reputable contractor approved by Landlord. Upon request, Tenant shall supply Landlord with a copy of any such contract. If Tenant fails to maintain the Signage in good condition and repair or fails to maintain or provide the maintenance contracts as set forth herein for the Signage, such failure shall be deemed to be an Event of Default. The parties agree that, as a result of Tenant's failure to maintain the Signage or maintain or provide the maintenance contracts as set forth herein, the appearance of the Shopping Center shall be diminished, and as a result thereof, Landlord will suffer damages in an amount which is not readily ascertainable. Therefore, in addition to, and not in lieu of, any other remedies which Landlord has under this Lease, at law or in equity, after twenty-four (24) hours' oral notice from Landlord, (i) Tenant shall be obligated to pay as liquidated damages (and not a penalty) and amount equal to One Hundred Dollars (\$100.00) per day for each day that Tenant fails to maintain the Signage, and (ii) Landlord shall have the right to cure such Event of Default in any manner deemed appropriate by Landlord, in Landlord's sole discretion, with the total cost of such cure, together with a repair fee of twenty percent (20%) of the total cost of such cure, being payable by Tenant to Landlord as Additional Rent upon Landlord's demand therefor.

**Section 8.3 Painting and Displays by Tenant.** Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior, without first obtaining Landlord's written approval, which approval may be withheld in Landlord's sole and absolute discretion. Subject to the other provisions of this Section, Landlord shall not unreasonably withhold its consent to any painting or decoration of the interior of the Premises. Tenant will install and maintain at all times, subject to the other provisions of this Section, displays of merchandise in the show windows (if any) of the Premises. All articles, and the arrangement, style, color and general appearance thereof, in the interior of the Premises including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be professionally designed and prepared and in keeping with the character and standards of the Shopping Center, as determined by Landlord. Landlord reserves the right to require Tenant to correct any non-conformity.

**Section 8.4 Environmental Matters.**

(a) Tenant shall maintain the Premises, and its operations thereon and therein, in compliance with all Laws regarding the environment, human health or safety (herein "Environmental Laws") which apply to the Premises or its use. Tenant shall cure in compliance with Environmental Laws any hazardous substances, hazardous wastes, biohazardous materials, asbestos, petroleum products, formaldehyde, toxic substances, pollutants

or contaminants (as those terms are defined in any of the Environmental Laws or at common law, hereinafter "**Hazardous Substances**") discharged by Tenant or its agents, employees, representatives, contractors, invitees, or licensees (herein "**Tenant Related Parties**") in, on, at or under the Premises, but Tenant shall not be responsible for remediating (and Landlord shall be responsible for remediating) any Hazardous Substances existing in the Premises at the Delivery of Possession or caused by Landlord during the term of the Lease. In no event shall Tenant or the Tenant Related Parties store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substances in, upon, under, over or from the Premises except in the normal course of operation of the Premises for the Permitted Use and provided that Tenant complies with all applicable Environmental Laws with respect to any Hazardous Substances in, upon, under, over or from the Premises in the normal course of operation of the Premises for the Permitted Use.

(b) Tenant shall not operate any business at the Premises which is subject to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the regulations promulgated pursuant thereto, and any amendments thereto or any successor legislation or regulation (herein "**ISRA**"). Notwithstanding any provision of ISRA to the contrary, if the Tenant's operations become subject to ISRA, Tenant shall, at Tenant's own expense, do whatever is necessary to comply with ISRA whenever an obligation to do so arises. If requested to do so by Landlord, but no more often than once per year, Tenant shall obtain a letter from the New Jersey Department of Environmental Protection or any successor agency confirming that ISRA does not apply to the Tenant's operations. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord regarding or in furtherance of ISRA compliance. Tenant shall sign any affidavit concerning compliance with Environmental Laws that is submitted to it by Landlord which is true, accurate and complete; if an affidavit is not true, accurate and complete, Tenant shall provide the necessary information to make it true, accurate or complete and shall then sign same.

(c) Tenant shall promptly supply Landlord with any notices, correspondence and submissions of any nature made by Tenant to, or received by Tenant from, the New Jersey Department of Environmental Protection ("**DEP**"), the United States Environmental Protection Agency, or any local, state or federal authority concerning compliance with Environmental Laws.

(d) Tenant shall not install any underground or aboveground storage tanks on the Premises without Landlord's prior written permission, which may be withheld in Landlord's sole discretion.

(e) At any time upon request of the Landlord, Tenant must give Landlord and its representatives access, during normal business hours, to inspect the Premises, to inspect any documents pertaining to Tenant's compliance with Environmental Laws, or to perform any work to confirm that the Premises and its use by Tenant comply with Environmental Laws.

(f) Notwithstanding the expiration or earlier termination of this Lease, if there exists a violation of Environmental Laws at the Premises for which Tenant is liable or if Tenant has failed to fulfill its obligations under this Section 8.4, Tenant shall have a continuing obligation to pay the amount established as Rent under this Lease plus the difference between such rent and the fair market rental value of the Premises, if greater than the established rent, to

Landlord for the full period after expiration or earlier termination until the governmental entities with jurisdiction confirm, in writing, that the violation of Environmental Laws has been cured and the Tenant fulfills its obligations under this Lease.

(g) In the event a lien shall be filed against the Premises pursuant to Environmental Laws, including but not limited to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. '9601 et seq., arising from Hazardous Substances for which Tenant is responsible pursuant to this Lease, then Tenant shall, within thirty (30) days from the time Tenant is given notice of the lien or in such shorter period of time in the event that the United States, New Jersey, or any agency or subdivision of either such entity has commenced steps to cause the Premises to be sold pursuant to the lien, pay the claim and remove the lien from the Premises.

(h) Tenant shall indemnify, defend and hold Landlord and the Landlord Indemnitees harmless from any and all fines, suits, procedures, claims, liabilities, costs and actions of any kind, including counsel fees (including those incurred to enforce this indemnity or for any other purpose) arising out of or in any way related to (1) the use, handling, generation, treatment, storage, disposal, other management or release of any Hazardous Substances, in or about the Shopping Center or the Premises, whether or not Tenant may have acted negligently with respect to such Hazardous Substances, by Tenant or the Tenant Related Parties or (2) Tenant's failure to comply with the provisions of this Lease. Tenant's obligations and liabilities under this Agreement survive the expiration or earlier termination of this Lease, and shall continue for so long as Landlord remains responsible or liable under Environmental Laws or otherwise for either any spills or discharges of Hazardous Substances or for any violations of Environmental Laws which occurred during Tenant's possession of the Premises, unless caused by Landlord. Tenant's failure to abide by the terms of this paragraph shall be enforceable by injunction.

(i) Landlord hereby agrees to protect, defend, indemnify and hold Tenant harmless from any and all fines, suits, procedures, claims, liabilities, costs and actions of any kind, including reasonable counsel fees (including those incurred to enforce this indemnity or for any other purpose) arising out of or in any way related to (i) the presence of any Hazardous Substances in or about the Premises or the Shopping Center which were stored, used, generated, installed or disposed of by Landlord or (ii) which were in the Premises on the Delivery of Possession. The foregoing indemnification shall survive the expiration or earlier termination of this Lease. Landlord's failure to abide by the terms of this paragraph shall be enforceable by injunction.

**Section 8.5 Trash Service.** Tenant shall keep any garbage, trash, rubbish or other refuse in rat-proof containers within the interior of the Premises and shall deposit such garbage, trash, rubbish and refuse, on a daily basis, in designated receptacles and/or compactors provided by Landlord. Landlord shall provide a trash removal service for the Shopping Center from designated receptacles and/or compactors. All costs related to Landlord's service to remove trash from the Shopping Center, including the costs of maintaining, repairing and replacing the trash receptacles and compactors, shall be deemed to be part of Landlord's Operating Costs. If Landlord deems Tenant's generation and/or generation of trash at the Premises to be excessive,

Tenant shall also pay Landlord, as Additional Rent, the costs for the same that exceed normal trash generation for a retail tenant of comparable size as determined by Landlord. Landlord shall have the option to require Tenant to obtain and pay for its own receptacle or dumpster, in which event, Tenant will not be obligated to pay Landlord the cost of trash removal as part of Landlord's Operating Costs.

## **ARTICLE IX**

### **REPAIRS AND ALTERATIONS**

**Section 9.1 Repairs to be Made by Landlord.** Subject to Articles X and XIV, Landlord, at its expense, will make, or cause to be made: (a) repairs to any electrical, mechanical, sprinkler (excluding sprinkler heads) and other systems serving the Premises if and to the extent such systems were installed by Landlord and serve other tenant premises in addition to the Premises and provided Tenant shall give Landlord notice of the necessity for such repairs; and provided further that such repairs and alterations are not occasioned or required by Tenant's Permitted Use or by any act or omission of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors in which case the cost of such repairs shall be the sole obligation of Tenant; and (b) structural repairs to the exterior walls, structural roof and structural floor (excluding floor coverings) which collectively enclose the Premises (excluding, however, all doors, door frames, storefronts, windows and glass) and the structural columns which enclose or are located in the Premises; provided Tenant shall give Landlord notice of the necessity for such repairs; and provided further that such repairs are not necessitated by Tenant's Permitted use or by any act or omission of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors in which case the cost of such repairs shall be the sole obligation of Tenant.

**Section 9.2 Repairs to be Made by Tenant.** Tenant, at its expense, will maintain and make all repairs and replacements to the Premises and to all systems, installations, equipment, facilities, and loading dock therein, other than those repairs required to be made by Landlord pursuant to the provisions of Section 9.1. Tenant, at its expense, shall contract for periodic maintenance for the heating, ventilating and air conditioning unit(s) and exhaust system (if applicable) serving the Premises with a reputable service company approved by Landlord. Upon request, Tenant shall supply Landlord with a copy of all such contracts and/or monthly maintenance records. Tenant will surrender the Premises in as good condition as when received, excepting depreciation caused by ordinary wear and tear and damage by casualty (other than such damage by casualty caused by the act or omission of Tenant, its agents, concessionaires, officers, employees, contractors, licensees or invitees and not covered by Landlord's insurance); provided, however, Tenant shall be responsible for surrendering the HVAC system in good repair and condition at the end of the Term and providing Landlord with a certification from a reputable HVAC contractor that the HVAC is in such condition. If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice thereof by Landlord to Tenant, such failure shall constitute an Event of Default under this Lease, and Landlord may, at its option, make such repairs without prior notice to Tenant or liability to Tenant for any loss or damage which may result to Tenant's business by reason of such repairs (including, without limitation, damage to Tenant's business). Tenant shall pay Landlord, within five (5) days of demand therefor, the cost of such repairs plus a repair fee equal to fifteen percent (15%) of the cost of such repairs. Notwithstanding the foregoing, in the event of an emergency, no notice shall be required prior to Landlord's exercise of the foregoing rights.

**Section 9.3 Alterations by Tenant.** Tenant will not make any alterations, renovations, penetrations, improvements or installations of any kind in, on, or to the Premises or any part thereof (collectively, "Alterations") unless and until Tenant shall have submitted to Landlord plans and specifications therefor, prepared at Tenant's expense by an architect or other duly qualified person, and shall have obtained Landlord's written approval thereof. In the case of any Alterations involving (i) the storefront or signs, (ii) structural elements, (iii) mechanical, electrical or other systems serving or effecting portions of the Shopping Center other than or in addition to the Premises, (iv) cutting or drilling or (v) or other Alterations which are in Landlord's reasonable judgment material and/or detrimental to the Premises, Landlord may withhold its approval in its sole and absolute discretion. With respect to Alterations not set forth in (i) through (v) above, Tenant must seek Landlord's approval of Tenant's plans and specifications (which approval shall not be unreasonably withheld and which approval shall not be required if the cost of such alterations is in the aggregate less than Five Thousand Dollars (\$5,000.00) and if such approval is granted, Tenant shall cause the work to be performed, at its sole cost and expense, promptly, strictly in accordance with such approved plans and specifications and in a good and workmanlike manner by duly licensed contractors approved by Landlord, without interference with or disruption to the operations of tenants or other occupants of the Shopping Center, and in compliance with all Laws and the provisions of Section 7.2(b) and (c) as if such alterations were "Tenant's Work".

**Section 9.4 Changes and Additions to Buildings, Common Areas and Shopping Center.** Landlord reserves the right at any time and from time to time: (a) to make, and permit others to make, changes to the Buildings, Common Areas and the Shopping Center, including additions to, subtractions from, rearrangement of, alterations of, modifications or supplements to the building areas, walkways, parking areas, driveways or other Commons Areas; (b) to add or delete land area from the Shopping Center; (c) to construct, and to permit others to construct, other buildings and improvements in the Shopping Center and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same; and (d) to convey or lease portions of the Shopping Center to others; provided that the foregoing shall not deny access to the Premises or materially and adversely interfere with the conduct of Tenant's business in the Premises.

