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| UNITED STATES BANKRUPTCY COURT Southern District of New York | | PROOF OF CLAIM |
| Name of Debtor: UBI LIQUIDATING CORP. f/k/a URBAN BRANDS, INC. | | Case Number: 10-13005 (KJC) |
| NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503. | | |
| Name of Creditor (the person or other entity to whom the debtor owes money or property): THOR GALLERY AT MILITARY CIRCLE LLC | | ADMINISTRATIVE EXPENSE |
| Name and address where notices should be sent: Thor Gallery at Military Circle LLC, c/o Matalon Shweky Elman PLLC 450 Seventh Avenue, 33rd Floor New York, New York 10123 Telephone number: (212) 244-9000 email: jlm@trial-lawyer.org | | |
| Name and address where payment should be sent (if different from above): Telephone number: email: | | COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ |
| Name and address where payment should be sent (if different from above): Telephone number: email: | | <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. |
| 1. Amount of Claim Administrative Expense \$ <u>2,779.84</u> | | |
| If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges. | | |
| 2. Basis for Claim: <u>Post-Petition rent on non-residential real estate lease</u> (See instruction #2) | | |
| 3. Last four digits of any number by which creditor identifies debtor: STORE 1113 | 3a. Debtor may have scheduled account as: _____ (See instruction #3a) | 3b. Uniform Claim Identifier (optional): _____ (See instruction #3b) |
| 4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. | | |
| Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed) | | Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ |
| 5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. | | |
| <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). | <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). | <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). |
| <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). | <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). | <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). |
| | | Amount entitled to priority: \$ _____ |
| *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. | | |
| 6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9): \$ <u>2,779.84</u> | | |



7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor/surety, indorser, or other codebtor.
- (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: JOSEPH LEE MATALON

Title: Attorney-At-Law

Company: MATALON SHWEKY ELMAN PLLC

Address and telephone number (if different from notice address above):

Same as above

(Signature)

(Date)

Telephone number: _____ email: jlm@trial-lawyer.org

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is 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 delivering 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 an interested party objects to the 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:

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.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

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

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

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

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing 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. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. 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. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

ASHLEY STEWART WOMAN #1113
MILITARY CIRCLE MALL
BANKRUPTCY ON 09/21/10
OUTSTANDING CHARGES FROM 09/21/10 TO 9/30/10

| MONTH | BRT | ELE | HVA | PRO | SPR | W&S | TOTAL |
|--------------------|-----------------|---------------|--------------|---------------|--------------|--------------|-----------------|
| 9/21/10 TO 9/30/10 | 2,333.33 | 155.67 | 92.22 | 147.51 | 22.22 | 28.89 | 2,779.84 |
| TOTAL | 2,333.33 | 155.67 | 92.22 | 147.51 | 22.22 | 28.89 | 2,779.84 |

CENTER: MILITARY CIRCLE, NORFOLK, VIRGINIA
TENANT: LARGE APPAREL OF VIRGINIA, INC. (d/b/a Ashley Stewart)
SPACE: 1113
DATE: Mar 21, 1998

JMB 301 7/92

SHOPPING CENTER DEED OF LEASE

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| Exhibit A: | The Premises | |
| Exhibit B: | Landlord's and Tenant's Work | |
| Exhibit C: | Sign Criteria | |

MILITARY CIRCLE
SHOPPING CENTER DEED OF LEASE

THIS LEASE made as of the 21st day of May, 1998, between MILITARY CIRCLE LIMITED PARTNERSHIP ("Landlord"), a Maryland limited partnership, having a place of business at 900 North Michigan Avenue, Chicago, Illinois 60611-1957, and LARGE APPAREL OF VIRGINIA, INC. ("Tenant"), a Virginia corporation, whose principal place of business is located at 100 Metra Way, Secaucus, NJ 07094.

ARTICLE 1
BASIC PROVISIONS

- A. Tenant's Trade Name: Ashley Stewart Woman Sizes 14-26 or The Essence of Body & Soul
- B. Center: Military Circle Mall
Address: 880 North Military Highway
Norfolk, Virginia 23502
- C. Premises: Space No. 1113 at the Center, consisting of approximately 4,000 rentable square feet, the approximate location of which is shown cross-hatched on Exhibit A hereto. The Premises shall have frontage of at least approximately 30 lineal feet.
- D. Commencement Date: August 1, 1998*
- E. Expiration Date: January 31, 2009
- F. Permitted Use: For the display and retail sale of misses, children's, infants, men's, ladies and women's apparel, including, but not limited to, juniors, half-size and large-size, furnishings and accessories, lingerie, perfume, health and beauty aids, handbags, shoes, scarves, cosmetics, wigs and costume jewelry (including precious metals), gift and boutique items, and for no other purpose whatsoever. Tenant may perform alterations on apparel sold at the Premises. Display and sale of footwear and perfume shall not exceed 800 square feet of floor area.

G. Minimum Rent:

| Period | | Monthly Amount | Annual Amount |
|-----------------------|--------------------------------|-------------------|----------------------|
| Commencement Date | Through <u>July 31, 2003</u> | <u>\$4,666.67</u> | <u>\$56,000.00**</u> |
| <u>August 1, 2003</u> | Through <u>Expiration Date</u> | <u>\$5,333.33</u> | <u>\$64,000.00</u> |
| | Through | | |
| | Through Expiration Date | | |

*provided that if the date that is seventy-five (75) days after Landlord returns a fully-executed lease to Tenant and delivers the Premises to Tenant is later than May 19, 1998, then the Commencement Date shall be seventy-five (75) days after the later of the return of the fully-executed lease to Tenant and delivery of the Premises to Tenant.

** See Rider Three

H. Percentage Rent:

| <u>Period</u> | <u>Amount Each Lease Year</u> |
|--|---|
| Commencement Date Through <u>July 31, 2003</u> | <u>Five</u> percent (<u>5</u> %) of Gross Sales exceeding a Breakpoint of \$ <u>1,120,000.00</u> |
| <u>August 1, 2003</u> Through <u>Expiration Date</u> | <u>Five</u> percent (<u>5</u> %) of Gross Sales exceeding a Breakpoint of \$ <u>1,280,000.00</u> |
| Through _____ | _____ percent (____ %) of Gross Sales exceeding a Breakpoint of \$ _____ |
| Through _____ | _____ percent (____ %) of Gross Sales exceeding a Breakpoint of \$ _____ |
| Through <u>Expiration Date</u> | _____ percent (____ %) of Gross Sales exceeding a Breakpoint of \$ _____ |

Prorations of Breakpoints for Partial Lease Years, and prorations for Lease Years containing two different Breakpoints for different periods, shall be as described in Article 3.

- I. Initial Estimated Monthly Center Expenses: \$ 3,416.66
- J. Initial Estimated Monthly Taxes: \$ 670.00
- K. Initial Monthly Promotion Fund Charge: \$ 333.33
together with a non-recurring initial payment equal to 12 times such monthly amount
- L. Initial Monthly Media Fund Charge: \$ None
- M. Other Initial Monthly Charges:

| <u>Charge</u> | <u>Amount</u> | <u>Lease Section/ Rider/Exhibit</u> |
|--|------------------|---|
| <u>HVAC Equipment Charge</u> | \$ <u>None</u> | <u>Rider Two</u> |
| <u>Estimated HVAC Operating Charge</u> | \$ <u>276.68</u> | <u>Rider Two</u> |
| <u>Sprinkler Charge</u> | \$ <u>66.66</u> | <u>Rider Two</u> |
| <u>Water Charge</u> | \$ <u>66.66</u> | <u>Rider Two</u> |
| _____ | \$ _____ | _____ |

- N. Security Deposit: \$ None
- O. Radius Restriction: Two (2) miles from the Center
- P. Guarantor: Ashley Stewart, Ltd., a Delaware Corporation
- Q. Rent Payment Address: Tenant shall forward all Rent, Insurance certificates and Gross Sales reports to Landlord at the following address, or such other address or addresses as to which Landlord shall provide advance notice:
Urban Retail Properties Co., 880 N. Military Highway, Norfolk, VA 23502
- R. Rent Shall Be Payable To: Military Circle Limited Partnership (13-3990084)
or such other entity as Landlord shall designate from time to time in writing.

The foregoing provisions shall be interpreted and applied in accordance with the other provisions of this Lease set forth below. The terms in this Article, and the terms defined in Article 28, shall have the meanings specified therefor, herein or therein, when used as capitalized terms in other provisions of this Lease.

ARTICLE 2

PREMISES, TERM AND COMMENCEMENT DATE

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for a term ("Term") commencing on the Commencement Date and ending on the Expiration Date set forth in Article 1, unless sooner terminated as provided herein, subject to the provisions herein contained. The Commencement Date set forth in Article 1 shall be advanced to such earlier date as Tenant opens the Premises for business. If Landlord delays delivering possession of the Premises or substantial completion of any Landlord's Work under Exhibit B, this Lease shall not be void or voidable and Landlord shall have no liability for loss or damage resulting therefrom. In such case, the Commencement Date shall be postponed for a period equal to the delay, except to the extent that such delays arise from the acts or omissions of Tenant or Tenant's employees, agents or contractors. If the Commencement Date is advanced or postponed, the Rent and other obligations of Tenant, and the Term and initial Lease Year hereunder, shall all commence on the Commencement Date as advanced or postponed. However, the Expiration Date set forth in Article 1 shall not be changed. Landlord and Tenant shall confirm in writing any adjustment to the Commencement Date hereunder upon written request by either party. In the event of any dispute concerning such adjustment, Tenant shall pay Rent commencing on the Commencement Date set forth in Article 1, subject to adjustment between the parties after such dispute is resolved. ~~Notwithstanding the foregoing to the contrary, Landlord may delay delivery of the Premises and performance of any Landlord's Work until this Lease has been mutually signed and delivered; and such delays shall not postpone the Commencement Date set forth in Article 1 or the commencement of Rent hereunder, except as the parties may expressly agree otherwise in writing.~~ *

ARTICLE 3

MINIMUM RENT AND PERCENTAGE RENT

A. **Minimum Rent.** Tenant shall pay Landlord the monthly Minimum Rent set forth in Article 1 in advance on or before the first day of each calendar month during the Term, except that Minimum Rent for the first full and any initial partial calendar month shall be paid ~~when Tenant~~ on the Commencement Date ~~executes this Lease.~~

B. **Percentage Rent.** Tenant shall pay Landlord Percentage Rent each Lease Year equal to the applicable percentage of the amount by which Gross Sales exceed the applicable Breakpoint for such Lease Year set forth in Article 1. Percentage Rent for each Lease Year shall be paid on a monthly basis commencing with the first month in each Lease Year in which Tenant's Gross Sales for such Lease Year exceed the applicable Breakpoint. Such payments shall be made on or before the fifteenth (15th) day of each calendar month with respect to Gross Sales made during each preceding month. The term "Lease Year" shall have the meaning specified therefor in Article 28.

C. **Breakpoint Prorations.** The Breakpoint for any Partial Lease Year shall be prorated on a per diem basis. If Minimum Rent is abated or reduced for any reason during any Lease Year, the Breakpoint for such period shall be reduced proportionately. If two Breakpoint amounts are in effect during different portions of a given Lease Year under Article 1, the Breakpoint for such Lease Year shall be the weighted average of both Breakpoint amounts, determined as follows: (a) each Breakpoint amount shall be multiplied by the number of days during which it is in effect, and then divided by 365, and (b) the amounts so computed shall be added to obtain the weighted average Breakpoint for such Lease Year.

See Page 3A

D. **Adjustments.** If the Center is expanded during the Term by the addition of one or more Majors, the Minimum Rent and the Breakpoint, including each subsequent level thereof if either is scheduled to increase during the Term under Article 1, shall be increased by ten percent (10%) as of the date each such additional Major opens for business. Commencing with the fourth full Lease Year, and each Lease Year thereafter, Landlord reserves the right to increase the monthly Minimum Rent to an amount equal to eighty-five percent (85%) of the average total monthly Minimum Rent and Percentage Rent payable by Tenant during the three Lease Years prior thereto, with a proportionate adjustment of the Breakpoint; provided, in no event shall the Minimum Rent ever be reduced below the rate of Minimum Rent then in effect or otherwise payable under this Lease.