**Section 9.5 Roof, Walls, Interior of Premises.** Without limiting Landlord's rights under Section 9.4, Landlord shall have the exclusive right: (a) to use all or any part of the roof and the side and rear walls of the Premises and the areas above the finished ceiling or below the floor of the Premises for any purpose; (b) to erect additional stories or other structures over all or any part of the Premises; (c) to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises; and (d) to install, maintain, use, repair and replace within, over, under or through the Premises, pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Shopping Center.

## **ARTICLE X COMMON AREAS**

**Section 10.1 Use of Common Areas.** Landlord grants to Tenant and its agents, employees and customers, a nonexclusive license to use, beginning on the Rent Commencement



during the Term, for their intended purposes, subject to all provisions of this Lease governing the use, maintenance and control thereof.

**Section 10.2 Management and Operation of Common Areas.** Landlord will operate and maintain or will cause to be operated and maintained the Common Areas in a manner deemed by Landlord to be appropriate, and Landlord will have the right (a) to establish, modify and enforce reasonable rules and regulations with respect to the Common Areas; (b) to enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of the Common Areas; (c) to enforce parking charges (by operation of meters or otherwise) with appropriate provisions for parking ticket validation by tenants on any parking areas of the Shopping Center; (d) to close all or any portion of said parking areas or other Common Areas to such extent as may, in the opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; (e) to close temporarily any or all portions of the Common Areas; (f) to hold special events in the Common Areas; and (g) to do and perform such other acts in and to said areas and improvements as Landlord shall determine to be advisable. In connection with Landlord's operation and maintenance of the Common Areas, Landlord shall use good faith efforts not to materially and adversely interfere with Tenant's use of the Premises for the Permitted Use. Landlord shall have the right, from time to time, in connection with special events produced, sponsored, presented or authorized by Landlord, to limit access to all or part of the Common Areas and the Shopping Center to persons that have paid an admissions charge for access to such areas and or are otherwise authorized by Landlord to enter such areas.

**Section 10.3 Employee Parking Areas.** Tenant and its employees shall park their cars only in such areas, if any, as may be designated for that purpose by Landlord. Tenant shall furnish Landlord with state automobile license numbers used by Tenant or its employees within five (5) days after taking possession of the Premises and shall thereafter notify Landlord by the first day of each January, April, July and October of any changes in such information. If Tenant or its employees park their cars in the Common Areas, but outside the designated parking areas, if any, Landlord shall have the right to charge Tenant, as Additional Rent, the sum of Ten Dollars (\$10.00) per day per car parked in violation of this Section. Notwithstanding the foregoing, Landlord agrees to waive such charge for the first violation within a twelve (12) month period for which Landlord has provided Tenant written notice. Tenant shall notify its employees in writing of the provisions of this Section. Landlord may elect to have violating vehicles towed or booted, at the owner's expense, without incurring any liability to Tenant.

**Section 10.4 Tenant to Pay Proportionate Share of Landlord's Operating Costs.** Tenant will pay Landlord, as Additional Rent, Tenant's Proportionate Share of Landlord's Operating Costs for each Operating Year. Such Proportionate Share shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord for each Operating Year, each installment being due on the first day of each calendar month, commencing on the Rent Commencement Date. Landlord estimates that Tenant's Proportionate Share for the first Operating Year shall be Five 75/100 Dollars (\$5.75) per square foot of Tenant's Floor Area. At any time during each Operating Year (but not more than once per Operating Year), Landlord may re-estimate Tenant's Proportionate Share of Landlord's Operating Costs and adjust Tenant's monthly installments payable thereafter during such Operating Year to reflect more accurately Tenant's Proportionate Share of Landlord's Operating Costs as re-estimated by Landlord. Within one hundred twenty (120) days or such additional time (in Landlord's determination) after the

end of each Operating Year, Landlord shall deliver to Tenant a statement of Landlord's Operating Costs for such Operating Year and the amount of Tenant's Proportionate Share thereof. Any overpayment or deficiency in Tenant's payment of its Proportionate Share of Landlord's Operating Costs for such Operating Year shall be adjusted within thirty (30) days after Tenant's receipt of such statement; with respect to any overpayment, at Landlord's sole option the same may be credited against future installments of Tenant's Proportionate Share of Landlord's Operating Costs or reimbursed to Tenant. Failure of Landlord to provide the statement called for hereunder within the time prescribed shall not relieve Tenant of its obligations hereunder.

Tenant shall not have the right to examine, inspect or audit Landlord's records pertaining to Landlord's Operating Costs, but Landlord will provide reasonable backup for Landlord's Operating Costs upon receipt of Tenant's written request (but not more frequently than once per year). Notwithstanding anything contained herein or any presumptions to the contrary, said statement and all information contained therein or otherwise delivered to Tenant by Landlord, or its employees, agents and/or representatives regarding Landlord's Operating Costs, including without limitation, relating in any way to exclusions, deductions and Tenant's Proportionate Share, is strictly confidential information delivered for Tenant's sole use and review. Tenant may not publish, share, exchange or in any way disseminate such statement, or any of the information contained therein, inferred or otherwise deduced there from, or otherwise delivered by Landlord to Tenant, to any outside party of Tenant and Tenant employees, without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion, and then only upon the prior execution by the intended recipient of a confidentiality agreement and protective order in form and substance acceptable to Landlord.

**Section 10.5 "Landlord's Operating Costs" Defined.** The term "Landlord's Operating Costs" includes all the costs and expenses incurred by or on behalf of Landlord in operating, managing, insuring, securing, maintaining, repairing and replacing the Shopping Center including, without limitation, all costs and expenses of the following: (a) operating, maintaining, repairing, and replacing signs, security systems, lighting, and similar fixtures or equipment; (b) operating, maintaining, repairing, replacing and managing any parking facilities, transit facilities and park or pedestrian resting areas in or serving the Shopping Center; (c) cleaning, painting, policing and providing security for the Common Areas (including cost of uniforms, equipment and employment taxes); (d) installing, maintaining, operating and renting of signs; (e) repairing, maintaining and replacing sprinkler systems and alarm systems; (f) removing snow and ice from the Common Areas, and removing trash and debris from the Common Areas to Landlord's receptacles and compactors; (g) regulating traffic; (h) purchasing, repairing, maintaining and replacing machinery and equipment used in the operation and maintenance of the Common Areas, and paying all personal property taxes and other charges incurred in connection with such equipment; (i) maintaining, repairing and/or replacing pavement, curbs, walkways, landscaping, seating areas, fountains, pools, drainage systems, roofs, pipes, ducts, conduits, and similar items and lighting facilities; (j) planting, replanting and replacing trees, flowers, shrubbery and planters in the Shopping Center; (k) providing music or entertainment services and sound systems for the Shopping Center, including furnishing electricity therefor; (l) providing water services, if any, furnished by Landlord for the nonexclusive use of all tenants; (m) providing parcel pick-up and delivery services to the Shopping Center; (n) maintaining reserves for repair, maintenance and replacement of the Common Areas and its equipment; (o) costs of providing light and power to the Common Areas; (p) insuring (including but not limited

to special causes of loss form (or substitute equivalent thereto) and other insurance on the Common Areas and the Shopping Center, including the cost of any deductible amount incurred by Landlord, the costs of providing security to the Shopping Center, pest control at the Shopping Center, insurance protecting Landlord and CRDA (or any ground lessor) against liability for personal injury, death and property damage, liquor liability and workers' compensation insurance), (q) providing seasonal decorations; (r) administrative costs (including salaries, benefits and employment taxes) attributable to personnel involved in the daily accounting (including auditing fees related to the operation of the Shopping Center), maintenance and management of the Shopping Center; and (s) an overhead charge equal to fifteen percent (15%) of the total costs and expenses incurred in connection with the above described items, provided such administrative and overhead costs shall not include depreciation of improvements accounted for by Landlord for federal income tax purposes. Notwithstanding the foregoing, capital expenditures shall not be included in the year incurred, but the amortization expense of such capital expenditures in accordance with generally accepted accounting principals shall be included in Operating Costs.

## **ARTICLE XI**

### **PROMOTION AND ADVERTISING**

**Section 11.1 Promotion Fund; Program.** Landlord will maintain a bank account, separate from all of its other bank accounts, into which Landlord shall deposit the Promotion Fund Contribution paid by Tenant as well as similar contributions that Landlord may receive from time to time from other tenants of the Shopping Center. The aggregate of such funds on hand from time to time are referred to herein as the "**Promotion Fund**". The Promotion Fund shall be used by Landlord to pay costs and expenses associated with the formulation and carrying out by Landlord or its designee of a programs for the promotion and advertising of the Shopping Center and transporting prospective customers to the Shopping Center, including, without limitation, the salary of a promotion and advertising director and related administrative personnel, rent and insurance. Such programs may include, without limitation, tabloids, direct mail pieces, special events, shows, displays, signs, marquees, decor, seasonal events, institutional advertising, promotional literature and other activities intended to promote and advertise the Shopping Center and a program designed to cause bus and jitney services to discharge and pick-up potential customers in the Shopping Center. Tenant hereby authorizes Landlord to use Tenant's trade name and a brief description of Tenant's business in connection with the promotion and advertising program.

**Section 11.2 Tenant's Contributions to Promotion Fund.** Tenant shall pay to Landlord as Additional Rent the Promotion Fund Contribution for each Promotion Year in monthly installments as billed by Landlord for each Promotion Year, each installment being due on the first day of each month. The Promotion Fund Contribution shall be adjusted annually, as of the first day of each Promotion Year, for any change in the Consumer Price Index. The annual Promotion Fund Contribution due from Tenant for the first Promotion Year falling within the Term shall be prorated if the Rent Commencement Date occurs after the commencement of such Promotion Year.

**Section 11.3 Tenant's Advertising.** Unless Landlord directs otherwise, Tenant shall cause the trade name of the Shopping Center to be prominently displayed in all print, internet

identified as being in the Shopping Center in all radio and television advertisements concerning the Premises.

**Section 11.4 Shopping Center Name.** Landlord shall have the right, from time to time, to adopt, modify and change the trade name for the Shopping Center.

## **ARTICLE XII**

### **UTILITIES**

**Section 12.1 Water, Electricity, Telephone and Sanitary Sewer.** Landlord will provide at points in or near the Premises the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer service, as more specifically described in Exhibit "C". Landlord, at its sole discretion, shall have the right, from time to time, to alter the method and source of supply of such utilities to the Premises, provided that the foregoing shall not diminish the availability of such utilities in the Premises. Tenant agrees to execute and deliver to Landlord such documentation as may be required to effect such alterations. Tenant shall arrange with the appropriate public utility, authority or Landlord, in Tenant's name and at its expense, and through meters and/or sub-meters as specified by the public utility, authority or Landlord and installed by Tenant to measure consumption directly from the Premises, for the supply of utility services to the Premises and shall pay prior to delinquency all charges therefor directly to the appropriate utility, authority or Landlord providing the service. If Landlord is required or elects to supply water, gas, electricity, heat, air conditioning, or sewer rentals, or any other utility service, for the Premises, then Tenant shall purchase the same from Landlord at the then-prevailing local rates and charges, and to pay promptly the charges therefor when bills are rendered to Tenant. Tenant will not overload the electrical wiring serving the Premises or within the Premises, and will install at its expense, subject to the provisions of this Lease governing alterations by Tenant, any additional electrical wiring which may be required in connection with Tenant's operations.

Notwithstanding the foregoing or anything else in this Lease to the contrary, Tenant shall pay for all utility connection fees, tap fees, usage fees, utility assessments, impact fees and any other fees assessed by the utility company or the applicable governmental authority with respect to the Premises or the use of the Premises by Tenant.

**Section 12.2 Fire Protection Sprinkler Systems.** Landlord will provide, install and maintain a fire protection sprinkler system in the Premises as more specifically described in the Exhibit "C", which system shall remain the property of Landlord. The fire protection sprinkler system of the Shopping Center, including the fire protection sprinkler system located in the Premises, is part of the Common Areas. Notwithstanding the foregoing, Tenant shall be responsible for replacing any damaged sprinkler heads in the Premises and for providing all other fire protection systems which may be required for the Premises by applicable Laws.