E. **Gross Sales Records.** Tenant shall ensure that the business of Tenant and of any subtenant, licensee or concessionaire in, at or from the Premises is operated such that the ~~following books and records (collectively, "Tenant's Records") are prepared, preserved and maintained in accordance with generally accepted accounting principles:~~ (i) daily dated sealed, continuous, cash register tapes; (ii) serially numbered sales slips; (iii) settlement report sheets of transactions with subtenants, concessionaires and licensees; (iv) bank statements; (v) general ledger or summary record of all receipts and disbursements from operations in, at or from the Premises; (vi) state and local sales and use tax returns; and (vii) such other records that would normally be kept pursuant to generally accepted accounting principles, or as the Landlord may reasonably require in order to determine Gross Sales hereunder. A separate bank account shall be maintained for all revenue from the Premises and no funds from any other source shall be deposited in such account. Tenant shall retain Tenant's Records at the Premises or at the home or regional office of Tenant for at least three (3) years from the end of the Lease Year to which they are applicable or, Landlord can verify Tenant's Gross Sales from a review of Tenant's ~~until such audit or controversy is terminated, even though such retention period may be after the expiration of the Term or earlier termination of this Lease.~~

(two (2))

* The parties hereby agree that, if not terminated prior thereto, the term of the lease between Landlord and Tenant (successor to Half Size Clothing, Inc.) dated May 24, 1993 for space in the Shoppes at the Military Circle shall terminate on the Commencement Date of this Lease.

For the purpose of the aforesaid calculation, Gross Sales in excess of Breakpoint shall be determined for the first full twelve (12) months following the Commencement Date and Percentage Rent for the aforesaid Partial Lease Year shall be calculated and paid on such excess prorated as to the number of days of a full calendar year which are included in said Partial Lease Year. Such Percentage Rent shall be paid on or before the last day of the thirteenth (13th) month next following the Commencement Date.

F. **Gross Sales Statements.** Tenant shall provide Landlord with a monthly statement of Gross Sales within fifteen (15) days after the end of each calendar month, signed by an authorized representative, which shall show Gross Sales and an itemization of any exclusions or deductions therefrom for such month, as well as year-to-date amounts for the current Lease Year. If any Percentage Rent is due for such month, the payment shall accompany such statement. In addition to such regular monthly statements, Tenant shall provide an annual statement within sixty (60) days after the end of each Lease Year, which shall show the total amount of Gross Sales for such Lease Year, and shall be certified to be true, complete and correct by an independent certified public accountant reasonably satisfactory to Landlord, or at Tenant's option by Tenant's chief financial officer. If such annual statement shows that Tenant underpaid Percentage Rent for such Lease Year, Tenant shall include the additional amount with such statement, and if such statement shows that Tenant overpaid Percentage Rent, Landlord shall provide a credit or refund. Tenant shall require that any subtenant, licensee or concessionaire furnish similar statements.

G. **Audits.** Landlord may from time to time (but not more frequently than once each thirty (30) calendar year), upon at least ten (10) days' notice to Tenant, cause a complete audit or examination to be made of Tenant's Records and such books and records of any subtenant, licensee or concessionaire for all or any part of the three Lease Years immediately preceding such notice. During such audit, Landlord or its authorized representatives shall have full and free access to Tenant's Records and the right to require that Tenant, its agents and employees furnish such information or explanation with respect to such items as may be necessary for a proper examination and audit thereof. If such audit or examination discloses that any of Tenant's statements of Gross Sales understates Gross Sales made during any Lease Year by one percent (1%) or more, or if Tenant shall have failed to furnish Landlord any monthly Gross Sales statements during any Lease Year or shall have failed to prepare and maintain Tenant's Records as required herein, Tenant shall pay Landlord the cost of such audit or examination, including travel and related expenses, and any deficiency in Percentage Rent, with interest at the Default Rate. If such audit or examination shall disclose an understatement of more than five percent (5%), Landlord shall also have the right to cancel this Lease by written notice given to Tenant within six (6) months after such audit. Landlord's acceptance of Percentage Rent shall be without prejudice to the Landlord's examination, audit and other rights hereunder.

H. **Gross Sales Defined.** "Gross Sales" shall mean the entire amount of the actual sale price, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted at, on or from the Premises, including, without limitation: (i) mail, telephone, facsimile and other orders received or filled at the Premises, including but not limited to catalogue sales, (ii) deposits not refunded to purchasers, (iii) orders taken at the Premises although filled elsewhere, (iv) gross receipts from vending and game machines (not to be construed to authorize vending or game machines unless specifically set forth in Article 1), (v) sale price of gift and merchandise certificates, (vii) payments from other parties for shelf or advertising space at or respecting the Premises; (viii) the full value of all consideration other than money received, (viii) all other gross income or receipts from any business or operation at, on or from the Premises, and (ix) Gross Sales by any sublessee, concessionaire or licensee. However, Gross Sales shall not include (but Tenant shall keep separate records therefor as part of Tenant's Records): (a) returns to shippers or manufacturers, (b) proceeds from the sale of used trade fixtures, (c) any cash or credit refunds made upon any sale in or from the Premises where the merchandise is returned by the purchaser, (d) any sales or excise tax imposed by any duly constituted governmental authority (provided that no income or franchise tax, capital stock tax, tax based upon gross receipts, assets or net worth, or similar tax shall be deducted from Gross Sales), and (e) the exchange of merchandise between the stores and warehouses of Tenant, if any, where such exchange of merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale that has theretofore been made in or from the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made in or from the Premises. No deduction shall be allowed for any uncollected or uncollectible amounts or reserves therefor, nor for cost of products or services sold, or other costs, charges or expenses of purchasing, financing, selling, transportation, overhead or taxes except as expressly provided herein. Trade-ins shall not reduce the sale price of the item sold for purposes hereof. Layaway, credit and installment sales shall be included in the month in which the goods or services are delivered or provided, or in which any portion of the payment is received, whichever first occurs, regardless of when or whether full payment is received.

ARTICLE 4

PAYMENT OF RENT, RENT TAXES AND PRORATIONS

A. **Rent and Rent Taxes.** Minimum Rent, Percentage Rent, Taxes, Center Expenses, Promotion Fund Charges, Media Fund Charges and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease are sometimes herein referred to collectively as "Rent", and all remedies applicable to the non-payment of Rent shall be applicable thereto. Rent shall be paid without any prior demand or notice therefor, and shall in all events be paid without any deduction, recoupment, set-off or counterclaim, and without relief from any valuation or appraisal laws. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value added tax, or any other applicable tax on the Rent, utilities or services herein or otherwise respecting this Lease or any other document entered in connection herewith. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant.

1. Landlord agrees to use reasonable efforts to keep confidential any information obtained by Landlord pursuant to the provisions of this section of this Lease, except that Landlord may disclose such information to Landlord's legal counsel and consultants, prospective transferees of all or any portion of Landlord's interest in the Center, and existing or prospective mortgagees, in connection with any litigation concerning the rights and obligations of the parties to this Lease, and when required by Law to do so.
2. GROSS SALES DEFINED, is hereby amended by adding the following additional exclusions from Gross Sales:
 - (a) non-retail bulk sales or closeouts of merchandise not sold at retail;
 - (b) bulk sales made for the purpose of clearing stock of old/or obsolete merchandise to dealers and the like and not to the general public;
 - (c) alteration charges and delivery charges, in addition to the sales price of the merchandise sold, provided same are performed at no gross profit to Tenant;
 - (d) all sums representing deposits on merchandise to be held as layaways, provided that at the time the merchandise is delivered to the customer, the entire amount of the purchase price of same, including the original deposit, shall be added to Gross Sales. If the sale is not consummated and the deposits forfeited by the customer, the deposit shall immediately thereafter be included in Gross Sales;
 - (e) interest, finance, service or carrying charges as may be paid by Tenant's customers in addition to the sales price of merchandise sold (this exclusion from Gross Sales is specifically not applicable to national credit card plans such as, but not necessarily limited to, MasterCard, Visa and American Express); and
 - (f) the amount of any sales to employees at a discount of at least twenty percent (20%), such excluded amount not to exceed two percent (2%) of Tenant's Gross Sales at the Premises per Lease Year.

Commencement Date B. Prorations. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Minimum Rent, monthly payments of estimated Taxes and Center Expenses, Promotion Fund Charge, Media Fund Charge and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Minimum Rent is scheduled to increase under Article 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay amounts towards actual Taxes and Center Expenses for such first or final calendar years shall be prorated on a per diem basis to reflect the portion of such years included in the Term. Prorations of Breakpoints for Partial Lease Years, and prorations for Lease Years containing two different Breakpoints for different periods, shall be as described in Article 3.

ARTICLE 5

TAXES AND CENTER EXPENSES

Notwithstanding anything contained in this Lease to the contrary, the amount Tenant is obligated to pay on an annualized basis for Center Expenses shall not increase by more than seven and a half percent (7 1/2%) (the "Cap Percentage") from one Lease Year to the following Lease Year provided, however, if for any one Lease Year to the following Lease Year the increase is less than the Cap Percentage, then the difference may be applied to any future increase(s) from one year to the next year such that the cap applicable to that future year-to-year increase(s) in Center Expenses may be higher than the Cap Percentage and, further, the amount of Center Expenses that falls outside the Cap Percentage for a year may be included in the unused portion of a future year's Cap Percentage.

A. Taxes. Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of Taxes in the manner described below.

B. Center Expenses. Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of Center Expenses in the manner described below.

C. Manner of Payment. Taxes and Center Expenses shall be paid in the following manner:

(i) Landlord may reasonably estimate in advance the amounts Tenant shall owe for Taxes and Center Expenses for any full or partial calendar year of the Term. In such event, Tenant shall pay such estimated amounts, on a monthly basis, on or before the first day of each calendar month, together with Tenant's payment of Minimum Rent. Tenant shall pay initially and until further notice by Landlord the estimated amounts set forth in Article 1. Landlord may reasonably adjust the estimated amounts, including the initial estimated amounts set forth in Article 1, from time to time prior to the Commencement Date and during the Term.

(ii) Within 180 days after the end of each calendar year, or as soon thereafter as practicable, Landlord shall provide a statement (the "Statement") to Tenant showing: (a) the amount of actual Taxes and Center Expenses for such calendar year, with a listing of amounts for major categories of Center Expenses, (b) any amount paid by Tenant towards Taxes and Center Expenses during such calendar year on an estimated basis, and (c) any revised estimate of Tenant's obligations for Taxes and Center Expenses for the current calendar year.

(iii) If the Statement shows that Tenant's estimated payments were less than Tenant's actual obligations for Taxes and Center Expenses for such year, Tenant shall pay the difference. If the Statement shows an increase in Tenant's estimated payments for the current calendar year, Tenant shall pay the difference between the new and former estimates for the period from January 1 of the current calendar year through the month in which the Statement is sent. Tenant shall make such payments within ten (10) days after Landlord sends the Statement.

(iv) If the Statement shows that Tenant's estimated payments exceeded Tenant's actual obligations for Taxes and Center Expenses, Tenant shall receive a credit for the difference against payments of Rent next due. If the Term shall have expired and no further Rent shall be due, Landlord shall refund such difference when Landlord sends the Statement.

D. Tax Refunds, Supplemental Billings and Fiscal Tax Years. Tax refunds shall be deducted from Taxes in the year they are received by Landlord. If Taxes for any period during the Term or any extension thereof shall be increased after payment thereof by Landlord for any reason, including without limitation error, reassessment, or supplemental billing by applicable governmental or municipal authorities, Tenant shall pay Landlord within ten (10) days after notice Tenant's Proportionate Share of such increased Taxes. If any Taxes shall be paid based on assessments or bills by a governmental or municipal authority using a fiscal year other than a calendar year, Landlord may elect from time to time to bill Tenant and make adjustments: (i) based on such fiscal year, or (ii) based on tax payments becoming due during the subject calendar year without regard to such fiscal year.

E. Finality of Statements. Unless Tenant takes exception to any Statement by written notice to Landlord within one hundred eighty (180) days after Landlord provides such Statement to Tenant, such Statement shall be considered final and binding on Tenant. Tenant acknowledges that Landlord's ability to budget and incur expenses depends on the finality of such Statement, and accordingly agrees that time is of the essence of this Paragraph. If Tenant takes exception

to any matter contained in any Statement as provided herein, Landlord may refer the matter to an independent certified public accountant, whose certification as to the proper amount shall be final and binding as between Landlord and Tenant. Tenant shall promptly pay the cost of such certification unless such certification determines that Tenant was overbilled by more than 2%. Pending resolution of any such exceptions, Tenant shall continue paying Tenant's Proportionate Share of Taxes and Center Expenses in the amounts determined by Landlord, subject to adjustment between the parties after any such exceptions are resolved.