**Section 12.3 Discontinuance and Interruptions of Utility Services.** Landlord shall not be liable to Tenant in damages or otherwise if any utility shall become diminished or unavailable from any public utility company, public authority or any other person or entity (including Landlord) supplying or distributing such utility, or for any interruption in any utility service (including, without limitation, any water, heating, ventilation, or air-conditioning) and the same

shall not constitute a termination of this Lease or an eviction, actual or constructive, of Tenant or entitle Tenant to any diminution or abatement of Rent.

If due to Landlord's negligence or willful misconduct, utilities to the Premises are interrupted and materially and adversely affects Tenant's conduct of business in the Premises for a period of seventy-two (72) consecutive hours as a result, then, as Tenant's sole and exclusive remedy, Tenant's Rent payable hereunder shall abate equitably commencing after such seventy-two (72) consecutive hour period until the earlier of the date on which such interruption ceases to materially and adversely affect Tenant's conduct of business in the Premises; provided, however, in the event such interruption is due to Landlord's repairs or alterations which Tenant has herein covenanted to perform and has failed so to do, then there shall be no abatement of Rent. Notwithstanding the foregoing, Tenant's right to an equitable abatement of Rent as set forth herein shall be conditioned on Tenant providing reasonable evidence that the material and adverse effect on Tenant's business (e.g., a material decrease in Tenant's Gross Sales) was caused by such interruption.

### **ARTICLE XIII** **INDEMNITY AND INSURANCE**

#### **Section 13.1 Indemnity.**

Tenant shall indemnify, defend and hold Landlord and the Landlord Indemnitees harmless from and against all liabilities, obligations, damages, judgments, 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 Indemnitees and arising, directly or indirectly, out of or in connection with (i) Tenant's breach of its obligations under this Lease, (ii) the acts or negligence of the Tenant Parties, (iii) any loading platform area permitted to be used by Tenant, and/or (iv) the use or occupancy of the Premises and the Shopping Center by the Tenant Parties. If any action or proceeding is brought against any of the Landlord Indemnitees by reason of any of the foregoing, Tenant shall reimburse the Landlord Indemnitees the cost of defending such action or proceeding or, upon Landlord Indemnitees' written request and at Tenant's sole cost and expense, resist and defend such action and proceeding by counsel approved by the Landlord Indemnitees. Any such cost, damage, claim, liability or expense incurred by the Landlord Indemnitees for which Tenant is obligated to reimburse Landlord Indemnitees hereunder or under this Lease shall be deemed Additional Rent due and payable within five (5) days after notice to Tenant that payment is due. This Section 13.1 shall survive any termination or expiration of this Lease.

**Section 13.2 Landlord Not Responsible for Acts of Others.** Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any part of the premises adjacent to or connecting with the Premises or any other part of the Shopping Center, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, or water, gas, sewer or steam pipes. To the maximum extent permitted by law, Tenant agrees to use and occupy the

Premises, and to use such other portions of the Shopping Center as Tenant is herein given the right to use, at Tenant's own risk.

**Section 13.3 Tenant's Insurance.** At all times after the Premises are made available to Tenant for performance of Tenant's Work, Tenant will carry and maintain, at its expense: (a) comprehensive general liability insurance (at least as broad as ISO Form CG 00 01 07 98 or equivalent), including insurance against assumed or contractual liability under this Lease, with respect to the Premises, providing protection with limits for each occurrence of not less than Two million Dollars (\$2,000,000); (b) special causes of loss form property damage insurance (or equivalent substitute thereto), written at full replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Lease) and all leasehold improvements installed in the Premises by Landlord for Tenant's benefit, or by Tenant, including any items originally paid for by any tenant finish allowance given to Tenant, pursuant to the Work Schedules or otherwise; (c) if and to the extent required by any Laws, worker's compensation or similar insurance in form and amounts required by such Laws; and (d) product liability insurance having coverage for liability of not less than Three Million Dollars (\$3,000,000) per occurrence, and, if Tenant shall be engaged in the sale of any alcoholic beverages, shall include Innkeeper's Liability Coverage (commonly known as Dram Shop Insurance). If, by reason of changed economic conditions or changes to insurance limits applicable to the shopping center industry generally or the Permitted Use in particular, the insurance amounts set forth above become inadequate in Landlord's judgment, Tenant shall increase such amounts to limits as may be requested by Landlord consistent with standard insurance practice.

**Section 13.4 Tenant's Contractor's Insurance.** Tenant shall require any contractor of Tenant performing work on the Premises to carry and maintain, at no expense to Landlord: (a) comprehensive general liability insurance, including contractors liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, providing protection with limits for each occurrence of not less than Two Million Dollars (\$2,000,000); and (b) worker's compensation or similar insurance in form and amounts required by any Laws.

**Section 13.5 Policy Requirements.** The company or companies writing any insurance which Tenant is required to carry and maintain or cause to be carried and maintained, as well as the form of such insurance, shall at all times be subject to Landlord's reasonable approval provided that such insurance shall in no event provide coverages less than required under this Lease and all such companies shall be licensed and admitted to do business in the State and shall have a Rating Classification of at least A and Financial Size category of at least Class XII in Best's Insurance Reports. Commercial general liability and property damage insurance policies evidencing such insurance shall name CRDA and Landlord and its designee(s) as additional insureds or loss payees as required by Landlord and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to CRDA, Landlord and its designee(s) or any mortgagee having an interest in the Shopping Center or in any ground lease. Tenant shall deposit a binding certificate of each such policy (and upon Landlord's written request, a copy of such policy), with Landlord promptly upon commencement of Tenant's obligation to procure the same. Tenant shall renew each such policy at least thirty (30) days prior to the expiration thereof, and deliver evidence of such renewal to

Landlord promptly upon Tenant's receipt of same. Tenant's failure to maintain the insurance required shall be deemed an Event of Default (as defined herein).

**Section 13.6 Increase in Insurance Premiums.** Tenant will not do or omit to do or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord or will cause the premium rates for any such insurance to be increased beyond the minimum rate from time to time otherwise applicable. In the event of any breach of this Section, in addition to any other remedies available to Landlord, Tenant will pay, as Additional Rent, the amount of any such increase, together with all costs associated therewith, upon Landlord's demand.

**Section 13.7 Waiver of Right-of Recovery.** Each party releases and waives on behalf of itself and on behalf of the insurers of such party's property, any and all claims and any rights of subrogation of any such insurer against the other party, its employees and agents for loss (other than loss or damage resulting from the willful, wrongful act of such other party, its employees and agents but including loss or damage resulting from the negligent acts of such other party, its employees and agents) sustained from any peril to property that is covered under a standard all-risk or Special Form - Causes of Loss policy, or any peril that is required to be insured against herein, whether or not such insurance is actually in force, or from any peril to property actually insured against, though not required to be under this Lease. All insurance policies of Landlord and Tenant required by this Lease shall contain a clause or endorsement pursuant to which the insurance companies waive subrogation and consent to a waiver of right of recovery. Tenant shall provide Landlord with a copy of the endorsement providing for the aforesaid release and waiver of subrogation.

#### **ARTICLE XIV DAMAGE AND DESTRUCTION**

##### **Section 14.1 Obligations to Repair and Reconstruct.**

(a) If the Premises are damaged by fire or other casualty not caused by Tenant, its agents, servants and/or employees, (any of such causes being referred to herein as a "Casualty"), but the Premises shall not be rendered wholly or partially untenable, Landlord shall cause the damage to the Premises, to the extent of Landlord's Work (excluding the matters referred to in the last sentence of this paragraph), to be repaired as nearly as practicable to its condition prior to the Casualty (but in no event shall Landlord be obligated to expend more than the available insurance proceeds) and there shall be no abatement of Rent. If, as a result of a Casualty not caused by Tenant, its agents, servants and/or employees (or as a result of Landlord's demolition of the Buildings or any portion thereof following a Casualty for the purpose of reconstruction), the Premises shall be rendered wholly or partially untenable, then Landlord shall cause the damage to the Premises to be repaired as set forth in the preceding sentence, and Annual Minimum Rent and Additional Rent (other than any Additional Rent due Landlord by reason of Tenant's failure to perform any of its obligations hereunder) shall be abated, and Tenant's Breakpoint shall be reduced, proportionately on a square foot basis as to the portion of the Premises rendered untenable during the period of such untenability. Anything herein to the contrary notwithstanding, Landlord shall not be liable for interruption to Tenant's business or

for damage to or replacement or repair of Tenant's personal property (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provision of this Lease) or of any leasehold improvements installed in the Premises by, for or on behalf of Tenant pursuant to the Work Schedules or otherwise.

(b) Tenant shall repair, restore, replace, or rebuild the Premises, to the extent of Tenant's Work (and all work referred to in the last sentence of the preceding paragraph), as nearly as practicable to its condition prior to the Casualty. Tenant shall complete performance of its work under this Section and have the entire Premises reopened for business for the Permitted Use and under Tenant's Trade Name within thirty (30) days after Landlord notifies Tenant that the Premises are ready for Tenant to commence its work under this Section, and any abatement of Rent shall terminate as of the date of such notification.

**Section 14.2 Landlord's Option to Terminate Lease.** Notwithstanding Section 14.1, (a) if any damage to the Premises or the Buildings is not fully covered by Landlord's insurance or Landlord's Mortgagee does not make such insurance proceeds available to Landlord; (b) if the Premises are rendered wholly or partially untenantable during the last two (2) years of the Term; or (c) if the Building of which the Premises is a part is damaged to the extent of the lesser of twenty-five percent (25%) or more of Floor Area of such Building or twenty-five percent (25%) of the full replacement value of such Building, then in any of such events, Landlord may elect to terminate this Lease by giving to Tenant notice of such election within ninety (90) days after the occurrence of the fire or other casualty causing the damage. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and Rent (other than Additional Rent due Landlord by reason of Tenant's failure to perform any of its obligations hereunder) shall be adjusted as of the date of such termination.

**Section 14.3 Tenant's Option to Terminate.** If Landlord does not substantially complete restoration of the Premises within one hundred eighty (180) days after Landlord adjusts such casualty with its insurer, and provided Tenant is not then in default under the Lease, then Tenant may terminate this Lease upon sixty (60) days prior written notice to Landlord, but if Landlord is able to substantially complete such restoration within such sixty (60) day period, then Tenant's termination notice shall be null and void.

## **ARTICLE XV CONDEMNATION**

**Section 15.1 Effect of Taking.** If the whole or any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate, but only as to the part so taken, on the date Tenant is required to yield possession thereof to the condemning authority. Landlord and Tenant (to the same extent as their repair and replacement obligations under Section 14.1) shall make such repairs, replacements and alterations as may be necessary in order to restore the part not taken to a useful condition (Landlord not being required to expend more than the available condemnation proceeds) and Annual Minimum Rent, Additional Rent (other than any Additional Rent due Landlord by reason of Tenant's failure to perform any of its obligations hereunder) shall be abated, and Tenant's breakpoint shall be reduced, in the same proportion on a square foot basis as the portion of Tenant's Floor Area so taken bears to Tenant's original Floor Area. If the aforementioned taking of the Premises renders the remainder of the Premises untenantable for the Permitted Use, either party may terminate this Lease as of the date when



Tenant is required to yield possession by giving notice to that effect within thirty (30) days after such date. If (i) the condemnation proceeds are inadequate for the repair or restoration of the Premises or (ii) Landlord's Mortgagee fails to make available such condemnation proceeds, or (iii) twenty percent (20%) or more of Building Floor Area is taken as aforesaid, or (iv) twenty percent (20%) or more of the floor area in the Building that contains the Premises is taken as aforesaid, then Landlord may elect either (x) to terminate this Lease as of the date on which possession thereof is required to be yielded to the condemning authority, by giving notice of such election within ninety (90) days after such date or (y) provide Tenant with substantially equivalent premises in the Shopping Center within thirty (30) days after the date Tenant is required to yield possession of the Premises to the condemning authority, in which case this Lease shall continue in full force and effect except that the "Premises" shall be the substitute premises provided by Landlord.

**Section 15.2 Condemnation Awards.** All compensation awarded for any taking of the Premises or the Shopping Center or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, but if and only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord and/or the owner of the fee simple estate in the Shopping Center.

## **ARTICLE XVI** **ASSIGNMENT AND SUBLETTING**

**Section 16.1 Landlord's Consent Required.** Tenant will not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease departments therein, nor pledge or encumber by mortgage or other instruments its interest in this Lease without Landlord's prior written consent, which consent may be withheld by Landlord in its sole but reasonable discretion. This prohibition includes any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure, or an assignment or subletting to or by a receiver or trustee in any federal or state bankruptcy, insolvency, or other proceedings. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the foregoing prohibition with respect to any subsequent assignment or subletting. Tenant shall pay and reimburse to Landlord the reasonable costs and expenses incurred by Landlord to cover Landlord's administrative cost, overhead and counsel fee in connection with any permitted assignment or subletting and any and all additional costs and expenses incurred hereunder.