F. **General Matters.** So long as Tenant's obligations hereunder are not materially adversely affected thereby, Landlord reserves the right to reasonably change, from time to time, the manner or timing of the foregoing payments. Although this Lease contemplates the computation of Taxes and Center Expenses on a cash basis, Landlord may make reasonable and appropriate accrual adjustments and Landlord reserves the right to change to a full accrual system of accounting. In lieu of providing one Statement covering Taxes and Center Expenses, Landlord may provide separate statements at the same or different times. No delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord or a waiver of Landlord's right to require payment of Tenant's obligations for actual or estimated Taxes or Center Expenses.

ARTICLE 6

CONDITION OF PREMISES; OPENING FOR BUSINESS

Tenant agrees to accept the Premises, Center, and any Systems and Equipment serving the Premises "as is," without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements except as may be expressly provided in Exhibit B hereto or elsewhere in this Lease ("Landlord's Work"). Tenant shall on or before the Commencement Date: (i) completely remodel the Premises and install a new storefront, storefront sign and trade fixtures in and for the same in accordance with the other provisions of this Lease, including, without limitation, Article 7, Exhibits B and C and the Rules ("Tenant's Initial Work"), and (ii) open the Premises for business to the public, fully stocked and staffed and in compliance with all provisions of this Lease, including, without limitation, Article 8. Landlord may require that Tenant accept possession of the Premises and proceed with Tenant's Initial Work and/or the preparation and submission of plans therefor prior to the Commencement Date upon ten (10) days' advance notice. During any period that Tenant shall be permitted or required to enter the Premises prior to the Commencement Date (to plan or perform Tenant's Initial Work), Tenant shall comply with all terms and provisions of this Lease, except those provisions requiring the payment of Rent (other than such charges as Landlord may impose under Article 7 or Exhibit B). The parties agree that Tenant's obligations under this Article go to the essence of the parties' agreement hereunder, and that any failure to perform such obligations will result in damages to Landlord that are extremely difficult and impractical to determine and for which Landlord's remedies at law will not be adequate. Accordingly, as a fair and reasonable estimate and liquidation of Landlord's damages and not a penalty, if Tenant fails to complete Tenant's Initial Work and open the Premises for business in the manner required herein by the Commencement Date, Tenant shall pay Landlord as additional Rent an amount equal to 50% of the Minimum Rent then in effect prorated on a per diem basis until Tenant completes Tenant's Initial Work and so opens for business. Acceptance by Landlord of such liquidated damages shall not be deemed permission for Tenant to continue such violation, and shall not preclude Landlord from seeking any other remedy (other than damages) for such violation including, without limitation, specific performance or termination of this Lease or Tenant's right to possession as described in Article 22.

Landlord shall prior to delivery to Tenant install demising studs at the new lease line of the Premises. Also, Landlord shall cause the work set forth in Exhibit B, Section 1, part 3, to be performed.

unless delayed by an Unavoidable Delay

within fifteen (15) days after

ARTICLE 7

TRADE FIXTURES, ALTERATIONS AND LIENS

A. **Approval.** Tenant shall not attach any fixtures, equipment or other items to the Premises or make any additions, changes, alterations or improvements to the Premises or the Systems and Equipment serving the Premises, including without limitation Tenant's Initial Work described in Article 6 and Exhibit B hereto (all such work referred to collectively herein as the "Work"), without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent, except that Landlord reserves the right to withhold consent in Landlord's sole discretion for Tenant's Initial Work, and Work affecting the structure, safety or security of the Center or Premises, the Systems and Equipment, or the appearance of the Premises from any Common

See Page 6A Areas.

B. **Conditions.** Landlord reserves the right to impose requirements as a condition of such consent or otherwise in connection with the Work, including without limitation, requirements that Tenant: (i) submit for Landlord's prior written approval detailed plans and specifications prepared by licensed and competent architects and engineers, (ii) submit for Landlord's prior written approval the names, addresses and background information concerning all contractors, subcontractors and suppliers, (iii) obtain and post permits, bonds, and additional insurance, (iv)

reasonable

and

Notwithstanding the foregoing, Tenant may do interior, non-structural, non-utility, non-mechanical and non-electrical alterations within the Premises without the approval of Landlord, the cost of which does not exceed Fifty Thousand and no/100 Dollars (\$50,000.00) in any twelve (12) month period, so long as such alterations do not materially or adversely alter the character, standards or design of the Premises as originally approved in Tenant's plans and specifications.

submit contractor, subcontractor and supplier lien waivers, (v) use union labor, and (vi) comply with such other requirements as Landlord may impose concerning the manner and times in which such Work shall be done and other aspects of the Work. Landlord may require that all Work be performed under Landlord's supervision. If Landlord consents or supervises, or recommends any suppliers, contractors, architects, or engineers, the same shall not be deemed a warranty as to the adequacy of the design, workmanship or quality of materials, or compliance of the Work with any Laws.

C. **Performance of Work.** All Work shall be performed: (i) in a thoroughly first class, professional and workmanlike manner, (ii) only with materials that are new, high quality, and free of material defects, (iii) strictly in accordance with plans and specifications approved by Landlord in advance in writing, (iv) not to adversely affect the Systems and Equipment or the structure of the Center, (v) diligently to completion and so as to cause the least possible interference with other tenants and the operation of the Center, and (vi) in compliance with all Laws and other provisions of this Lease, including without limitation, Exhibit B and the Rules attached hereto as Rider One. If Tenant fails to perform the Work as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to cure such failure within 48 hours after notice by Landlord (except that notice shall not be required in emergencies), Landlord shall have the right to stop the Work until such failure is cured (which shall not be in limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease).

D. **Liens.** Tenant shall keep the Center, Premises and this Lease free from any mechanic's, materialman's or similar liens or encumbrances, and any claims therefor, in connection with any Work. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Work (or such additional time as may be necessary under applicable Laws), to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such claim, lien or encumbrance by bond or otherwise within twenty (20) days after notice by Landlord. If Tenant fails to do so, Landlord may pay the amount or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Landlord shall be deemed additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Center or Premises to any such notices, liens or encumbrances whether claimed by operation of statute or other Law or express or implied contract. Any claim to a lien or encumbrance upon the Center or Premises arising in connection with any Work shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Center and Premises.

E. **Landlord's Fees and Costs.** Tenant shall pay Landlord a reasonable fee to cover Landlord's overhead and out-of-pocket costs, including the cost of any outside engineer, architect or consultant, in reviewing Tenant's plans and specifications and performing any supervision of the Work; and such fees as Landlord may reasonably impose for utilities, trash removal, temporary barricades and other matters in connection with the Work, or such fees therefor (if any) set forth in Exhibit B hereto.

ARTICLE 8

USE AND OPERATING REQUIREMENTS

A. **Use; Compliance With Laws.** Tenant shall use the Premises for the purposes specified in Article 1 (and Tenant shall use the Premises for all the purposes specified therein), and for no other purpose whatsoever, subject to and in compliance with all other provisions of this Lease, including without limitation the Rules attached as Rider One hereto. Tenant shall comply with all Laws relating to the Premises and Tenant's use thereof, including without limitation, Laws requiring the Premises to be closed on Sundays or any other days or hours, health, safety and building codes, and any permit or license requirements. Landlord makes no representation that the Premises are suitable for Tenant's purposes.

B. **Required Hours.** Tenant agrees to continuously operate and conduct its business in one hundred percent (100%) of the Premises during the Required Hours. "Required Hours" herein shall mean those hours established from time to time by Landlord for the Center in general, in Landlord's sole discretion; provided, Landlord shall not require that Tenant open for business before 9:00 a.m. or remain open after 10:00 p.m., except: (i) for holiday, seasonal or other special sales or promotions, or (ii) when at least one Major or a majority of the tenants at the Center will be open. If Tenant desires to operate the Premises during additional hours beyond those required by Landlord hereunder, Tenant shall first obtain Landlord's written approval (which may be withheld in Landlord's sole discretion), and Tenant shall pay all additional costs and expenses and Landlord's reasonable charges in connection therewith, including, without limitation, any additional utilities, security services, cleaning and trash removal. Without limiting the generality of the foregoing, Landlord reserves the right to close the Center on holidays or certain hours of holidays, including without limitation, New Year's Day, Easter, Thanksgiving and Christmas.

Insert 1

Landlord represents that the zoning regulations and ordinances affecting the Premises when possession of the Premises is delivered to Tenant will permit Tenant to use the Premises for those uses authorized in this Lease.

Landlord agrees that, at its sole cost and expense, it shall fully promptly cooperate with Tenant and shall execute all forms, applications, affidavits and permits that Tenant shall reasonably request Landlord to sign in order that Tenant may operate its business at the Premises as it intends in accordance with the provisions of this Lease.

Insert 2

(i) 1. (A) Notwithstanding anything to the contrary contained in Section 8.B, provided Tenant is not in Default under this Lease, if during the Term less than two (2) Majors or less than sixty percent (60%) of the rentable square footage (excluding spaces for Majors) fronting the enclosed Mall of the Center is open for business and such condition (the "Closing Condition") continues for an uninterrupted period of six (6) months or more, Tenant's Minimum Rent shall decrease to fifty percent (50%) of the amount that is otherwise set forth in this Lease and the Breakpoint shall be proportionately reduced ("Substitute Rent") until such time that a replacement Major shall be open for business, at which point in time Tenant would resume paying Minimum Rent and Percentage Rent as is otherwise then required under this Lease including any postponed adjustments.

(B) If the Closing Condition continues for an additional twelve (12) consecutive months (the "Additional Period"), and Tenant's annual Gross Sales for the Additional Period declined by twenty percent (20%) or more as compared with the last twelve (12) consecutive month period during the Term that the Closing Condition was not in effect, then Tenant may terminate the Term of this Lease upon sixty (60) days prior notice to Landlord given within ninety (90) days after the last day of the Additional Period, provided such termination shall be null and void if, (i) within thirty (30) days after Tenant's notice, the Closing Condition is no longer in effect or (ii) Landlord furnishes Tenant reasonable evidence that within six (6) months thereafter the Closing Condition will no longer be in effect, provided that, in the case of (ii) above, if the Closing Condition is still in effect six months later, the Term shall expire without the necessity for further notice.

(C) At the time Tenant exercises such option, Tenant shall give Landlord notice of its exercise of such option. Tenant shall continue to pay any and all Rent as required under this Lease, and any adjustments thereto. At any time following the fifth (5th) Lease Year during the time Tenant is paying Substitute Rent, Landlord may terminate this Lease upon thirty (30) days notice to Tenant. Tenant may nullify Landlord's termination by giving written notice to Landlord within ten (10) day after receipt of Landlord's notice of termination in which Tenant waives the rights set forth in this Section and resumes paying the Minimum Rent and Percentage Rent otherwise due from the date of Tenant's notice.

2. Notwithstanding anything to the contrary contained herein, any Major or an in-line tenant that is closed by reason of the following causes shall be deemed open for purposes of determining the existence of the Non-Operating Period:

- (1) Unavoidable Delay other than fire or casualty;
- (2) Fire or other casualty;
- (3) Taking Inventory; and
- (4) Remodeling.

3. Tenant acknowledges that the foregoing provisions are not intended as, nor shall the same be deemed, a warranty, representation, or agreement that any Major or in-line mall tenants will remain open for business during the entire Term.

Tenant and any of Tenant's Affiliates who lease space at the Center shall be deemed to be open for the purposes of calculating the number of Majors or the percentage of in-line retail tenant spaces open for business under this provision. "Tenant's Affiliates" shall mean any entity that is Tenant's parent company, subsidiary company, or affiliated company. As used herein, (i) "parent company" shall mean a company which owns a majority of Tenant's voting equity, (ii) "subsidiary company" shall mean a company at least a majority of whose voting stock is owned by Tenant, and (iii) "affiliated company" shall mean a company at least a majority of whose voting stock is owned by the parent company.

Notwithstanding anything to the contrary set forth herein, if Landlord commences construction of an expansion of the Center, any additional rentable floor space ("New Rentable Floor Space") constructed at the Center shall not be deemed to be part of the total rentable floor space of the Center for purposes of this provision until after it has become fully occupied and open for business for the first time.

(iii) Provided Tenant is not in default under this Lease, if Sears (or a successor department store) has not opened at the Center by November 1, 1999, Tenant's Minimum Rent shall decrease to fifty percent (50%) of the amount that is otherwise set forth in this Lease and the Breakpoint shall be proportionately reduced ("Substitute Rent") until such time that a replacement Major shall be open for business, at which point in time Tenant would resume paying Minimum Rent and Percentage Rent as is otherwise then required under this Lease including any postponed adjustments. Sears or

(iii) Landlord agrees that Tenant shall not be in violation of the provisions hereof if Tenant closes the Premises for not more than two (2) days during each Lease year, provided Tenant gives Landlord not less than five (5) days prior written notice and gives reasonable prior notice to the shopping public.

C. **Required Operations.** Tenant shall conduct its business at all times in a first-class, professional and businesslike manner consistent with reputable business standards and practices, and such that a high reputation of the Center is developed and enhanced. Tenant shall operate the Premises continuously, actively and diligently in a good faith manner designed to maximize Gross Sales. Tenant shall keep the Premises adequately staffed with well-trained personnel for efficient first class service, and adequately stocked with new "in season" merchandise in good condition and displayed in a professional and tasteful manner. Tenant agrees that storage and office space in the Premises shall be limited to that necessary for, and used in conjunction with, the business provided in Article 1 to be conducted in the Premises. Sales and services permitted under Article 1 shall be provided only on a retail basis to the general public. Tenant shall not use the Premises for catalogue sales.

and taking into consideration then existing business conditions

or, upon prior notice to Landlord, such other trade name as Tenant or an affiliate of Tenant used in at least three (3) other stores in the South whose use is substantially the same as the Permitted Use so long as such trade name is not similar to the trade name being used by any other tenant at the Center.

or an affiliate's

D. **Trade Name and Radius Restrictions.** Tenant shall conduct Tenant's business only under the trade name set forth in Article 1. Tenant and Tenant's affiliates, owners and subsidiaries shall not directly or indirectly own, operate, control, engage or have a financial interest in any business similar to that authorized to be conducted hereunder (including a department or concession in another store), or use or permit the use of the same or similar trade names, within the area set forth in Article 1, provided, however, that nothing herein shall prevent the operation of any of Tenant's existing stores under their present trade names, or require that Tenant violate any law

or other names so long as such are not similar to the Trade Name in use at the Premises, or stores acquired in an acquisition of at least ten (10) stores

E. **Violation of Requirements.** The parties agree that Tenant's obligations under this Article go to the essence of the parties' agreement hereunder, and that any failure to perform such obligations will result in damages to Landlord that are extremely difficult and impractical to determine and for which Landlord's remedies at law will not be adequate. Accordingly, as a fair and reasonable estimate and liquidation of Landlord's damages and not a penalty, if Tenant fails to perform any obligations under this Article during any portion of any day of the Term, Tenant shall pay Landlord as additional Rent an amount equal to 50% of the Minimum Rent then in effect prorated on a per diem basis. Acceptance by Landlord of such liquidated damages shall not be deemed permission for Tenant to continue such violation, and shall not preclude Landlord from seeking any other remedy (other than damages) for such violation including, without limitation, specific performance or termination of this Lease or Tenant's right to possession as described in Article 22.

after a prior failure to perform such obligation during any portion of any day during the previous twelve (12) month period of which Landlord notified Tenant

ARTICLE 9

PROMOTION OF CENTER AND TENANT'S BUSINESS

A. **Promotion Fund.** Tenant shall pay Landlord the monthly Promotion Fund Charge set forth in Article 1, subject to increases as described below (the fund created by such charges and any similar charges paid by other tenants or parties shall be referred to herein as the "Promotion Fund"). Landlord shall use the Promotion Fund to promote, advertise and market the Center through television, radio, newspaper or other media, or through other non-media promotions or events. Although Landlord may appoint a committee of representatives from one or more tenants or Majors to advise Landlord concerning the use of the Promotion Fund, Landlord reserves the right to use the Promotion Fund for the foregoing purposes in Landlord's sole discretion. Tenant shall also pay a non-recurring supplemental Promotion Fund Charge equal to twelve (12) times the monthly amount: (i) upon Tenant's execution of this Lease, and (ii) each time Landlord spends at least \$1,000,000 expanding or renovating the Center from time to time during the Term upon ten (10) days' written request by Landlord.

B. **Merchants' Association.** Landlord may, from time to time in Landlord's sole discretion, require that Tenant participate in a merchants' association for the Center sponsored or designated by Landlord. In such case: (a) Tenant shall participate as an active member in such association, (b) Tenant shall continue to pay the Promotion Fund Charge to Landlord, and such Promotion Fund Charge shall be deemed to satisfy any obligations of Tenant to pay regular monthly dues to such association, (c) Landlord shall turn over such Promotion Fund Charge to the association, or at Landlord's option shall continue to use the same or a portion thereof in conjunction with or on behalf of the association for the purpose of promoting, advertising and marketing the Center, and (d) Tenant shall pay any special assessments and participate in any joint advertising or promotional events sponsored by such association, and shall comply with all other requirements of such association.

C. **Media Fund; Joint Advertising.** Tenant shall pay Landlord the monthly Media Fund Charge set forth in Article 1, subject to increases as described below (the fund created by such charges and any similar charges paid by other tenants or parties shall be referred to herein as the "Media Fund"). Landlord shall use the Media Fund to supplement any Promotion Fund or in order to promote, advertise and market the Center through television, radio, newspaper or other electronic or print media, in Landlord's sole discretion. Landlord may, from time to time in Landlord's sole discretion and until further notice, reduce the Media Fund Charge and in lieu thereof require that Tenant spend an amount not exceeding such reduction on joint advertising prepared, established, sponsored or required for the Center by Landlord (with such design and content as Landlord shall reasonably approve in advance).

D. Payments, Increases, and Unused Funds. Tenant shall pay the Promotion Fund Charge and Media Fund Charge in advance on or before the first day of each calendar month during the Term. ^{Except as otherwise provided for herein} The Promotion Fund Charge and Media Fund Charge shall be subject to increases effective each January 1 during the Term or at such other times as Landlord may reasonably determine. Landlord shall determine each increase based on the percentage increase in the CPI from the Commencement Date through the latest date for which a current index is available prior to the scheduled increase. Notwithstanding the foregoing, in the case of the Media Fund Charge, Landlord may use the percentage increase in the electronic, print and outdoor advertising rates of the media utilized by Landlord over such rates for the preceding year in the media market in which the Center is located. In no event shall the Promotion Fund Charge or Media Fund Charge ever be reduced, even if the CPI or advertising rates decrease for any given period. Any amounts of the respective Funds remaining after the end of any calendar year shall be used by Landlord in subsequent years, and Landlord shall have no obligation to refund any unused amounts to Tenant after expiration of this Lease or otherwise whatsoever.

In no event shall Tenant's Promotion Fund Charge or Tenant's Media Fund Charge (on an annualized basis) increase more than the lower of six percent (6%) or CPI from one year to the next year, said cap to be cumulative (such that the unused portion of a year's cap can be used to absorb a prior year's increase that was outside the cap or carried forward to absorb a future year's increase that would have been outside the cap).

E. Tenant Advertising. In order to help maximize Gross Sales, Tenant agrees to spend an amount equal to at least two percent (2%) of Tenant's Gross Sales to advertise Tenant's business in the Premises in the market area in which the Center is located during each Lease Year. Such amount shall be in addition to the Promotion Fund Charge and Media Fund Charge. Tenant shall provide Landlord with evidence of such advertising costs as Landlord shall reasonably request from time to time. In any of Tenant's advertising and publicity programs in the market area in which the Center is located, Tenant shall include the Premises so as to receive at least as much publicity as other stores owned or operated by Tenant in such market area. All references to Landlord or the Center in such programs shall be in good taste and shall identify the Center by the name designated by Landlord from time to time.

See Page 9A, #1

F. Landlord's Expenses. Landlord shall be reimbursed out of the Promotion Fund or by any merchants' association for all costs and expenses incurred by Landlord in administering such Funds or in providing services to such association, including without limitation, costs for performing or procuring services for audits, tax filings and bookkeeping, and the compensation, benefits and related expenses for a marketing director and staff, rental value of space in the Center used by the same, all office equipment, utilities and supplies, postage and travel expenses in connection therewith, and the cost of all Center advertisements and promotional and marketing activities and events.

ARTICLE 10

UTILITIES

A. Utilities Provided By Tenant. Tenant shall: (i) make application in Tenant's own name for all utilities not provided by Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to, the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, gas, water, sewer, steam, fire protection, telephone and other communication and alarm services, HVAC, and all taxes or other charges thereon. Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at Landlord's option shall repair, alter or replace any such existing items (or Tenant shall share the costs thereof for any HVAC unit or hot water heater shared with other tenants as described in Article 11). Tenant shall maintain, repair and replace all such items, operate the same, and keep the same in good working order and condition, as further provided in Article 11. Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement or connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth in Article 7. Tenant shall ensure that all HVAC equipment is installed and operated at all times in a manner to prevent roof leaks, damage, or noise due to vibrations or improper installation, maintenance or operation. Tenant shall at all times keep the Premises sufficiently heated or air-conditioned such that heated or chilled air is not drawn to or from the Premises.

B. Utilities Provided By Landlord. Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, Tenant shall pay such charges as Landlord may establish from time to time, which Landlord may determine on a per square foot basis applicable to the square footage of the Premises as a monthly charge, or which Landlord may determine based on the quantity of utilities used or consumed at the Premises on a monthly or other regular basis. Such charges shall not exceed the rates, if any, that Landlord is permitted to charge pursuant to applicable Law. In addition, if Landlord establishes charges based on consumption or use: (i) such charges shall not be in excess of the rate that Tenant would be charged directly by the utility company serving the general area in which the Center is located, (ii) if the Premises are separately metered for such utilities, Tenant shall pay for amounts of such utilities based on such meters, and (iii) if the Premises are not separately metered for such utilities, Tenant shall pay for amounts of such utilities based on the reasonable estimates of Landlord's engineer or consultant, or at Landlord's election, shall pay Landlord's cost for installing separate meters, and shall thereafter pay based on such meters. If no such charges are established by Landlord, then the cost of such utilities shall be included as part of Center Expenses. Except to the extent prohibited by applicable Law, Landlord may also impose a reasonable administrative

provided Landlord is also providing same to all other similarly situated tenants in the Center

See Page 9A, #2

1. Landlord agrees to install Tenant's trade name on all directories in the Center within thirty (30) days of the Commencement Date.
2. To the extent that Tenant is able to obtain comparable utilities from local utility companies, the amount that Landlord charges for Landlord's utilities shall not unreasonably exceed the charges Tenant would otherwise incur for such comparable utilities. The foregoing does not apply to any air conditioning, heating or ventilating service provided to Tenant.

charge to cover meter-reading and other overhead expenses. All such charges shall be payable as additional Rent ten (10) days after billed by Landlord. ~~Landlord may discontinue providing any utilities then being provided by Landlord upon ten (10) days' advance written notice to Tenant (in which case Tenant shall obtain such utilities directly from the applicable utility company).~~ Landlord supplies ventilated air or chilled or heated air or water for air-conditioning or heating of the Premises. Landlord may nevertheless require that Tenant at Tenant's expense maintain, repair and replace any portion of the systems and equipment therefor exclusively serving the Premises, including without limitation any air handling equipment, ductwork and lines.

thirty (30)

Provided Landlord makes such election with all other similar situated tenants.

C. **Interruptions.** Landlord does not warrant that any utilities provided by Landlord will be free from shortages, failures, variations, or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortage, failure, variation, or interruption, including without limitation, loss of profits, business interruption or other incidental or consequential damages.