**Section 16.2 Transfer of Corporate Shares.** If Tenant is a corporation or is a partnership one or more of the general partners of which is a corporation (other than a corporation the outstanding voting stock of which is listed on a "National Securities Exchange," as defined in the Securities Exchange Act of 1934), and if at any time after execution of this Lease any part or all of the corporate shares of Tenant or of any such general partner or of the interest in the partnership (if Tenant is a partnership) shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition (including, but not limited to, such a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency, or other

proceedings) so as to result in a change in the present control of any said corporation by the person or persons owning a majority of said corporate shares as of the date hereof, such transfer shall constitute an assignment for purposes of Section 16.1. Any such transfer of the outstanding voting stock over a National Securities Exchange which does not result in a change in the present control of said corporation shall not be an assignment of this Lease requiring Landlord's consent.

**Section 16.3 Acceptance of Rent from Transferee.** The acceptance by Landlord of the payment of Rent or any other amount due and payable hereunder by Tenant, following any assignment or other transfer prohibited by this Article XVI shall not be deemed to be a waiver of any right or remedy of Landlord hereunder.

**Section 16.4 Continued Liability and Assumption Agreement.** Notwithstanding anything to the contrary in this Lease, no assignment of the Lease shall release the Tenant from any liability hereunder without the consent of Landlord, and Tenant shall remain jointly and severally liable with any assignee of its interests. No assignment shall be effective or binding on Landlord unless said transferee shall deliver to Landlord a recordable instrument in a form reasonably acceptable to Landlord which contains a covenant of assumption by said assignee of all of the obligations of Tenant under the Lease; provided, however, that a failure or refusal to so execute said instrument shall not release or discharge the assignee from its liability aforesaid.

**Section 16.5 Excess Consideration and Termination.** Notwithstanding Landlord's consent, if Tenant sells, sublets, assigns, or otherwise transfers this Lease and at any time receives periodic rent or other consideration which exceeds that which Tenant would at that time be obligated to pay Landlord under this Lease, Tenant shall immediately pay to Landlord one hundred percent (100%) of the gross increase in rent as the rent is received by Tenant and one hundred percent (100%) of any other consideration received by Tenant from the transferee.

Landlord shall have the option, in its sole discretion, to terminate this Lease, if Tenant requests Landlord's consent for a subletting or assignment. The option shall be exercised by Landlord giving Tenant written notice at any time after Tenant proposes or agrees to a subletting or assignment under Section 16.1 but no later than sixty (60) days following Landlord's receipt of Tenant's written notice as required by Section 16.1. The Term shall end on the date stated in Tenant's notice as the effective date for the assignment or subletting (or as specified by Landlord if there is no effective date so specified) as if that date had been originally fixed in this Lease for the expiration of the Term. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation with respect to this Lease and any commissions which may be owing as a result of any proposed assignment or subletting, whether or not the Premises are rented by Landlord to the proposed assignee or subtenant or any other tenant.

## **ARTICLE XVII**

### **DEFAULT**

**Section 17.1 "Event of Default" Defined.** Any one or more of the following events shall constitute an "Event of Default":

(a) Tenant shall make an assignment of any of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or an

involuntary petition under any bankruptcy or insolvency law shall be filed against Tenant and such involuntary petition is not dismissed within sixty (60) days after the filing thereof; or

(b) Any Guarantor shall make an assignment of any of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition under any bankruptcy or insolvency law shall be filed against any Guarantor and such involuntary petition is not dismissed within sixty (60) days after the filing thereof; or

(c) A permanent receiver, trustee or liquidator shall be appointed for Tenant, any Guarantor, for the property of Tenant, for the property of any Guarantor and such receiver, trustee or liquidator shall not have been discharged within ten (10) days from the date of his appointment; or

(d) The admission in writing by Tenant or Guarantor of its inability to pay its debt when due; or

(e) The failure of Tenant to pay any Rent or other sum of money after the same is due hereunder and such failure continues for more than five (5) days after receipt of written notice of such failure; or

(f) Tenant shall default in the due keeping, observing or performance of any covenant, agreement, term, provision or condition of this Lease on the part of Tenant to be kept, observed or performed (other than a default involving the payment of money), which default is not cured within ten (10) days after the giving of notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such ten (10) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of the default within such ten (10) day period and shall thereafter diligently and continuously prosecute the curing of same and shall cure same within ninety (90) days after the giving of notice thereof by Landlord; provided, however, if Tenant shall default in the performance of any such covenant or agreement of this Lease two (2) or more times in any twelve (12) month period, then notwithstanding that each of such defaults shall have been cured by Tenant, any further similar default shall be deemed and Event of Default without the ability of cure; or

(g) Any event shall occur or any contingency shall arise whereby this Lease or the estate hereby granted or the unexpired balance of the Term hereof would, by operation of law or otherwise, devolve upon or pass to any person, firm, association or corporation other than Tenant except as expressly permitted hereunder or whenever Tenant shall desert or abandon the Premises or the same shall become vacant (whether the keys be surrendered or not and whether the Rent be paid or not); or

(h) The ceasing by Tenant, in whole or in part at any time after the Rent Commencement Date, to use the entire Premises for operating the business of Tenant therein as provided in this Lease (herein referred to as "Abandonment") and the failure by Tenant to have recommenced operation of its business at the entire Premises, fully stocked with merchandise and fully staffed and otherwise in compliance with Article IV, provided that if any Abandonment occurs on more than one (1) occasion during the Term, then an Event of Default shall be deemed to have occurred immediately upon such Abandonment; or

(i) The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease; or

(j) Any other lease held by Tenant from Landlord shall expire and terminate (whether or not the Term thereof shall then have commenced) as a result of the default by Tenant thereunder.

**Section 17.2 Remedies.** Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by Law) may do any one or more of the following:

(a) With or without judicial process, Landlord or Landlord's agents may immediately or at any time thereafter, reenter into or upon the Premises, or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises again as and of its first estate and interest therein. The words "re-enter", "re-entry", and "re-entered" as used in this Lease are not restricted to their technical legal meanings; and/or

(b) Declare to be immediately due and payable an amount equal to the Present Worth (as hereinafter defined), as of the date of such Event of Default, of the following: (i) the Annual Minimum Rent due for the remainder of the Term, plus (ii) (A) the average Annual Percentage Rent payable hereunder for the three (3) Lease Years immediately preceding such Event of Default, or for the entire preceding portion of the Term, if less than three (3) Lease Years have elapsed, extrapolated to an annualized amount if the expired portion of the Term is less than twelve (12) months and (B) the Additional Rent payable in the immediately preceding Lease Year, or portion thereof, if less than twelve (12) months of the Term has elapsed, extrapolated to an annualized amount assuming a 5% annual increase, all multiplied by the number of Lease Years and fraction of a Lease Year then constituting the unexpired Term or portion thereof. "Present Worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the "Discount Rate" then in effect at the Federal Reserve Bank of New York. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Rent in advance; and/or

(c) Terminate this Lease by giving written notice of such termination to Tenant, which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein, provided, that Landlord shall not be deemed to have accepted any Abandonment or surrender of all or any portion of the Premises by Tenant unless Landlord has terminated this Lease pursuant to this Section 17.2 (c) regardless of whether Landlord has reentered or relet any or all of the Premises or exercised any or all of Landlord's other rights under the provisions of this section or applicable law; and/or

(d) In Landlord's own name (but either (i) as agent for Tenant, if this Lease had not then been terminated, or (ii) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Premises for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have

constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole and absolute discretion and collect and receive the rents therefor. Anything contained in the provisions of this Lease or applicable law to the contrary notwithstanding, (i) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other person for any failure to do so or to collect any rent or other sum due from any such reletting; (ii) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, in the event that the proceeds of such reletting exceed any Rent, installment thereof or other sum owed by Tenant to Landlord hereunder; and (iii) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any initial or other concessions or "free-rent" or reduced rent period in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by the provisions of Section 5.7, unless Landlord has elected to accelerate Rent as provided in Section 17.2 (b), (i) the installments of the Annual Minimum Rent, Annual Percentage Rent (determined as set forth in Section 17.2 (b)) and any Additional Rent accruing during such remainder had this Lease not terminated, less any income from such reletting of any or all of the Premises, plus (ii) the cost to Landlord of any such reletting (including, attorneys' fees, leasing or brokerage commissions, free rent concessions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus (iii) any other sums for which Tenant is liable under the provisions of this Lease, and Tenant hereby waives any and all rights which it may have under Law, the exercise of which would be inconsistent with the foregoing provisions of this Section 17.2 (d); and/or

(e) Cure such Event of Default in any manner deemed appropriate by Landlord, in Landlord's sole discretion, with the total cost of such cure, together with interest thereon at the Default Rate from the date of such expenditure, being payable by Tenant to Landlord as Additional Rent upon Landlord's demand therefor; and/or

(f) Pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity.

### **Section 17.3 Agreements and Matters Concerning Events of Default.**

(a) The provisions of Section 17.2 shall not limit or prejudice Landlord's right to prove for and obtain as damages, by reason of an Event of Default or termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

(b) No expiration or termination of this Lease as a result of an Event of Default, or summary dispossession proceedings, Abandonment, reletting or re-entry by Landlord as a result of an Event of Default, shall relieve Tenant of any of its liabilities and obligations under this Lease, including the obligation to pay Rent, and Tenant shall remain liable to Landlord for all damages resulting from any Event of Default, including but not limited to, any damage resulting from the breach by Tenant of any of its obligation under this Lease to pay Rent and any other sums which Tenant is obligated to pay hereunder.

(c) If any or all of the Premises are relet by Landlord for any or all of the unexpired Term of this Lease (Landlord being under no obligation to do so), the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(d) Upon the occurrence of an Event of Default, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all expenses (including attorneys' fees) incurred by Landlord (i) in curing or seeking to cure any Event of Default; (ii) in exercising or seeking to exercise any of Landlord's rights and remedies under the provisions of this Lease and at law or in equity on account of any Event of Default; (iii) otherwise arising out of any Event of Default; and (iv) interest on all such expenses, at the Default Rate, all of which expenses and interest shall be Additional Rent.

(e) Tenant hereby expressly waives, to the extent permitted by law, the service of any notice of intention to re-enter provided for in any statute, and Tenant, for itself and all persons claiming through or under Tenant waives any and all right of redemption or re-entry or repossession in case Tenant is dispossessed by a judgment or warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease.

(f) In the event of a breach or threatened breach on the part of Tenant with respect to any of the covenants, agreements, terms, provisions or conditions on the part of or on behalf of Tenant to be kept, observed or performed, Landlord shall also have the right to seek injunctive relief.

(g) The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may lawfully be entitled at any time, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not herein provided for.

(h) In the event of: (i) the termination of this Lease under the provisions of Section 17.2; or (ii) the re-entry of the Premises by Landlord under the provisions of Section 17.2; or (iii) the termination of this Lease (or re-entry) by or under any summary dispossession or other proceeding or action or any provision of Law by reason of default hereunder on the part of Tenant, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance Rent, security or otherwise, but such monies shall be credited by Landlord against any Rent due from Tenant at the time of such termination or reentry or, at Landlord's option, against any damages payable by Tenant under Section 17.2 hereof or pursuant to law.

(i) Notwithstanding anything in this Lease to the contrary and regardless whether an Event of Default shall have occurred, Landlord, without notice to Tenant, may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform, the cost of which performance by Landlord together with interest thereon at the Default Rate from the date of such expenditure shall be deemed Additional Rent and shall be payable by Tenant to Landlord upon demand if Landlord, in its good faith judgment, believes it, the Shopping Center or any other tenant or occupant thereof would be materially injured by failure to take rapid action as a result of Tenant's failure to perform such obligation of Tenant or

if the unperformed obligation of Tenant creates, in Landlord's good faith judgment, an emergency.

(j) Upon the occurrence of an Event of Default, Landlord may charge Tenant, as Additional Rent, a reasonable Event of Default processing fee, not to exceed Five Hundred Dollars (\$500) per Event of Default.

(k) All costs and expenses incurred by Landlord, including, without limitation, attorneys' fees, in enforcing any of its rights and remedies under this Lease shall be deemed to be Additional Rent and shall be repaid to Landlord by Tenant upon demand, together with interest at the Default Rate from the date incurred by Landlord to the date paid in full.

(l) Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term would have expired if it had not been terminated under the provisions of Section 17.2, or under any provision of Law, or had Landlord not re-entered the Premises.