See Page 10A

ARTICLE 11

MAINTENANCE AND REPAIR OF PREMISES

A. **Tenant Maintenance and Repairs.** Tenant shall keep the Premises in good working order, repair and condition (which condition shall also be clean, sanitary, sightly and free of pests and rodents, and which repairs shall include necessary replacements and capital expenditures and compliance with all Laws now or hereafter adopted), except to the extent provided to the contrary in Article 14 respecting casualty damage. Tenant's obligations hereunder shall include but not be limited to Tenant's trade fixtures and equipment, security gates, ceilings, walls, storefront, entrances, signs, interior decorations, floor-coverings, wall-coverings, entry and interior doors, exterior and interior glass, plumbing fixtures, light fixtures and bulbs, keys and locks, fire extinguishers and fire protection systems, and equipment and lines for water, sewer (including free flow up to the common sewer line), HVAC, electrical, gas, steam, sprinkler and mechanical facilities, and other systems and equipment which serve the Premises exclusively whether located within or outside the Premises, and all alterations and improvements to the Premises whether installed by Landlord or Tenant. Tenant shall also at Landlord's option perform or reimburse Landlord for any repairs, maintenance and replacements to areas of the Center outside the Premises caused as a result of moving any furniture, fixtures, or other property to or from the Premises, or otherwise caused by Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors. Any repairs or other work by Tenant hereunder shall be deemed "Work" under Article 7, and shall be subject to all of the requirements thereunder, including Landlord's prior written approval. Tenant shall provide Landlord with evidence that any Work required hereunder has been performed from time to time within five (5) days after Landlord's request therefor.

and elsewhere in this Lease which provides a duty on Landlord to make repairs

B. **HVAC Maintenance.** If the Premises are served exclusively by any HVAC units or other systems or equipment, Tenant shall enter annual, written maintenance contracts with competent, licensed contractors reasonably approved or designated by Landlord. Such contracts shall include, and Tenant shall require that such contractors provide: (i) inspection, cleaning and ~~testing at least monthly~~ for HVAC units and semi-annually for other systems and equipment (or more frequently if required by applicable Law or if reasonably required by Landlord), (ii) any servicing, maintenance, repairs and replacements of filters, belts or other items determined to be necessary or appropriate as a result of such inspections and tests, or by the manufacturers' warranty, service manual or technical bulletins, or otherwise required to ensure proper and efficient operation, including emergency work, (iii) all other work as shall be reasonably required by Tenant, Landlord or Landlord's insurance carriers, (iv) a detailed record of all services performed, and (v) an annual service report at the end of each calendar year (Tenant shall provide Landlord with a copy of such annual reports promptly upon ~~Tenant's receipt thereof~~). Not later than thirty (30) days prior to the Commencement Date and annually thereafter, Tenant shall provide Landlord with a copy of all maintenance contracts required hereunder, and written evidence reasonably satisfactory to Landlord that the annual fees therefor have been paid. Such maintenance contracts represent part of Tenant's obligations under this Article, and shall not be deemed to limit Tenant's general obligations to keep any HVAC equipment and other systems and equipment hereunder in good working order, repair and condition as further described in Paragraph A, above.

quarterly

after

Landlord's written request

C. **Shared Equipment.** If the Premises are served by one or more HVAC units or other such systems or equipment that also serve one or more other tenants, Tenant shall at Landlord's option made by Landlord from time to time in writing either: (a) make arrangements directly with such other tenant or tenants to reasonably share responsibility and expenses for inspection, maintenance, repairs, operation and replacements of such items, or (b) reimburse Landlord for Tenant's reasonable share of all costs incurred by Landlord in making such arrangements or performing such work (such share to be based on the ratio of the square footage of the Premises to the square footage of the areas leased to such other tenant or tenants, or at Landlord's option such other factors as Landlord shall deem reasonable).

that are

Notwithstanding anything to the contrary herein contained, if, as a result of Landlord's, its agents', employees' or contractors' negligence, there is an interruption or discontinuance in the furnishing of any utilities provided by Landlord to the Premises which results in Tenant's inability to operate its business at the Premises for a period exceeding two (2) consecutive business days, after the date of notice to Landlord from Tenant and Tenant closes the Premises, Tenant's Rent obligations under this Lease shall abate from the end of such period until the earlier of such time as Tenant is again reasonably able to operate at the Premises or until Tenant resumes the conduct of its business at the Premises.

D. **Landlord Maintenance and Repairs.** Landlord shall keep the roof above, foundation, exterior walls other than storefront, common utility lines to the point of connection for Tenant, and structural portions of the Premises in good working order and repair (the cost of which shall be included in Center Expenses, to the extent described in Article 28), provided that Tenant shall give Landlord reasonable prior notice of the necessity for such repairs, and further provided that any damage thereto shall not have been caused by any act or omission of, or violation of this Lease by, Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors, in which event Landlord may perform or require that Tenant perform such repairs as provided above (without limiting Landlord's other remedies therefor).

See Page 11A, #1

ARTICLE 12

COMMON AREAS

A. **Use of Common Areas.** Tenant may use the Common Areas to which, and for the purposes for which, other tenants at the Center are given access during the Term, subject to the following conditions:

(1) The Common Areas shall be used by Tenant and Tenant's employees and invitees on a non-exclusive basis in common with employees and invitees of Landlord and other tenants and parties to whom the right to use the Common Areas has been or is hereafter granted.

(2) Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas which interferes in any way with the use of the Common Areas by other parties.

(3) Tenant's use of the Common Areas shall be subject to the other provisions of this Lease, including without limitation, the Rules attached as Rider One hereto.

(4) Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises.

B. **Common Area Maintenance and Control.** Landlord shall administer, operate, clean, maintain and repair the Common Areas, and Tenant shall pay Tenant's Proportionate Share of Landlord's costs therefor as part of Center Expenses. Landlord reserves the right at all times to determine the nature and extent of all Common Areas, and shall have exclusive control and management thereof (except to the extent that Majors or other parties own or control portions thereof). Landlord shall have the right to close all or a portion of the Common Areas to discourage non-customer parking or prevent a dedication thereof to public use or otherwise prevent the acquisition of public rights in such areas, and shall have the right to take such other actions as are further described in Article 21. Landlord reserves the right to use, permit or deny the use of the Common Areas for any purpose which in Landlord's sole opinion may be in the best interests of the Center, including without limitation promotions, events, exhibits, displays, shows and other activities.

Consistent with other first-class similarly situated shopping centers,

temporarily

C. **Interruption of Services or Use.** Landlord does not warrant that any services to, or any use of, the Common Areas will be free from shortages, failures, variations, or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or other utilities or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortages, failures, variations or interruptions, including without limitation loss of profits, business interruption or other incidental or consequential damages.

See Page 11A, #2

D. **Definition of Common Areas.** The term "Common Areas" herein means all areas of the Center which are now or hereafter made available by Landlord from time to time for the general use or benefit of Landlord, any Majors, other tenants at the Center, other parties to whom the right to use the Common Areas has been or is hereafter granted, and their employees and invitees, as such areas currently exist and as they may be changed from time to time. The Common Areas may, at Landlord's election, include areas in adjoining properties which are or become available to Landlord, tenants, employees and invitees of the Center and which are maintained with the Common Areas under any reciprocal easement agreement, operating agreement or other such agreement now or hereafter in effect. Without limiting the generality of the foregoing, the Common Areas may include, as designated by Landlord from time to time, any parking areas and structures (whether in tiers or at, above or below grade), mall enclosures and roofs covering Center buildings, entrances, sidewalks, streets or roadways, passageways, concourses, courts, arcades, service corridors, loading platforms and truck docks, delivery areas, escalators and elevators, ramps, stairs, landscaped and vacant areas, public bathrooms, information and telephone booths, directory signs and equipment, common lighting facilities, drainage areas, lounges and shelters, package pick-up stations, drinking fountains, public comfort and first aid stations, public meeting rooms, auditoriums, bus stops, taxi stands, and all furniture, decorations, fixtures, improvements, Systems and Equipment, and other facilities, located in or serving any of the foregoing, except to the extent reserved for use by one or more designated tenants.

1. Landlord shall use reasonable efforts when making any repairs, additions or alterations in, about or affecting the Premises or adjoining premises so as to minimize interference with Tenant's business. All new pipes required by Law to be placed in the Premises that are not within the walls or above the ceiling shall be boxed in by Landlord who shall use due diligence to have the enclosures of said repairs comply with Tenant's decor.
2. Notwithstanding anything to the contrary herein contained, if, as a result of the negligence of Landlord or any company, firm or individual operating, maintaining or supervising services to the Common Areas or any of their respective agents or employees, there is an interruption or discontinuance in the furnishing of services to the Common Areas which results in Tenant's inability to conduct its business at the Premises for a period in excess of two (2) consecutive business days, after the date of notice to Landlord from Tenant and Tenant closes the Premises, the Rent payable under this Lease shall abate from the end of such period until the earlier of such time as Tenant is again reasonably able to operate at the Premises, or Tenant resumes the conduct of its business from the Premises.

ARTICLE 13

INSURANCE, SUBROGATION, AND WAIVER OF CLAIMS

A. **Required Insurance.** Tenant shall maintain during the Term: (i) commercial general liability insurance, with a contractual liability endorsement covering Tenant's indemnity obligations under this Lease, and with limits of not less than \$2,000,000 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) per occurrence, (ii) workers' compensation insurance as required by statute, and employer's liability insurance in the amount of at least \$500,000 per occurrence, (iii) plate glass insurance covering all plate glass in the Premises and the storefront therefor, and (iv) "all-risk" property damage insurance covering Tenant's inventory, personal property, business records, furniture, floor coverings, fixtures and equipment, and all Work installed by Tenant for damage or other loss caused by fire or other casualty or cause including, but not limited to, vandalism and malicious mischief, theft, explosion, business interruption, and water damage of any type, including sprinkler leakage, bursting and stoppage of pipes. All insurance required hereunder shall be provided by responsible insurers rated at least A and 10 in the then current edition of Best's Insurance Guide and shall be licensed in the State in which the Center is located. Tenant's property damage insurance shall include full replacement cost coverage and the amount shall satisfy any coinsurance requirements under the applicable policy. Tenant's insurance shall be primary, and any insurance maintained by Landlord or any other additional insureds hereunder shall be excess and noncontributory. Landlord shall have the right to reasonably increase the amount or expand the scope of insurance to be maintained by Tenant hereunder from time to time.

See Page 12A

(provided Tenant may self-insure for plate glass coverage)

B. **Certificates, Subrogation and Other Matters.** Tenant shall provide Landlord with certificates evidencing the coverage required hereunder (and, with respect to liability coverage showing Landlord and Landlord's managing agent for the Center and others designated by Landlord as additional insureds, and with respect to leasehold improvements showing Landlord as an additional named insured). Tenant shall provide such certificates prior to the Commencement Date or Tenant's possession of the Premises or construction of improvements therein (whichever first occurs). Tenant shall provide renewal certificates to Landlord at least thirty (30) days prior to expiration of such policies. Such certificates shall state that the coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Landlord. The parties mutually hereby waive all rights and claims against each other for all losses covered by their respective insurance policies, and waive all rights of subrogation of their respective insurers. The parties agree that their respective insurance policies are now, or shall be, endorsed so that such waivers of subrogation shall not affect their respective rights to recover thereunder.

as their interests may appear

ten (10)

they will attempt to provide that

C. **Waiver of Claims.** Except for claims arising from Landlord's intentional or grossly negligent acts that are not covered by Tenant's insurance hereunder, Tenant waives all claims against Landlord for injury or death to persons, damage to property or to any other interest of Tenant sustained by Tenant or any party claiming through Tenant resulting from: (i) any occurrence in or upon the Premises, (ii) leaking of roofs, bursting, stoppage or leaking of water, gas, sewer or steam pipes or equipment, including sprinklers, (iii) wind, rain, snow, ice, flooding, freezing, fire, explosion, earthquake, excessive heat or cold, fire or other casualty, (iv) the Center, Premises, Systems or Equipment being defective, out of repair, or failing, and (v) vandalism, malicious mischief, theft or other acts or omissions of any other parties including without limitation, other tenants, contractors and invitees at the Center. To the extent that Tenant is required to or does carry insurance hereunder, Tenant agrees that Tenant's property loss risks shall be borne by such insurance, and Tenant agrees to look solely to and seek recovery only from its insurance carriers in the event of such losses; for purposes hereof, any deductible amount shall be treated as though it were recoverable under such policies.

ARTICLE 14

CASUALTY DAMAGE

A. **Restoration by Landlord.** If the Premises shall be damaged by fire or other casualty, Landlord shall use available insurance proceeds to repair the Premises, except that Landlord shall not be required to repair or replace any of Tenant's furniture, furnishings, fixtures or equipment, or any alterations or improvements in excess of any Landlord's Work under Exhibit B hereto, and Landlord's obligations shall be subject to any governmental requirements or requirements of any Lender and such Lender's right to control, apply or withhold such insurance proceeds. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof.

B. **Restoration by Tenant.** If Landlord repairs the Premises as provided herein, Tenant shall repair and replace Tenant's Work, all items required to be insured by Tenant hereunder, and all other items required to restore the Premises to the condition required under Article 11 of this Lease. Tenant shall commence such work within ten (10) days following substantial completion by Landlord of any repairs required by Landlord hereunder and shall proceed diligently therewith to completion. Tenant's work hereunder shall constitute "Work" under Article 7 and shall be subject to all of the provisions thereof. Tenant may close the Premises for business to the extent reasonably required in connection with such Work.

Tenant shall be permitted to provide the coverage required under this paragraph under Tenant's blanket insurance policy provided that Tenant and Landlord shall be afforded protection in the same manner and to the same extent Tenant, Landlord, its beneficiaries and their employees and agents would have been covered had Tenant obtained such coverage as hereinabove set forth.

C. **Abatement of Rent.** Landlord shall allow Tenant a proportionate abatement of Minimum Rent from the date of the casualty through the date ~~that Landlord substantially completes~~ ^{which is the earlier to occur of the date Tenant repairs for business in the Premises or the date which is thirty (30) days after the date} Landlord's repair obligations hereunder (or the date that Landlord would have substantially completed such repairs, but for delays by Tenant, its agents, employees, invitees, Transferees and ~~contractors~~), provided such abatement ~~shall apply only to the extent the Premises are untenable for the purposes permitted under this Lease and not used by Tenant as a result thereof, based proportionately on the square footage of the Premises so affected and not used; and~~ ^{and delivers possession of the Premises to Tenant} ~~(iii) shall not apply if Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors cause the damage.~~

D. **Termination of Lease.** Notwithstanding the foregoing to the contrary, Landlord may elect to terminate this Lease, if the Center is materially damaged by Tenant or any other occupant of the Premises, or any of their agents, employees, ~~invitees or contractors~~, or if the Center is damaged by fire or other casualty or cause such that: (a) more than 25% of the Premises is affected by the damage, (b) the damage occurs less than one year prior to the end of the Term, (c) any Lender requires that the insurance proceeds or any portion thereof be applied to the Mortgage debt (or terminates the ground lease, as the case may be), or the damage is not fully covered by Landlord's insurance policies, or (d) in Landlord's reasonable opinion, the cost of the repairs, alterations, restoration or improvement work would exceed 25% of the replacement value of the Center or of the portion thereof owned or ground leased by Landlord (whether or not the Premises are affected). In any such case, Landlord may terminate this Lease by notice to Tenant within 120 days after the date of damage (such termination notice to include a termination date providing at least thirty (30) days for Tenant to vacate the Premises). ~~Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Law to terminate this Lease by reason of damage to the Premises or Center.~~ ^{and further provided that Landlord simultaneously terminates the leases for all other similarly situated tenants}

^{See Page 13A}

ARTICLE 15

CONDEMNATION

If at least 25% of the rentable area of the Premises shall be taken by power of eminent domain or condemned by a competent authority or by conveyance in lieu thereof for public or quasi-public use ("Condemnation"), including any temporary taking for a period of one year or longer, this Lease shall terminate on the date possession for such use is so taken. If: (i) less than 25% of the Premises is taken, but the taking includes a material portion of the Center or of the portion thereof owned or ground leased by Landlord, or (ii) the taking is temporary and will be in effect for less than one year but more than thirty (30) days, then in either such event, Landlord ~~may elect to terminate~~ ^{or Tenant} this Lease upon at least thirty (30) days' prior written notice to ~~Tenant~~. ~~The parties further agree~~ ^{the other} that: (a) if this Lease is terminated, all Rent shall be apportioned as of the date of such termination or the date of such taking, whichever shall first occur, (b) if the taking is temporary, Rent shall be abated for the period of the taking (but the Term shall not be extended thereby), and (c) if this Lease is not terminated but any part of the Premises is taken, the Minimum Rent, Breakpoint, Taxes, Center Expenses, and Promotion Fund Charge shall be proportionately abated based on the square footage of the Premises so taken. Landlord shall be entitled to receive the entire award or payment in connection with such Condemnation and Tenant hereby assigns to Landlord any interest therein for the value of Tenant's unexpired leasehold estate or any other claim and waives any right to participate therein, except that Tenant shall have the right to file any separate claim available to Tenant for moving expenses and any taking of Tenant's personal property, provided such award is separately payable to Tenant and does not diminish the award available to Landlord or any Lender.

ARTICLE 16

RETURN OF POSSESSION

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall surrender possession of the Premises in broom-clean condition and good repair, ~~free of debris,~~ ^{reasonable wear, tear, excepted,} and otherwise in the condition required under Article 11, and shall ensure that all signs, vaults, safes, shelving, showcases, mirrors, and movable trade fixtures and personal property have been removed therefrom (subject to Article 36) and that any damage caused thereby has been repaired. All leasehold improvements and other fixtures, such as light fixtures and HVAC equipment, plumbing fixtures, hot water heaters, fire suppression and sprinkler systems, wall coverings, carpeting and drapes, in or serving the Premises, whether installed by Tenant or Landlord, shall be Landlord's property and shall remain, all without compensation, allowance or credit to Tenant. However, if prior to such termination or within thirty (30) days thereafter Landlord so directs by notice, Tenant shall promptly remove such of the foregoing items as are designated in such notice and repair any damage to the Premises caused by such removal. If Tenant shall fail to perform any repairs or restoration, or fail to remove any items from the Premises as required hereunder, Landlord may do so, and Tenant shall pay Landlord the cost thereof upon demand. All property removed from the Premises by Landlord hereunder may be handled, discarded or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. All such property shall at Landlord's option be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. If Landlord arranges for storage of any such property, Landlord shall have a lien against such property for costs incurred in removing and storing the same.

If fifty percent (50%) or more of the rentable square footage of the Premises is damaged or destroyed during the last eighteen (18) months of the Term, Tenant shall have the option (except in cases of Tenant's willful misconduct) to terminate this Lease upon giving notice to Landlord of exercise thereof within thirty (30) days after the date of such damage or destruction, and if Tenant exercises its option to terminate, then Tenant shall not have to rebuild the Premises so long as Tenant tenders to Landlord a sum sufficient to restore the Premises to the condition to which Tenant would be required to restore hereunder but for the termination.

ARTICLE 17

HOLDING OVER

all charges and
Percentage Rent and
150%

Tenant shall pay Landlord 200% of the amount of Rent then applicable prorated on a per diem basis for each day Tenant shall retain possession of the Premises or any part thereof after expiration or earlier termination of this Lease, together with all damages sustained by Landlord on account thereof. The foregoing provisions shall not serve as permission for Tenant to hold-over, nor serve to extend the Term (although Tenant shall remain a tenant at sufferance, bound to comply with all provisions of this Lease until Tenant vacates the Premises). Landlord shall have the right, at any time after expiration or earlier termination of this Lease or Tenant's right to possession, to reenter and possess the Premises and remove all property and persons therefrom, and Landlord shall have such other remedies for holdover as may be available to Landlord under other provisions of this Lease or applicable Laws.

Minimum

with judicial process

ARTICLE 18

SUBORDINATION, ATTORNMEN AND MORTGAGEE PROTECTION

This Lease is subject and subordinate to all Mortgages now or hereafter placed upon the Center, and all other encumbrances and matters of public record applicable to the Center, including without limitation, any reciprocal easement or operating agreements, covenants, conditions and restrictions (and Tenant shall not act or permit the Premises to be operated in violation thereof). If any foreclosure or power of sale proceedings are initiated by any Lender or a deed in lieu is granted (or if any ground lease is terminated), Tenant agrees, upon written request of any such Lender or any purchaser at such sale, to attorn and pay Rent to such party and to execute and deliver any instruments necessary or appropriate to evidence or effectuate such attornment. In the event of attornment, no Lender shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (prior to such Lender becoming Landlord under such attornment); (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such Lender, or (iii) bound by any future modification of this Lease not consented to by such Lender. Any Lender may elect to make this Lease prior to the lien of its Mortgage, and if the Lender under any prior Mortgage shall require, this Lease shall be prior to any subordinate Mortgage; such elections shall be effective upon written notice to Tenant. Tenant agrees to give any Lender by certified mail, return receipt requested, a copy of any notice of default served by Tenant upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of leases, or otherwise) of the name and address of such Lender. Tenant further agrees that if Landlord shall have failed to cure such default within the time permitted Landlord for cure under this Lease, any such Lender whose address has been so provided to Tenant shall have an additional period of thirty (30) days in which to cure (or such additional time as may be required due to causes beyond such Lender's control, including time to obtain possession of the Center by power of sale or judicial action). The provisions of this Article shall be self-operative; however, Tenant shall execute such documentation as Landlord or any Lender may request from time to time in order to confirm the matters set forth in this Article in recordable form. To the extent not expressly prohibited by Law, Tenant waives the provisions of any Law now or hereafter adopted which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease or Tenant's obligations hereunder if such foreclosure or power of sale proceedings are initiated, prosecuted or completed.

provided Tenant shall not be required to subordinate to a Mortgage that is entered into after the date of this Lease unless Tenant is furnished with a non-disturbance agreement from the Lender on Lender's standard form or in a form which is otherwise acceptable to the Lender, provided furnishing such non-disturbance agreement shall not be a condition to Tenant's subordination to the Mortgage if Tenant is in default

ARTICLE 19

ESTOPPEL CERTIFICATE

and Landlord

Tenant shall from time to time, within fifteen (15) days after written request from Landlord, execute, acknowledge and deliver a statement: (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect (or if this Lease is claimed not to be in force and effect, specifying the ground therefor) and the dates to which the Minimum Rent, Percentage Rent and other charges hereunder have been paid, and the amount of any Security Deposit, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) certifying such other matters as Landlord may reasonably request, or as may be requested by Landlord's current or prospective Lenders, insurance carriers, auditors, and prospective purchasers. Any such statement may be relied upon by any such parties. If Tenant shall fail to execute and return such statement within the time required herein, Tenant shall be deemed to have agreed with the matters set forth therein, and Landlord acting in good faith shall be authorized as Tenant's attorney-in-fact to execute such statement on behalf of Tenant (which shall not be in limitation of Landlord's other remedies therefor).

(the other

(the

(the requesting party

of Landlord or Tenant as is appropriate

ARTICLE 20

ASSIGNMENT AND SUBLETTING

A. **Transfers.** Tenant acknowledges that Landlord has entered this Lease in order to obtain the unique attraction of Tenant's trade name, the unique services and/or merchandising mix and product lines associated with Tenant's business and the unique combination of Tenant's apparent operating expertise and financial integrity. Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion: (i) assign, mortgage, pledge, hypothecate, encumber, permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, by operation of law or otherwise, (ii) sublet the Premises or any part thereof, or extend, renew or modify any sublease, or (iii) permit the use of the Premises by any parties other than Tenant and its employees, whether as licensee, concessionaire, franchisee or otherwise (all of the foregoing are hereinafter referred to collectively as "Transfers" and any party to whom any Transfer is made or sought to be made is hereinafter referred to as a "Transferee"). Any Transfer made without complying with this Article shall, at Landlord's option, be null, void and of no effect (which shall not be in limitation of Landlord's other remedies). Whether or not Landlord grants consent, Tenant shall pay \$750.00 towards Landlord's review and processing expenses. ~~and~~

See Page 15A, #1

~~well as any reasonable legal fees incurred by Landlord in connection therewith.~~

except with respect to a Transfer permitted without Landlord's consent pursuant to this Lease

B. **Procedure.** If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord, which notice shall include: (a) a reference to the Center, Premises and this Lease, (b) the name and address of the proposed Transferee and a detailed description of the business operation proposed to be conducted in the Premises, (c) the proposed effective date (which shall not be less than 45 nor more than 180 days after Tenant's notice), (d) the terms of the proposed Transfer, a copy of all documentation pertaining thereto, and a detailed description of any alterations to the Premises required in connection with the Transfer, (e) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, (f) names, addresses, periods of ownership and operation, and reasonable description of all other businesses owned and operated by the Transferee then or within the three (3) previous years, and (g) business and character references and any other information to enable Landlord to determine the retail business experience, financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business, and such other information as Landlord may reasonably require.

C. **Consent.** If Landlord consents to a Transfer: (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, including without limitation, the purposes for which the Premises shall be used under Article 1, (b) Tenant shall remain fully liable for all obligations under this Lease, including without limitation, those obligations arising before and after the Transfer, and any assignee shall expressly assume all of Tenant's obligations, (c) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, and (d) Tenant shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord. Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (i) treat such sublease as cancelled and repossess the Premises by any lawful means, or (ii) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If Tenant shall Default hereunder, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease).