## **ARTICLE XVIII**

### **SUBORDINATION AND ATTORNMENT**

**Section 18.1 Subordination.** This Lease is subject and subordinate in all respects to all underlying leases now or hereafter covering the Shopping Center and to all Mortgages which may now or hereafter be placed on or affect such leases and/or the Shopping Center, the Buildings, improvements, or any part thereof and/or Landlord's interest therein, and to each advance made and/or hereafter to be made under any such Mortgages, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions of and for such underlying leases and/or Mortgages. This Section 18.1 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall execute and deliver promptly any instrument that Landlord and/or any mortgagee and/or the lessor under any underlying lease and/or their respective successors in interest may request.

**Section 18.2 Attornment.** Tenant agrees, at the election and upon demand of any owner of the Shopping Center, or of any Mortgagee in possession thereof, or of any holder of a leasehold hereafter affecting the Shopping Center, to attorn, from time to time, to any such owner, Mortgagee or holder, upon the terms and conditions set forth herein for the remainder of the Term. The foregoing provisions shall inure to the benefit of any such owner, Mortgagee or holder, shall apply to the tenancy of Tenant notwithstanding that this Lease may terminate upon the termination of any such leasehold estate, and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. Tenant, however, upon demand of any such owner, Mortgagee or holder, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to such owner, mortgagee or holder, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the Term. Nothing contained in this Section 18.2 shall be construed to impair any right, privilege or option of any such owner, Mortgagee or holder.

Tenant agrees that in the event the interest of Landlord becomes vested in the holder of any Mortgage or in any ground lessor, or in anyone claiming by, through or under either of them, then such holder shall not be: (i) liable for any act or omission of any prior landlord (including Landlord herein); (ii) subject to any offsets or defenses which Tenant may have against any prior landlord (including Landlord herein); (iii) bound by any Rent which Tenant may have paid for more than the current month to any landlord (including Landlord herein).

**Section 18.3 Further Assurances.** Tenant agrees that, upon the request of Landlord, Tenant will execute, acknowledge and deliver such document or instrument as may be requested by the holder of any Mortgage on Landlord's interest in the Shopping Center and/or the Buildings confirming or agreeing that this Lease is assigned to such Mortgagee as collateral security for such Mortgage and agreeing to abide by such assignment, provided that a copy of such assignment has in fact been delivered to Tenant.

## **ARTICLE XIX**

### **NOTICES**

**Section 19.1 Notices.** All notices consents, approvals, requests, or demands ("Notices") which may or are to be required or permitted to be given hereunder, may be given by a party or its attorney to either other party and shall be in writing. All Notices shall be sent by certified United States mail, return receipt requested, postage prepaid or by recognized overnight courier, addressed to Tenant at the Premises, or to the address set forth in Section 1.1, or to such other place as Tenant may from time to time designate in a Notice to Landlord and addressed to Landlord at the address set forth in Section 1.1, and to such other person or place as Landlord may from time to time designate in a Notice to Tenant. All Notices shall be deemed delivered three (3) business days after deposit in a designated postal depository or one (1) business day after delivery to the overnight courier. Notices required hereunder may be given by either an agent or attorney acting on behalf of Landlord.

**Section 19.2 Notice to Mortgagees.** If any Mortgagee shall notify Tenant that it is the holder of a Mortgage affecting the Premises, no notice, request or demand 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 the above Section and to such address as such Mortgagee shall designate.

## **ARTICLE XX**

### **BANKRUPTCY OR INSOLVENCY**

**Section 20.1 Tenant's Interest Not Transferable.** Neither Tenant's interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee, except as may specifically be provided pursuant to 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), or to any receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the Bankruptcy Code.

**Section 20.2 Termination.** In the event the interest or estate created in Tenant hereby shall be taken in execution or by other process of law, or if Tenant's Guarantor, if any, or his executors, administrators, or assigns, if any, shall be adjudicated insolvent or bankrupt pursuant



to the provisions of any state or federal law, or if a receiver or trustee of the property of Tenant or Tenant's Guarantor, if any, shall be appointed by reason of the insolvency or inability of Tenant or Tenant's Guarantor, if any, to pay its debts, or if any assignment shall be made of the property of Tenant or Tenant's Guarantor, if any, for the benefit of creditors, then, and in any such events, this Lease and all rights of Tenant shall automatically cease and terminate with the same force and effect as though the date of such event were the date originally set forth herein and fixed for the expiration of the Term, and Tenant shall vacate and surrender the Premises but shall remain liable as herein provided.

**Section 20.3 Tenant's Obligation to Avoid Creditors' Proceedings.** Tenant or Tenant's Guarantor, if any, shall not cause or give cause for the appointment of a trustee or receiver of the assets of Tenant or Tenant's Guarantor, if any, and shall not make any assignment for the benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under any insolvency law, except under the Bankruptcy Code, or the appointment of a trustee or receiver of Tenant or Tenant's Guarantor, if any, or of the assets of either of them, shall be conclusive evidence that Tenant caused, or gave cause, therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within thirty (30) days after such allowance or appointment. Any act described in this Section 20.3 shall be deemed a material breach of Tenant's obligations hereunder, and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease and under all laws.

**Section 20.4 Rights and Obligations Under the Bankruptcy Code.**

(a) Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and as debtor in possession, and any trustee who may be appointed, agrees as follows: (i) to perform each and every obligation of Tenant under this Lease, including, but not limited to, the manner of use and operation as provided in Article IV and Article VIII until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) to pay monthly in advance on the first day of each month, as reasonable compensation for use and occupancy of the Premises, an amount equal to the monthly installment of Annual Minimum Rent and other charges otherwise due pursuant to this Lease and to pay Annual Percentage Rent monthly at the percentage set forth in this Lease for the Lease Year in which such month falls on all sales during such month in excess of one-twelfth (1/12th) of the Breakpoint for such Lease Year, with payment of all such percentage rent to be made by the tenth (10th) day of the succeeding month; (iii) to reject or assume this Lease within sixty (60) days of the appointment of such trustee under Chapter 7 of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable, so long as notice of such period is given) of the filing of a petition under any other Chapter of the Bankruptcy Code; (iv) to give Landlord at least forty-five (45) days' prior written notice of any proceeding related to any assumption of this Lease; (v) to give at least thirty (30) days' prior written notice of any abandonment of the Premises, with any such abandonment to be deemed a rejection of this Lease and an abandonment of any property not previously moved from the Premises; (vi) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (vii) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (viii) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

(b) No default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord. It is understood and agreed that this is a lease of real property in a shopping center and that, therefore, Section 365(b)(3) of the Bankruptcy Code is applicable to any proposed assumption of this Lease in a bankruptcy case. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignments are the following: (i) the cure of any monetary defaults and the reimbursement of any pecuniary loss immediately upon entry of a court order providing for assumption and/or assignment; (ii) the deposit of a sum equal to three (3) months rent to be held by Landlord as a security deposit; (iii) the use of the Premises as set forth in Article IV and the quality, quantity and/or lines of merchandise of any goods or services required to be offered for sale are unchanged; (iv) the debtor, debtor in possession, trustee, or assignee of such entity demonstrates in writing that it has sufficient background including, but not limited to, substantial retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment of the Premises in the manner contemplated in this Lease, and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; (v) the prior written consent of any Mortgagee to which this Lease has been assigned as collateral security; and (vi) the Premises, at all times, remains a single store and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

## **ARTICLE XXI** **ARBITRATION**

**Section 21. 1 Arbitration** Notwithstanding anything to the contrary contained in this Lease, the parties hereby agree to resolve any and all claims, causes of action, disputes regarding defaults or Events of Default (collectively, "**Disputes**") under this Lease, except those for which summary proceedings are available in the Superior Court of the State of New Jersey, Law Division, Special Civil Part, Landlord/Tenant Division, by mandatory, binding arbitration in accordance with the following terms and conditions:

(a) Disputes shall be settled by arbitration in the City of Atlantic City, New Jersey in accordance with the commercial Rules of the American Arbitration Association (or its successor then existing);

(b) The arbitration will be conducted by one (1) arbitrator selected by the American Arbitration Association and having a minimum of ten (10) years experience resolving disputes related to retail leases (the "**Arbitrator**");

(c) The Arbitrator must apply the laws of the State of New Jersey in determining the Disputes;

(d) The decision of the Arbitrator shall be in writing, shall contain a detailed basis for the decision and shall be delivered to both parties within seven (7) business days following completion of any proceedings before the Arbitrator;

(e) The decision shall be conclusive upon the parties, with no right to appeal same, and judgment upon any award or decision may be entered in any court having jurisdiction thereof; and

(f) The costs, fees and expenses (including but not limited to attorney's fees) of the Arbitrator, the American Arbitration Association and the prevailing party shall be borne by the losing party.

## **ARTICLE XXII**

### **MISCELLANEOUS**

**Section 22.1 Parties' Option to Terminate Lease.** Notwithstanding any provisions herein to the contrary, if for any reason, subject to Force Majeure, Delivery of Possession does not occur by the Drop Dead Date, Landlord or Tenant, as their sole and absolute remedy, may elect to terminate this Lease by giving notice of such election to the other party at any time after the Drop Dead Date but prior to the Delivery of Possession, time being of the essence. In the event Delivery of Possession occurs within thirty (30) days following Landlord's receipt of a notice of termination by Tenant, such notice shall be deemed null and void and Tenant shall accept possession of the Premises and this Lease shall remain in full force and effect. If such notice is given, this Lease and the rights and obligations of the parties hereunder shall thereupon cease and terminate without need for the execution of any further or other instrument, but, if Landlord shall request, Tenant shall execute an instrument, in recordable form, whereby Tenant releases and surrenders all right, title and interest which it may have in and to the Premises under this Lease or otherwise. If Tenant fails to execute such instrument within thirty (30) days after submission of such instrument to it by Landlord, Landlord is hereby authorized to execute and record such instrument evidencing such release.

**Section 22.2 Estoppel Certificates.** At any time and from time to time, within ten (10) business days after Landlord shall request the same, Tenant will execute, acknowledge and deliver to Landlord and to such Mortgagee or other party as may be designated by Landlord, a certificate in the form attached hereto as Exhibit "F" respect to the matters set forth on Exhibit "F" and such other matters relating to this Lease or the status of performance of obligations of the parties hereunder as may be reasonably requested by Landlord. In the event that Tenant fails to provide such certificate within ten (10) business days after request by Landlord therefor, Tenant shall be deemed to have approved the contents of any such certificate submitted to Tenant by Landlord and Landlord is hereby authorized to so certify.

**Section 22.3 Inspections by Landlord.** Landlord, its agents, employees and contractors shall have the right to enter all parts of the Premises after twenty-four (24) hours prior notice (unless Landlord determines in good faith that an emergency exists, in which case no prior notice shall be required), to inspect the same and to enforce or carry out any provision of this Lease. In addition, Landlord shall have the right to show, at reasonable times, the Premises during ordinary business hours to any existing or prospective Mortgagee, tenant, purchaser, assignee of any loan secured by the Shopping Center, or any portion thereof, or assignee of any interest in Landlord.

**Section 22.4 Memorandum of Lease.** The parties hereby agree that, upon the request of either party, each will execute, acknowledge and deliver in short form a memorandum of this

Lease in recordable form. Recording, filing and like charges and any stamps, charges for recording, transfer or other tax shall be paid by the party requesting such recordation. In the event of termination of this Lease, within thirty (30) days after written request from Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord an agreement removing such short form of lease from record. If Tenant fails to execute such agreement within said thirty (30) day period, Landlord is hereby authorized to execute and record such agreement removing the short form of lease from record.

**Section 22.5 Remedies Cumulative and Consents and Approvals.** No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of such breach. No waiver by Landlord of any breach by Tenant under this Lease or of any breach by any other tenant under any other lease of any portion of the Shopping Center shall affect or alter this Lease. Except to the extent this Lease expressly provides otherwise as to a specified matter, any consent or approval of Landlord with respect to any matter in connection with this Lease may be granted or withheld by Landlord in its sole and absolute discretion.

**Section 22.6 Successors and Assigns.** This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, Tenant and their respective successors and assigns; provided, however, no rights shall inure to the benefit of any assignee or successor of Tenant to the extent such assignee or successor acquired any purported interest herein in violation of Article XVI. Upon any sale or other transfer by Landlord of its interest in the Premises, and assumption of possession of the Premises by the transferee, such transferee shall be solely responsible for all obligations of Landlord under this Lease accruing thereafter and Landlord shall be fully and forever released of its obligations hereunder.

**Section 22.7 Compliance with Laws and Regulations.** Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with (a) all Laws affecting the Premises or any part thereof, or the use thereof, including, but not limited to, the Americans with Disabilities Act and those Laws which require the making of any unforeseen or extraordinary changes, whether or not any such Laws which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (b) all rules, orders and regulations of the National Board of Fire Underwriters or Landlord's fire insurance rating organization or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises.

**Section 22.8 Captions and Headings.** The table of contents and the article and section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

**Section 22.9 Joint and Several Liability.** If two (2) or more individuals, corporations, partnerships or other business association (or any combination of two (2) or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business association to pay Rent and perform all other obligations hereunder shall be deemed to

be joint and several, and all notices, payments and agreement given or made by, with or to any one of such individuals, corporations, partnerships or other business associations shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other business association, the members of which are by law subject to personal liability, the liability of each such member shall be joint and several.

**Section 22.10 Broker's Commission.** Each of the parties represents and warrants that it has not engaged any broker, agent or finder which is entitled to any brokerage commissions, finders' fees or other compensation in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability, including, without limitation, attorneys' fees, arising from any such claim by any person alleged to have been engaged by the indemnifying party.

**Section 22.11 No Discrimination.** Tenant will not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

**Section 22.12 No Joint Venture.** Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. The provision of this Lease in regard to the payment by Tenant and the acceptance by Landlord of Annual Percentage Rent is a reservation for rent for the use of the Premises and not a participation by Landlord in the income or profits of Tenant as such.

**Section 22.13 No Option.** The submission of this Lease to Tenant for examination does not constitute a reservation of or option for the Premises, and this Lease shall become effective only upon execution and delivery thereof by both parties. Landlord and Tenant agree that the Lease has been freely negotiated by Landlord and Tenant and in the event of any ambiguity, controversy, dispute or disagreement over the interpretation, validity or enforceability of this Lease or any of its covenants, terms or conditions, no inference, presumption or conclusion whatsoever shall be drawn against Landlord by virtue of Landlord having drafted this Lease.

**Section 22.14 Merger, No Warranty and No Modification.** This writing 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. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, 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, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. Landlord makes no representation or warranty whatsoever, express or implied, orally or in writing as to the configuration, tenant mix or any future construction in the Shopping Center and that any plans or discussions were for informational purposes only and not intended to be relied upon by Tenant. Tenant acknowledges that it has not relied upon any such representations or warranties in connection with the execution of this Lease. This Lease can be modified only by a writing signed by both Landlord and Tenant.

**Section 22.15 Severability.** If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to 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 22.16 Third Party Beneficiary.** Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a Mortgagee, CRDA or any ground lessor.

**Section 22.17 Corporate, Limited Liability Company or Partnership Tenants.** In the event Tenant is a corporation, limited liability company or a partnership, Tenant and the persons executing this Lease on behalf of Tenant, hereby covenant and warrant that: Tenant is a duly constituted corporation, limited liability company or partnership qualified to do business in the State; Tenant has taken all necessary corporate, company or partnership action to approve its execution of this Lease; and such persons are duly authorized by the board of directors, managing member, general manager, general partner or managing partner of such entity to execute and deliver this Lease on behalf of such entity.

**Section 22.18 Applicable Law.** This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of New Jersey, without regard to principles of conflict of laws. Venue shall be in the judicial district in which the Shopping Center is located.

**Section 22.19 Performance of Landlord's Obligations by Mortgagee.** Tenant shall accept performance of any of Landlord's obligations hereunder by any Mortgagee.

**Section 22.20 Waiver of Counterclaims and Trial by Jury.** Landlord and Tenant hereby mutually waive any and all rights which either may have to a trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this Lease. Tenant shall not impose any counterclaim or counterclaims in summary proceeding or other action based on termination or holdover, except to the extent that Tenant's failure to make such claim in such proceeding would, as a matter of law, preclude Tenant from raising such claim in any other proceeding or forum.

**Section 22.21 Intentionally Omitted.**

**Section 22.22 Exculpation.** If Tenant shall recover any judgment against Landlord in connection with this Lease, such judgment shall be satisfied only out of the proceeds of sale received upon the execution of such judgment and levied thereon against the right, title and interest of Landlord in the Shopping Center and neither Landlord nor any of the partners, shareholders or members comprising Landlord shall be personally liable for any deficiency. The covenants of this Lease shall run with the land and all personal liability of Landlord shall cease in the event of sale or transfer of its interest. Notwithstanding the foregoing, in no event shall Landlord or the Landlord Indemnities have any liability to Tenant for lost profits or any consequential or punitive damages whatsoever, or for any damage caused by any other tenants or

occupants of the Premises or the Shopping Center or any other person claiming under or through Tenant, or their agents or employees, or for any damage caused by governmental or quasi-governmental authorities or public or private utilities or their agents or employees. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that it has no privity of contract with the CRDA, and in no event shall Tenant claim or assert any claim whatsoever in any action against the CRDA and in no event shall the CRDA have any liability whatsoever for any claims that arise under this Lease. "Landlord" as used in this Lease, shall not be deemed to include the CRDA.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim and Tenant hereby specifically waives the right to any money damages or other remedies. If by reason of Landlord's failure to complete construction of the Shopping Center or the Premises, Landlord delivers notice of such failure to Tenant, then Tenant's sole and exclusive remedy shall be a right to terminate this Lease.

~~Section 22.23 Security Interest.~~ As security for the payment of all Rent becoming due, Tenant hereby grants to Landlord a security interest in the following described collateral, which Tenant owns or shall hereafter acquire or create, immediately upon the acquisition or creation thereof: (a) all inventory at any time located in, or in transit to or from, identified for delivery to the Premises prior to and during the Term of the Lease; (b) all equipment and other personal property, including trade fixtures, placed in the Premises at any time during the Term of the Lease; and (c) all proceeds of the foregoing, and proceeds of hazard insurance and condemnation awards of all of the foregoing described properties or interests in properties, including all products of, and accessions to, such properties or interests in properties (collectively, the "Collateral"). Such security interest shall be a first and prior security interest as against the claims of any other creditors of Tenant, and Tenant so warrants to Landlord. Tenant agrees, within ten (10) days after submission thereof by Landlord, to execute and deliver to Landlord all financing statements and other instruments evidencing the security interest granted hereby. Failure of Tenant to execute any such statements or instruments within such ten (10) day period, shall constitute a breach of the Lease. Tenant hereby irrevocably appoints Landlord as its attorney in fact with full power and authority, and as holding a power coupled with an interest, to execute, deliver and record in the name of Tenant any such statements or instruments. Upon the happening of any Event of Default or the making of any levy, seizure or attachment of the Collateral, or at any time thereafter while such default has not been cured, Landlord shall have all the remedies of a secured party under the laws of the State, including, without limitation, the right to take possession of the Collateral, and for that purpose Landlord may enter upon the Premises and remove the same therefrom. Landlord hereby agrees to give Tenant prior notice of any public sale of the Collateral or of the date after which any private sale or any other intended disposition thereof is to be made, and, at such sale, Landlord may purchase the Collateral. The security interest created in such Collateral hereby shall be terminated if all Rent due under the Lease is paid in full and Tenant is not otherwise in default under the Lease upon the natural expiration of the Term.

~~Tenant agrees to execute such financing and continuation statements as may be requested from time to time by Landlord and, in the alternative, Tenant does hereby irrevocably appoint Landlord as attorney in fact for tenant with full power and authority without notice to tenant to execute or record one or more financing statements or continuations thereof in the name of Tenant, and such other instruments as be necessary to perfect the security interest of Landlord.~~

**Section 22.23 Intentionally Deleted.**

**Section 22.24 Survival.** To the extent any covenants or obligations of either party hereunder, either by the express terms of this Lease or by reasonable implication, are intended to survive termination of this Lease, the same shall survive such termination.

**Section 22.25 Additional Rent.** Any amounts to be paid by Tenant to Landlord pursuant to the provisions of this Lease, whether such payments are to be periodic and recurring or not, shall be deemed to be "Additional Rent" and otherwise subject to all provision of this Lease and of law as to the default of the payment of Rent.

**Section 22.26 Financial Statement.** Upon execution of this Lease by Tenant and thereafter within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a copy of the audited financial statement or annual report of Tenant for the most recently completed fiscal period.

**Section 22.27 Guaranty.** This Lease is contingent upon the execution of the Guaranty by the Guarantor that is attached to this Lease. Any default under the Guaranty shall be deemed a default under this Lease, and Landlord shall be entitled to all remedies provided under this Lease and/or available at law or equity.

**Section 22.28 Representation by Counsel. THE TENANT HEREBY ACKNOWLEDGES AND, BY EXECUTING THIS LEASE BELOW, AGREES THAT TENANT (a) HAS REVIEWED AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS LEASE AND (b) HAS EITHER REVIEWED THIS LEASE WITH AN ATTORNEY OR HAS HAD THE OPPORTUNITY TO DO SO.**

**Section 22.29 Exhibits not a Representation.** Unless expressly set forth to the contrary in this Lease, any site plans or tenant lists set forth in this Lease or in Exhibits to this Lease are not intended, in any way, to constitute a representation or warranty by, or on behalf of, Landlord (a) as to the past, current or future layout of the Shopping Center or (b) as to the past, existing or future tenants or occupants in the Shopping Center. Any site plans or listing of tenants or occupants in the Shopping Center set forth in this Lease, including the Exhibits, are for the sole purpose of showing the approximate location of the Premises in the Shopping Center and are to be used for no other purposes whatsoever. The labeling of any past, current or future tenants or occupants in the Shopping Center on any Exhibit to this Lease are not intended to represent or warrant that such listed tenants or occupants have been, are or will be tenants or occupants in the Shopping Center.

**Section 22.30 Ground Lease.** Landlord has entered into the Ground Lease with CRDA. This Lease shall, at all times, be subject and subordinate to the Ground Lease, as same may be amended from time to time. The foregoing provisions shall inure to the benefit of the tenant under the Ground Lease and shall be self-operative, without requiring any further instrument to



Landlord agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to Landlord or any mortgagee or any mortgagee of Landlord's interest in the Ground Lease or the Shopping Center, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the Term. Nothing contained in this Section 22.30 shall be construed to impair any right, privilege or option of the ground lessor under the Ground Lease.

**Section 22.31 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

**Section 22.32 Merger.** There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate of the Premises or any part thereof by reason of the fact that the same person, firm, corporation, or other legal entity may acquire or hold, directly or indirectly, this Lease or the leasehold estate and the fee estate in the Premises or any interest in such fee estate, without the prior written consent of any Mortgagee or any mortgagee of Ground Lease Tenant's interest in the Ground Lease or the Shopping Center.

**Section 22.33 New Jersey Business Registration Act Requirements.**

The "Business Registration Act" shall mean P.L. 2001, c. 134, sections 1 through 4, as amended by P.L. 2004, c. 57, Section 3, effective June 29, 2004, codified at N.J.S.A. 52:32-44, et seq. As a condition to the effectiveness of this Lease, Tenant shall provide proof of valid business registration to Landlord in accordance with the Business Registration Act. Tenant shall also obtain proof of valid business registration from all of its contractors, subcontractors, assignees, subtenants and concessionaires and their sub-subcontractors and sub-subtenants ("Tenant's Parties"), if any, and shall furnish the same to Landlord. Landlord shall, in turn, forward such proof of valid business registration to CRDA.

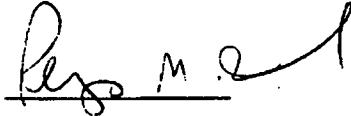
Tenant shall, at all times during the course of the Tenant's performance of its obligations under this Lease, maintain and submit to Landlord within ten (10) days after Landlord's written request (if Landlord is required to provide such information to CRDA) an accurate and up to date list of all Tenant's Parties and their addresses. The list shall be accompanied with proof of business registration of each of the Tenant's Parties and shall be promptly updated with any changes or additions that may occur from time to time as applicable. If no Tenant's Parties exist, Tenant shall attest to such fact to Landlord and CRDA on such forms as CRDA may reasonably require.

Tenant and each of its "affiliates" as defined in such section of the Business Registration Act, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax payment pursuant to the "Sales and Use Tax Act, P.L. 1966," c. 30 (C.54:32B-1, et seq.) on all their sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

**Section 22.34 Time of the Essence.** Time shall be of the essence in the performance of all of Tenant's obligations under this Lease.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, hereby have executed this Lease under seal as of the Effective Date.