D. **Recapture.** Notwithstanding anything to the contrary contained in this Article, Landlord shall have the option, by giving notice to Tenant within thirty (30) days after receipt of Tenant's notice of any proposed Transfer, to recapture the Premises. Such recapture notice shall cancel and terminate this Lease as of the date stated in Tenant's notice as the effective date of the proposed Transfer, unless Tenant revokes Tenant's notice of proposed Transfer by notice to Landlord within ten (10) days after Landlord's notice of recapture.

except with respect to a Transfer permitted without Landlord's consent pursuant to this Lease

E. **Increase in Minimum Rent.** ~~If Landlord consents to a Transfer, the monthly Minimum Rent shall be increased on the effective date of the Transfer to the greater of: (i) an amount equal to the average total monthly Minimum Rent and Percentage Rent payable by Tenant during the thirty-six (36) months prior thereto (or such shorter period as may have occurred since the Commencement Date), or (ii) an amount equal to the Minimum Rent then in effect multiplied by a fraction, the numerator of which is the GPI then in effect and the denominator of which is the GPI in effect on the Commencement Date; provided, in no event shall the Minimum Rent ever be reduced below the rate of Minimum Rent then in effect or otherwise payable under this Lease. If the Minimum Rent is increased hereunder, there shall be a proportionate adjustment to the Breakpoint.~~

F. **Certain Transfers.** For purposes of this Lease, the term "Transfer" shall also include the following, whether accomplished directly or indirectly: (a) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a majority of the partners, or a transfer of a majority of partnership interests, in the aggregate on a cumulative basis, or the dissolution of the partnership, and (b) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), the: (i) dissolution, merger, consolidation or other reorganization of Tenant, (ii) sale or other transfer of more than a cumulative aggregate of 50% of the voting shares of Tenant (other than to immediate family members by reason of gift or death) or (iii) sale, mortgage, hypothecation or pledge of more than a cumulative aggregate of 50% of Tenant's net assets.

See Page 15A, #2, #3 and #4

1. A. Notwithstanding anything to the contrary herein contained, Landlord agrees that Tenant may assign this Lease, or sublet the Premises, to Tenant's parent corporation or to any subsidiary or Affiliate (as hereinafter defined) of Tenant or Tenant's parent without obtaining the prior written consent of Landlord, provided that the following conditions are met:
 - (a) that such assignment or subletting shall in no manner relieve Tenant or Guarantor of any of the obligations undertaken by it under this Lease or the Guaranty;
 - (b) that such permitted assignee or subtenant of Tenant to which this Lease may be assigned or the Premises sublet agrees by a written instrument reasonably satisfactory to Landlord to be bound by all the conditions, obligations and agreements contained in this Lease;
 - (c) that a fully executed copy of such assignment or sublease be delivered to Landlord within thirty (30) days of the effective date of such assignment or sublease; and
 - (d) that any assignee or subtenant in possession of the Premises shall, during such possession for the Term or any extension thereof, remain the parent or a wholly-owned subsidiary or Affiliate of Tenant.

As used herein the term Affiliate shall mean an entity which (i) directly or indirectly controls Tenant or (ii) is under the direct or indirect control of Tenant or (iii) is under common direct or indirect control with Tenant. Control shall mean ownership of fifty percent (50%) or more of the voting securities or rights of the controlled entity.
- B. Notwithstanding the foregoing, Tenant shall have the right at any time and from time to time, without the consent of Landlord, to enter into license or concession agreements for the use of a portion of the Premises as departments within Tenant's Permitted Use, aggregating not more than fifteen percent (15%) of the square foot sales area of the Premises; provided, however, that such space shall be operated by any such licensee or concessionaire as departments under the control, and only under the permitted Trade Name, of Tenant. The Gross Sales of such licensee or concessionaire shall be included in the Gross Sales of Tenant for purposes of computing Percentage Rent payable under this Lease. Such licensee or concessionaire shall not be required to assume Tenant's obligations under this Lease but shall be subject to the terms hereof.
2. Notwithstanding any other provision contained in this Lease, Tenant shall at all times have the right to assign this Lease, or sublease any portion of the Premises for any period of time on such terms as Tenant and such assignee and/or sublessee may enter into but which do not alter the requirements or duties of the Tenant under this Lease, without any consent from Landlord, provided that either: (1) the assignee or sublessee is a corporation, partnership or other entity which is controlled by Tenant; or (2) the assignee or sublessee is a corporation, partnership or other entity which is controlled by the present stockholders of Tenant and/or any member or members of the family (as hereinafter defined) of a present stockholder of Tenant. Furthermore, notwithstanding any other provision of this Lease, any transfer of stock of Tenant between any present stockholders of Tenant, and/or a member of the family of any stockholder of Tenant, and/or any corporation, partnership or entity or person who could become an assignee or subtenant of this Lease without the consent of Landlord, as provided in this paragraph, shall not be deemed an assignment of this Lease by Tenant for the purposes of any provision of this Lease. No such assignment or substitution shall (i) in any manner relieve Tenant or Guarantor of any of the obligations undertaken by it under this Lease or the Guaranty and (ii) that at all times the management of the business of Tenant remains within the family of the stockholders as of the date hereof. For the purposes of this paragraph, "control" of a corporation, partnership or other entity shall be governed by the ownership, either directly or beneficially, of a majority of the voting stock and/or voting rights of said corporation, partnership or entity. The term "family", as used in this paragraph, shall include the spouse, child, grandchild, spouse of a child, and/or spouse of a grandchild of any present stockholder of Tenant, whether or not such member of the family is now in being and/or is now a spouse of any stockholder, stockholder's child and/or stockholder's grandchild.
3. Notwithstanding anything contained in this Lease to the contrary, Tenant may not assign, sublet or otherwise transfer this Lease or any interest therein without the consent of the Landlord if such assignment, subletting or transfer would release the Guarantor of any liability under the terms of the Guaranty.
4. A registered offering of the stock of Tenant shall not be deemed a Transfer under this Lease provided (i) the registered public offering applies to all stores of Tenant, its parent, subsidiaries and affiliates, (ii) there is no material change in Tenant's management on account thereof, (iii) Tenant is not in default under this Lease at the time of the public offering, and (iv) Tenant gives Landlord thirty (30) days' prior notice of such registered public offering.

ARTICLE 21

RIGHTS RESERVED BY LANDLORD

Except to the extent expressly limited herein, Landlord reserves full rights to control the Center (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including more particularly, but without limitation, the following rights:

A. Access to Premises. Landlord and its authorized representatives may: (i) inspect the Premises, (ii) exhibit the Premises to current and prospective tenants, purchasers, lenders, insurers, governmental authorities, and brokers, (iii) place in and upon the Premises or such other places as may be determined by Landlord "For Rent" signs or notices if Tenant shall abandon or vacate the Premises, or at any time during the last 120 days of the Term, (iv) enter or permit entry to the Premises in emergencies or for any other reasonable purpose, or for the purpose of exercising any other rights or remedies expressly granted or reserved to Landlord under this Lease or applicable Law, or to make any repairs, maintenance, improvements or alterations, or other work in or about the Center, and (v) in connection therewith, erect scaffolding and temporary barricades and take into, upon or through the Premises, materials required to perform the same, and if reasonably required, move Tenant's leasehold improvements, fixtures, property and equipment. However, in connection with entering the Premises to exercise any of the foregoing rights, Landlord shall take reasonable steps to minimize any interference with Tenant's business, and following completion of the work, return Tenant's leasehold improvements, fixtures, property and equipment to the original locations and condition to the fullest extent reasonably possible.

Except as otherwise provided for herein,

upon at least twenty-four (24) hours advance notice to Tenant which notice may be given by oral or written notice to Tenant's store manager or comparable person except in emergencies in which no notice shall be required

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B. Reserved Areas. Landlord reserves all rights to use (or grant other parties the right to use) and Tenant shall have no right, title or interest in: (i) the roof of the Center, (ii) exterior non-storefront portions of the Premises (including, without limitation, demising walls and outer walls of the area of the Center in which the Premises are located), (iii) air rights above the Premises and rights to the land and improvements below the floor level of the Premises, and (iv) areas within the Premises necessary for utilities, services, safety and operation of the Center that will not materially interfere with Tenant's use of the Premises, including the Systems and Equipment, fire stairways, and space between the suspended ceiling of the Premises and the slab of the floor or roof of the Center thereabove. If the Premises does not contain a suspended ceiling, the Premises shall extend vertically to the height where, in Landlord's reasonable opinion, a suspended ceiling would otherwise exist, and Landlord reserves the right to install a suspended ceiling and use the area thereabove.

adversely or

and Tenant's

C. Remeasurement. Landlord reserves the right to remeasure the Premises at any time prior to the end of the second Lease Year. All measurements shall be made from the outside of exterior walls, shaft walls or corridors or the center of any common walls, without deduction for columns, stairs or other interior construction or equipment, and shall include any basements and mezzanines in the Premises. If any remeasurement determines that the Premises contain a different number of square feet than set forth in Article 1, the Minimum Rent, Breakpoint Center Expenses, Taxes, Promotion Fund Charge, Media Fund, and Security Deposit shall be adjusted retroactively and prospectively on a prorata basis to reflect the number of square feet determined by such remeasurement. Upon either party's request, the revised square footage shall be confirmed in an amendment to this Lease signed by both parties.

and Tenant

D. Access to Center. Landlord may prevent or restrict access to the Center or designated portions thereof by such security procedures as Landlord may from time to time impose on days and hours when the Center is, or portions thereof are, closed for business to the public. Landlord reserves the right to control, prevent access by and remove, any person whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Center, or who in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs.

E. Emergency Closings. Landlord shall have the right (but not the obligation) to limit or prevent access to all or any portion of the Center, shut down elevator and escalator service, activate emergency controls or procedures, or otherwise take such action or preventive measures deemed necessary by Landlord for the safety of tenants or other occupants of the Center or the protection of the Center or other property located thereon or therein, in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public excitement or other dangerous condition, or threat thereof.

F. Other Tenants. Landlord reserves the right to lease any portion of the Center to such other tenants as Landlord, in Landlord's sole discretion, deems appropriate, whether or not engaged in the same or similar business for which Tenant is permitted to use the Premises under this Lease. Tenant acknowledges that Landlord has made no representations as to the presence of any specific tenant or number or types of tenants at the Center as of or after the Commencement Date, hours or days that such other tenants shall or may be open for business, or gross sales which may be achieved by Tenant or any other tenants at the Center. A vacation or abandonment of its premises or cessation of business in the Center by any other tenant or occupant shall not release or excuse Tenant from Tenant's obligations under any provision of this Lease.

except as otherwise set forth herein

See Page 16A

G. Insufficient Gross Sales. If for any Lease Year commencing with the third Lease Year, Tenant's Gross Sales are less than the Breakpoint for such Lease Year, Landlord reserves the right to terminate this Lease. Landlord may exercise such termination right by giving notice to Tenant within 100 days after Landlord receives the final statement of Tenant's Gross Sales for such Lease Year (or 100 days after Landlord completes its audit of such Gross Sales). Such termination shall be effective ninety (90) days after such notice.

If Tenant's Gross Sales for the second full Lease Year (the "Measuring Year") are less than Nine Hundred Fifty Thousand and No/100 Dollars (\$950,000.00), Tenant may terminate the Term by notice to Landlord, said termination to be effective 120 days after the notice. Tenant shall give said notice with Tenant's certified statement of Gross Sales for the Measuring Year, but in no event later than sixty (60) days after the end of the Measuring Year. If Tenant fails to submit its certified statement of Gross Sales for the Measuring Year within the time provided for above, Tenant shall not have the right to terminate the Term pursuant hereto. If Tenant is not open for business any day of the Measuring Year for all hours Tenant is required to be open for said day, for purposes of Tenant's termination right hereunder Tenant's Gross Sales for said day shall be the higher of (i) the actual Gross Sales for said day and (ii) 125% of the Percentage Rent Breakpoint (on a per diem basis) for the Measuring Year.

Except as otherwise provided for herein.

other than in the Premises

See Page 17A

H.

Changes to the Center.

Landlord reserves the right to: (i) change the name of the Center and the address or designation of the Premises or the building in which the Premises are located, (ii) install, maintain, alter and remove signs on or about the exterior and interior of the Center, (iii) add land, easements or other interests to or eliminate the same from the Center, and grant easements and other interests and rights in the Center to other parties, (iv) add, alter, expand, reduce, eliminate, relocate or change the shape, size, location, character, design, appearance, use, number or height of any permanent or temporary buildings, structures, improvements, surface parking, subterranean and multiple level parking decks, kiosks, planters, pools, waterfalls, parking areas, driveways, landscaped areas and other Common Areas, change the striping of parking areas and direction and flow of traffic, and convert Common Areas to leasable areas and leasable areas to Common Areas, (v) enclose any mall or other area, or remove any such enclosure, or add one or more additional levels or stories to the Center or any portion thereof, whether or not the Premises are contained therein, and add structural support columns that may be required within the Premises or Common Areas, (vi) relocate any HVAC equipment serving the Premises installed on the roof or other area outside the Premises if Landlord constructs an additional story or level or otherwise alters the Center, and (vii) in connection with the foregoing matters, or with any other inspections, repairs, maintenance, improvements or alterations in or about the Center, or as a result of any casualty, incident, strike, condemnation, act of God, Law or governmental requirement or request, or any other cause, erect scaffolding, barricades, and other structures reasonably required in, or otherwise close, Common Areas or portions thereof, including but not limited to public entry ways and areas, restrooms, stairways, escalators, elevators and corridors. However, in connection with exercising such rights, Landlord shall: (a) take reasonable steps to minimize or avoid any denial of access to the Premises except when necessary on a temporary basis, (b) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises, unless required by Laws or other causes beyond Landlord's reasonable control (and in the event of any permanent material reduction, the Minimum Rent, Breakpoint, Center Expenses, Taxes, and Promotion Fund Charge shall be proportionately reduced), (c) at Landlord's expense, move Tenant's entrance doorway if access thereto is materially impaired, and (d) if Landlord enters the Premises in connection with any of the foregoing matters, comply with Paragraph A above.