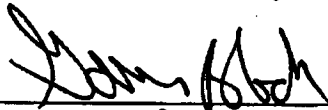
WITNESS/ATTEST:



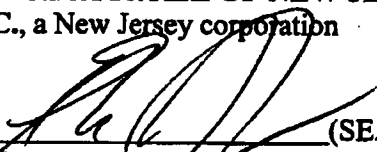


LANDLORD:

ATLANTIC CITY ASSOCIATES, LLC,  
a Maryland limited liability company

By:  (SEAL)  
Name: Gary A. Blah  
Title: Authorized Person

TENANT:  
LARGE APPAREL OF NEW JERSEY,  
INC., a New Jersey corporation

By:  (SEAL)  
Name: Ethan Shapiro  
Title: President/CEO

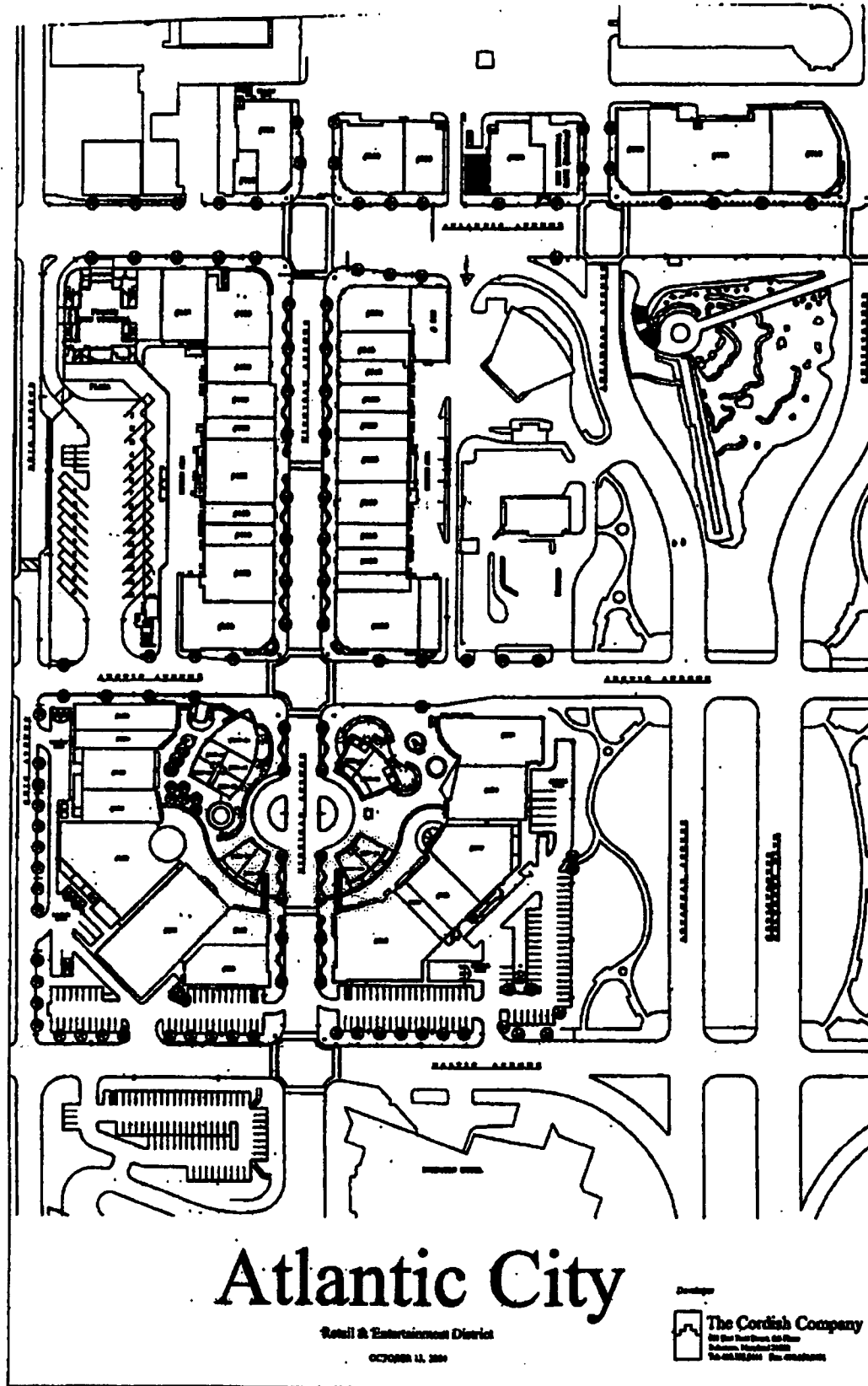
(CORPORATE SEAL)

**EXHIBIT "A"**

**DRAWING SHOWING LOCATIONS OF THE BUILDINGS**

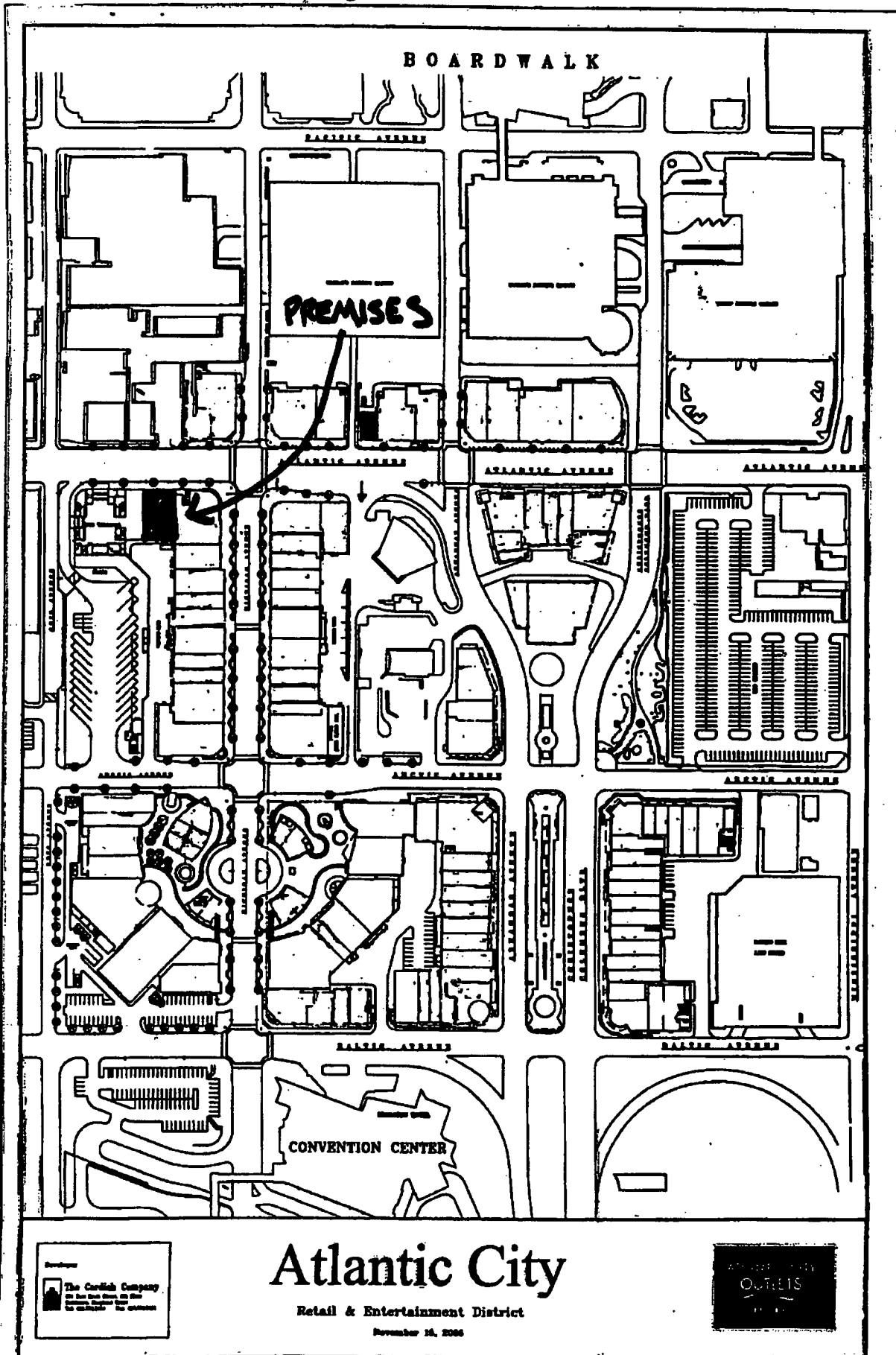
EXHIBIT "A"

DRAWING SHOWING LOCATIONS OF THE BUILDINGS



**EXHIBIT "B"**

**DRAWING SHOWING LOCATION OF THE PREMISES**



**EXHIBIT "C"**

**DESCRIPTION OF LANDLORD'S WORK**

Tenant expressly acknowledges and agrees that there is no Landlord's Work. Tenant expressly acknowledges and agrees that it is obligated to accept the Premises in their current "as is" condition.

## **EXHIBIT "D"**

### **DESCRIPTION OF TENANT'S WORK**

Tenant's Work shall include all work necessary to open the Premises for business for the Permitted Use. All Tenant's Work shall be subject to Landlord's approval and shall be provided and installed by Tenant at Tenant's sole expense in accordance with all applicable laws, ordinances, codes and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990, all regulations issued thereunder and the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented.



**EXHIBIT "E"**

**TENANT'S SIGN CRITERIA**

To be supplied by Landlord. If criteria not supplied, Signage shall be subject to Landlord's prior written approval.

**EXHIBIT "F"**

**TENANT ESTOPPEL CERTIFICATE**

RE: Lease Agreement, dated \_\_\_\_\_, 200\_\_\_\_, between ATLANTIC CITY ASSOCIATES, LLC ("Landlord"), and \_\_\_\_\_ ("Tenant"); dated \_\_\_\_\_, 200\_\_\_\_.

The undersigned, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, as Tenant under the above referenced Lease Agreement, hereby certifies to the Landlord and to \_\_\_\_\_ as follows:

1. That the above referenced Lease Agreement has not been modified, supplemented, or amended in any way except by agreement dated \_\_\_\_\_, 200\_\_\_\_ (as so modified, supplemented or amended, "Lease").

2. That the Lease is in full force and effect.

3. That the Lease represents the entire agreement between the parties as to the leasing of the Premises.

4. That all conditions under the Lease to be performed by Landlord prerequisite to the full effectiveness of the Lease have been satisfied, and on this date, Tenant has no claims against Landlord and there are no existing defenses or offsets which the Tenant has against the enforcement of the Lease by the Landlord, except as described below.

5. That the Rent Commencement Date was \_\_\_\_\_, 200\_\_\_\_ and the Expiration Date is (excluding renewal options.)

6. That Tenant has \_\_\_\_\_ right, pursuant to the terms of the Lease, to extend the Term for a period of \_\_\_\_\_ years.

7. That Tenant has exercised the following renewal options:

8. That the Annual Minimum Rent obligation of Tenant under the Lease is in effect and is \$ \_\_\_\_\_ per year/month.

9. That no Rent has been paid for the period after \_\_\_\_\_.

10. That Tenant has no notice or knowledge of any assignment, hypothecation or pledge by Landlord of the rent payable under the Lease, except \_\_\_\_\_.

11. That from and after the date hereof, the undersigned will not pay any rent under the Lease more than thirty (30) days in advance of its due date; will not surrender or consent to the modification of any of the terms of the Lease, nor to the termination thereof by Landlord, and will not seek to terminate the Lease by reason of any act or omission of Landlord until the undersigned shall have given written notice of such act or omission to the holder of such note

and mortgage (at such holder's last address furnished the undersigned) and until a reasonable lapse of time shall have elapsed following the giving of such notice during which period such holder shall have the right but shall not be obligated, to remedy such act or omission.

**IN WITNESS WHEREOF**, the undersigned Tenant has executed this Certificate the date written below.

**TENANT:**

---

**EXHIBIT "G"**

**CONFIRMATION AGREEMENT**

**THIS CONFIRMATION AGREEMENT** (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by and between **ATLANTIC CITY ASSOCIATES, LLC** ("Landlord") with offices located c/o The Cordish Company, 601 East Pratt Street, Sixth Floor, Baltimore, Maryland 21202 and \_\_\_\_\_ ("Tenant") with offices located at \_\_\_\_\_

**WITNESSETH:**

**WHEREAS**, by a certain Lease Agreement (the "Lease"), dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, Landlord leased to Tenant a portion of real property located in Atlantic City, New Jersey;

**WHEREAS**, Tenant is now in possession of the premises demised under the Lease; and

**WHEREAS**, pursuant to Section 3.1 of the Lease, Tenant agreed to execute and deliver to Landlord, upon Landlord's request, an agreement setting forth the Rent Commencement Date and Expiration Date of the Initial Term of the Lease;

**NOW, THEREFORE**, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, Landlord and Tenant agree as follows:

1. Unless otherwise defined herein or the context otherwise requires, each capitalized term utilized herein shall have the meaning ascribed to it in the Lease.
2. The Rent Commencement Date is \_\_\_\_\_.
3. The Expiration Date is \_\_\_\_\_.
4. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.
5. This Agreement contains the entire agreement of the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Agreement to be executed the day and year first above written.

**WITNESS/ATTEST:**

\_\_\_\_\_

\_\_\_\_\_

**LANDLORD:**

**ATLANTIC CITY ASSOCIATES, LLC,**  
a Maryland limited liability company

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

Name:

Title:

**TENANT:**

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

Name:

Title:

**EXHIBIT "H"**  
**PROHIBITED USES, EXCLUSIVES, AND RESTRICTIONS**

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in Article 1 of this Lease and in strict accordance with the rules and regulations. The below provisions shall bind Tenant only and not Landlord. Without in any way limiting the generality of the foregoing, Tenant may not use any portion of the Premises (a) as a casino, (b) for the sale or exhibition of unlawful pornographic materials, (c) for the operation of a sexually oriented business, or (d) for any of the following uses:

No tenant whose primary business is the sale of vitamins and nutritional supplements.

No tenant whose primary business is the sale of moderate to better priced sunglasses.

No tenant whose primary business is the sale of children's clothing.

No tenant in the Shopping Center shall sell or display the products of, or any products containing any of the following labels or trademarks: CK, Calvin Klein, Liz Claiborne; Liz Claiborne Woman; Elisabeth; Elisabeth, a Liz Claiborne Company; Elisabeth by Liz Claiborne; Claiborne; Dana Buchman; Sigrid Olsen; Mexx; Laundry by Shelli Segal; Villager; Russ; First Issue; Crazy Horse; Emma James; Axxess; Meg Allen; Claiborne Menswear Outlet; DKNY Jeans; Lucky Brand; Mexx; or Special Brands, a Liz Claiborne Company.

No tenant shall operate any business, including any carts and kiosks which sells (a) freshly ground or whole coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, or (c) gourmet, brand-identified brewed coffee.

No tenant shall operate a family shoe store.

No tenant shall sell Ecko Merchandise which is herein defined as merchandise that either (i) carries any trademark, brand or marking of an Ecko Company (as defined herein below), (ii) is manufactured by or for an Ecko Company, (iii) is licensed by or to an Ecko Company, or (iv) is otherwise permitted to be sold, distributed or used by an Ecko Company. An "Ecko Company" is defined as Ecko.Complex LLC (including any of its subsidiaries, affiliates, licensees or other related entities).

No tenant shall occupy or use its premises as a (i) TGI Friday's, Bennigan's, Chili's, Damon's and Ruby Tuesday's, and (ii) any other sitdown casual dining restaurant which serves alcoholic beverages and prominently features hamburgers, ribs and salads. This section shall not apply to tenants on the south side of Atlantic Avenue.

No tenant shall occupy or use its premises as a Chili's, TGIF or Red Robin restaurant in the 900 block of Atlantic Avenue.

No tenant shall sell hand-made pretzels.

No tenant shall sell crepes, paninis sandwiches and/or bubble tea in the Shopping Center.

No tenant shall sell submarine sandwiches.

No tenant shall sell fine Jewelry.

No tenant shall use it premises for the primary business of the retail sale of toys, games, hobby supplies, children's arts and crafts, bicycles, wheel goods, stuffed animals, children's sporting goods, juvenile or child related items (including but not limited to juvenile books, furniture, outdoor playsets, pools, etc.) (collectively the "Competing Use"). The Competing Use shall not restrict the sale of video or computer games or the sale of juvenile or childrens' shoes or apparel or educational materials. As used herein, "primary business" means the sale of such items from more than the lesser of (i) twenty percent (20%) of the square footage of such tenant's premises, or (ii) 2,000 square feet.

In addition to the foregoing restrictions, without in any way expanding the use clause set forth in this Lease or limiting the use restrictions set forth in this Lease, Tenant shall at all times operate as a (1) manufacturer whose primary business is the sale at wholesale of products to retailers and who sell this merchandise at the Shopping Center at a discount price; and/or (2) retailer who are licensed resellers of a single manufacturer's product, which manufacturer's product is the exclusive product offered for sale in an outlet store environment; and/or (3) retailer whose primary business is selling brands they control at regular retail price, who are selling such goods in an outlet store environment at a discount price.

**EXHIBIT "1"**  
**GUARANTY**

In order to induce ATLANTIC CITY ASSOCIATES, LLC ("Landlord") to execute and deliver that certain Lease Agreement (the "Lease") between Landlord and LARGE APPAREL OF NEW JERSEY, INC. ("Tenant") for the Premises containing approximately 4,100 square feet of gross leasable area in the The Walk Phase II, Atlantic City, New Jersey ("Shopping Center"), and in consideration thereof, the undersigned ("Guarantor") hereby unconditionally, absolutely and irrevocably guarantees to Landlord, and its successors and assigns, the prompt and full payment (and not merely the collectibility) and performance and observance by Tenant of each and every item, covenant, condition, provision and obligation to be paid, kept, observed or performed by Tenant under the Lease, together with any and all costs and expenses, including reasonable attorneys' fees, which may be incurred by Landlord in connection with any default by Tenant under the Lease or enforcing the Lease and/or this Guaranty (collectively the "Obligations"). Guarantor expressly acknowledges that he, she or it has reviewed the Lease and understands the same. If there is more than one Guarantor, the terms and conditions of this Guaranty shall apply to all Guarantors jointly and severally. The liability of Guarantor is coextensive with that of Tenant and also joint and several, and legal action may be brought against Guarantor and carried to final judgment either with or without making Tenant or any assignee or successor thereof as a party thereto.

The undersigned further covenants and agrees that Landlord may at any time or from time to time, in its sole and absolute unfettered discretion, without notice to, or consent from, the Guarantor and without in any way releasing, affecting, or impairing the obligations and liabilities of the Guarantor hereunder:

(a) Extend or change the time of payment of any rent due under the Lease or any other payment required to be made by Tenant under said Lease, or the manner, place, or terms of performance or observance of any of the terms, covenants, conditions, provisions or obligations to be kept, observed or performed by Tenant under the Lease; and/or

(b) Modify any of the terms, covenants, conditions or provisions of the Lease, or waive compliance with any of the terms, covenants, conditions, provisions or obligations under the Lease.

Payment by the undersigned under this Guaranty is to be made without requiring any proceedings to be taken against Tenant for the collection of any amounts owed by Tenant under the Lease or for the keeping, performing or observing of any of the terms, covenants, conditions, provisions or obligations to be observed by Tenant under the Lease. The undersigned hereby completely and fully waives (a) notice of acceptance of this Guaranty, (b) presentment for payment, (c) notice of dishonor or default of Tenant under the Lease, (d) protest and notice of protest thereof, (e) any right of setoff, counterclaim or deduction against amounts due under this Guaranty, (f) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance, and (g) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.



Without limiting the generality of the foregoing, the liability of the undersigned under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by (a) reason of any waiver or failure to enforce or delay in enforcing any of the Obligations, or (b) the granting of any indulgence or extension of time to Tenant, or (c) the assignment of the Lease, or the subletting of the Premises by Tenant, with or without Landlord's consent, or (d) the expiration of the Term of the Lease, or (e) if Tenant holds over beyond the Term of the Lease, or (f) any merger or reorganization of the release or discharge of Tenant or any other guarantor in any voluntary or involuntary receivership, bankruptcy, winding-up or other creditors' proceedings, or (g) the rejection, disaffirmance or disclaimer of the Lease by any party in any action or proceeding, or (h) the release of any collateral held for the Obligations or release of the Guarantor or any other guarantor, or (i) any defect or invalidity of the Lease, or (j) the transfer by Guarantor of any or all of the capital stock of Tenant. The liability of the Guarantor shall not be affected by any repossession, re-entry or re-letting of the Premises by Landlord, provided, however, that the net payments received by Landlord after deducting all costs and expenses of repossession and/or reletting the same (including, without limitation, any attorney fees, brokerage fees and any reasonable costs or expenses incurred in redecorating, remodeling, or altering the Premises for reletting), shall be credited from time to time by Landlord to the account of Tenant and Guarantor and Guarantor shall pay any balance owing to Landlord from time to time, immediately upon being given written notice of demand by Landlord in the manner for providing notice set forth in the Lease.

This Guaranty shall be binding upon the undersigned, his or its respective successors, assigns, personal or legal representatives and heirs, and shall inure to the benefit of Landlord and Landlord's successors and assigns. The undersigned hereby consents and agrees that this Guaranty may be assigned by Landlord, without recourse, in connection with any sale or assignment by Landlord of part or all of its interest in the Shopping Center in which the demised premises under the Lease are contained.

This Guaranty shall remain in full force and effect until the payment or performance of all of the Obligations and the other amounts payable under this Guaranty (whether or not the Lease shall have been terminated). Until the payment and performance of all the Obligations and the amounts payable under this Guaranty, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor under this Guaranty; (b) waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor under this Guaranty; and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the Landlord under the Lease.

The terms, covenants, conditions and obligations contained in this Guaranty may not be waived, changed, modified, discharged, or abandoned, except by agreement in writing, signed by the party or parties against whom enforcement of any waiver, change, modification, discharge or abandonment is sought. Guarantor agrees that it will, from time to time, within ten (10) days after Landlord's request, execute and deliver a statement certifying that this Guaranty is unmodified and in full force and effect. Guarantor hereby constitutes and appoints Landlord its true and lawful attorney-in-fact in Guarantor's name (which power of attorney shall be deemed irrevocable and a power coupled with an interest) to execute such statement if Guarantor shall fail to do so within such ten (10)-day period.

All notices or other communications to be provided pursuant to this Guaranty shall be in writing and shall be deemed to be properly served if sent by registered or certified mail or Federal Express or similar courier service with overnight delivery or via professional messenger service (with receipt therefor) or by certified or registered mail, return receipt requested, (i) if to Landlord, 601 E. Pratt Street, 6th Floor, Baltimore, Maryland 21202, and (ii) if to Guarantor, at the address set forth below. All notices or other communications to be provided pursuant to this Guaranty sent by certified or registered mail, return receipt requested, first-class postage prepaid shall be deemed effective when they are mailed, otherwise such notices shall be effective upon receipt.

IF CORPORATE GUARANTOR, USE THIS: The Guarantor hereby (i) irrevocably appoints \_\_\_\_\_ (the "Guarantor's Agent for Service of Process"), as the Guarantor's agent to accept service of process in any action or proceeding for the enforcement against Guarantor of any obligation or liability under this Guaranty, (ii) agrees that any such action or proceeding against the Guarantor may be commenced in any court of competent jurisdiction by service of process upon the Guarantor's Agent for Service of Process with the same affect as if the Guarantor were physically present in the same location where the Guarantor's Agent for Service of Process was served and had lawfully been served with process in such location and (iii) directs Guarantor's Agent for Service of Process to forward a copy of any notice, process or pleading served on Guarantor's Agent for Service of Process to Guarantor in the same manner in which notices are to be delivered to Guarantor pursuant to the preceding paragraph. The undersigned individual acknowledges that he/she is a duly authorized agent of the Guarantor with full power and authority to execute and deliver this Guaranty.

This Guaranty shall be governed by and construed in accordance with the laws of the State of New Jersey applicable to agreements made and to be wholly performed within the State of New Jersey. Guarantor hereby consents to the jurisdiction of any competent court within Atlantic County, New Jersey, and Baltimore City, Maryland in Landlord's discretion, including, without limitation, Federal courts of the United States.

**Waiver of Jury Trial. GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN LANDLORD AND GUARANTOR OR THEIR SUCCESSORS, ASSIGNS, PERSONAL OR LEGAL REPRESENTATIVES AND HEIRS UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF ITS PROVISIONS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE GUARANTOR, AND GUARANTOR ACKNOWLEDGES THAT NEITHER LANDLORD NOR ANY PERSON ACTING ON BEHALF OF LANDLORD HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT GUARANTOR ACKNOWLEDGES THAT HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS LEASE WITH LEGAL COUNSEL.**

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the 24 day  
of May, 2007.

WITNESS:

Susan D. Stead

GUARANTOR(S)

URBAN BRANDS, INC., a New Jersey corporation

[Signature] (SEAL)

Ethan Shapiro  
President/CEO