I. Termination or Relocation.

Landlord reserves the right to terminate this Lease if Landlord determines that such termination is required in order to demolish or substantially renovate or change the use or character of the Center or the building or portion thereof in which the Premises are located; provided: (i) Landlord shall give Tenant at least ninety (90) days' prior notice, and (ii) Landlord shall pay the direct, out-of-pocket, reasonable expenses of Tenant in moving from the Premises to any other location of Tenant within five (5) miles thereof, and an amount equal to the unamortized costs of Tenant's improvements and non-removable fixtures in the Premises on the effective termination date using straight-line amortization over ten (10) years. Landlord also reserves the right to substitute for the Premises other premises therein referred to as the "new premises" at the Center, provided: (a) the new premises shall be similar to the Premises in square footage, and Landlord shall improve or reimburse Tenant's direct, out-of-pocket reasonable expenses of improving the new premises so that it is substantially similar to the Premises, (b) Landlord shall give Tenant at least thirty (30) days' notice before making such change, and the parties shall execute an amendment to the Lease confirming the change within thirty (30) days after either party shall request the same, and (c) if Tenant shall already have taken possession of the Premises, Landlord shall pay the direct, out-of-pocket, reasonable expenses of Tenant in moving from the Premises to the new premises. Landlord may also terminate this Lease if any rent control law or ordinance is enacted which requires reductions in any Rent payable hereunder or which prohibits, or reduces the amount of, any increase in Rent provided for in this Lease.

ARTICLE 22

LANDLORD'S REMEDIES

A. Default.

The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Paragraph (B), below: (i) failure to make when due any payment of Rent, unless such failure is cured within ~~five (5)~~ ten (10) days after notice, (ii) failure to observe or perform any term or condition of this Lease other than the payment of Rent, unless such failure is cured within any period of time following notice expressly provided in other Articles hereof, or otherwise within a reasonable time, ~~but in no event more than fifteen (15) days following notice.~~ provided that Tenant commences to cure the Default within ~~Unavoidable Delays as described in Article 20, (iii) (a) making by Tenant or any guarantor of this Lease ("Guarantor") of any general assignment for the benefit of creditors, (b) filing by or against Tenant or any Guarantor of a petition to have Tenant or such Guarantor adjudged a bankrupt or a petition for reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant or such Guarantor, the same is dismissed within sixty (60) days), (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, (e) Tenant's or any Guarantor's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debt, (f) Tenant's or any Guarantor's insolvency or admission of an inability to pay its debts as they mature, or (iv) a violation by Tenant or any affiliate of Tenant under any other lease or agreement~~ and thereafter diligently and in good faith pursues the cure to completion and does cure the Default within sixty (60) days

ten (10)

provided that Tenant commences to cure the Default within

one hundred twenty (120)

In the exercise of its rights hereunder, Landlord will not (a) alter the traffic pattern in such manner as would deny any access by Tenant's customers to exits, and/or the department stores, (b) materially adversely interfere with the visibility of the Premises from the mall area immediately adjacent to the Premises or (c) construct a permanent kiosk of any kind within the extensions of the side lease lines of the Premises that is within ten (10) feet of the Premises, in any instance, without Tenant's prior consent, which consent shall not be unreasonably withheld or delayed.

with Landlord relating to the Center which is not cured within the time permitted for cure thereunder. Failure by Tenant to comply with the same term or condition of this Lease on two occasions during any twelve month period shall cause any failure to comply with such term or condition during the succeeding twelve month period, at Landlord's option, to constitute an incurable Default. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law; provided, Landlord may at any time and from time to time elect to comply with such notice and cure periods as may be provided by Law in lieu of the notice and cure periods provided herein.

B. Remedies. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth to the extent permitted by Law, which shall be distinct, separate and cumulative with and in addition to any other right or remedy allowed under any Law or other provisions of this Lease:

(1) Landlord may terminate Tenant's right of possession, reenter and repossess the Premises by detainer suit, summary proceedings or other lawful means, with or without terminating this Lease (and if applicable Law permits, and Landlord shall not have expressly terminated this Lease in writing, any such action shall be deemed a termination of Tenant's right to possession only). In such event, Landlord may recover from Tenant: (i) any unpaid Rent as of the termination date, (ii) the amount by which: (a) any unpaid Rent which would have accrued after the termination date during the balance of the Term exceeds (b) the reasonable rental value of the Premises under a lease substantially similar to this Lease for the balance of the Term, taking into account among other things, the condition of the Premises, market conditions and the period of time the Premises may reasonably remain vacant before Landlord is able to re-lease the same to a suitable replacement tenant, and Costs of Reletting (as defined in Paragraph I below) that Landlord may incur in order to enter such replacement lease, and (iii) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease. For purposes of computing the amount of Rent herein that would have accrued after the termination date, Tenant's obligation for Percentage Rent shall be projected based on Tenant's average annual Gross Sales for the 36 months (or lesser period, if 36 months of the Term have not expired) preceding Tenant's Default, and Tenant's obligations for Taxes, Center Expenses, and Promotion and Media Fund Charges shall be projected, based upon the average rate of increase, if any, in such items from the Commencement Date through the termination date. The amounts computed in accordance with the foregoing subclauses (a) and (b) shall both be discounted in accordance with accepted financial practice at the rate of ~~four percent (4%)~~ eight percent (8%) per annum to the then present value, pursuant to the appropriate legal process.

(2) Landlord may terminate Tenant's right of possession, reenter and repossess the Premises by detainer suit, summary proceedings or other lawful means, with or without terminating this Lease (and if applicable Law permits, and Landlord shall not have expressly terminated this Lease in writing, any such action shall be deemed a termination of Tenant's right to possession only). In such event, Landlord may recover from Tenant: (i) any unpaid Rent as of the date possession is terminated, (ii) any unpaid Rent which accrues during the Term from the date possession is terminated through the time of judgment (or which may have accrued from the time of any earlier judgment obtained by Landlord), less any consideration received from replacement tenants as further described and applied pursuant to Paragraph I, below, and (iii) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease, including without limitation, all Costs of Reletting (as defined in Paragraph I). Tenant shall pay any such amounts to Landlord as the same accrue or after the same have accrued from time to time upon demand. At any time after terminating Tenant's right to possession as provided herein, Landlord may terminate this Lease as provided in clause (1) above by written notice to Tenant, and Landlord may pursue such other remedies as may be available to Landlord under this Lease or applicable Law.

C. Mitigation of Damages. If Landlord terminates this Lease or Tenant's right to possession, ~~Landlord shall have no obligation to mitigate Landlord's damages except to the extent required by applicable Law.~~ use reasonable efforts If Landlord has not terminated this Lease or Tenant's right to possession, Landlord shall have no obligation to mitigate under any circumstances and may permit the Premises to remain vacant or abandoned. If Landlord is required by applicable Law to mitigate damages under this Lease: (a) Landlord shall be required only to use reasonable efforts to mitigate, which shall not exceed such efforts as Landlord generally uses to lease other space at the Center, (b) Landlord will not be deemed to have failed to mitigate if Landlord leases any other portions of the Center before reletting all or any portion of the Premises, and (c) any failure to mitigate as described herein with respect to any period of time shall only reduce the Rent and other amounts to which Landlord is entitled hereunder by the reasonable rental value of the Premises during such period, taking into account the factors described in clause B(1), above. In recognition that the value of the Center depends on the rental rates and terms of leases therein, Landlord's rejection of a prospective replacement tenant based on an offer of rentals below Landlord's published rates for new leases of comparable space at the Center at the time in question, or at Landlord's option, below the rates provided in this Lease, or containing terms less favorable than those contained herein, shall not give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages. or the provisions of this paragraph

D. Reletting. If this Lease or Tenant's right to possession is terminated, or Tenant vacates or abandons the Premises, Landlord may: (i) enter and secure the Premises, change the locks, install barricades, remove any improvements, fixtures or other property of Tenant therein, perform any decorating, remodeling, repairs, alterations, improvements or additions and take such other actions as Landlord shall determine in Landlord's sole discretion to prevent damage or

deterioration to the Premises or prepare the same for reletting, and (iii) relet all or any portion of the Premises (separately or as part of a larger space), for any rent, use or period of time (which may extend beyond the Term hereof), and upon any other terms as Landlord shall determine in Landlord's sole discretion, directly or as Tenant's agent (if permitted or required by applicable Law). The consideration received from such reletting shall be applied pursuant to the terms of Paragraph I hereof, and if such consideration, as so applied, is not sufficient to cover all Rent and damages to which Landlord may be entitled hereunder, Tenant shall pay any deficiency to Landlord as the same accrues or after the same has accrued from time to time upon demand, subject to the other provisions hereof.

E. **Specific Performance, Collection of Rent and Acceleration.** Landlord shall at all times have the right without prior demand or notice except as required by applicable Law to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond in connection therewith, and (ii) sue for and collect any unpaid Rent which has accrued. ~~Notwithstanding anything to the contrary contained in this Lease, to the extent not expressly prohibited by applicable Law, in the event of any Default by Tenant, Landlord may terminate this Lease or Tenant's right to possession and accelerate and declare that all Rent reserved for the remainder of the Term shall be immediately due and payable (in which event, Tenant's obligations for Percentage Rent, Taxes, Center Expenses, and Promotion and Media Fund Charges herein that would have accrued thereafter shall be projected in the manner described in Section D(1), above); provided the Rent so accelerated shall be discounted in accordance with accepted financial practice at the rate of four percent (4%) per annum to the then present value; and Landlord shall, after receiving payment of the same from Tenant, be obligated to turn over to Tenant any actual net reletting proceeds (net of all Costs of Reletting) thereafter received during the remainder of the Term, up to the amount so received from Tenant pursuant to this provision.~~

See Page 19A

F. **Late Charges and Interest.** Tenant shall pay, as additional Rent, a service charge of Two Hundred Dollars (\$200.00) for bookkeeping and administrative expenses, if any portion of Rent is not received when due. If Landlord rightfully issues a Notice of Default to Tenant, Tenant shall pay Landlord an additional service charge in the amount of One Hundred Dollars (\$100.00). In addition, any Rent not paid when due shall accrue interest from the due date at the Default Rate until payment is received by Landlord. Such service charges and interest payments shall not be deemed consent by Landlord to late payments, nor a waiver of Landlord's right to insist upon timely payments at any time, nor a waiver of any remedies to which Landlord is entitled as a result of the late payment of Rent.

G. **Landlord's Cure of Tenant Defaults.** If Tenant fails to perform any obligation under this Lease for five (5) days after notice thereof by Landlord (except that no notice shall be required in emergencies), Landlord shall have the right (but not the duty), to perform such obligation on behalf and for the account of Tenant. In such event, Tenant shall reimburse Landlord upon demand, as additional Rent, for all expenses incurred by Landlord in performing such obligation together with an amount equal to fifteen percent (15%) thereof for Landlord's overhead, and interest thereon at the Default Rate from the date such expenses were incurred. Landlord's performance of Tenant's obligations hereunder shall not be deemed a waiver or release of Tenant therefrom.

any twelve (12) month period

for the next following twelve (12) months

H. **Bad Rent Checks.** ~~If during the Term, as it may be extended, Landlord receives two (2) or more checks from Tenant which are returned by Tenant's bank for insufficient funds, Landlord may require that all checks thereafter be bank certified or cashier's checks (without limiting Landlord's other remedies). All bank service charges resulting from any bad checks shall be borne by Tenant.~~

I. **Other Matters.** No re-entry or repossession, repairs, changes, alterations and additions, reletting, acceptance of keys from Tenant, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or accept a surrender of the Premises, nor shall the same operate to release the Tenant in whole or in part from any of the Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord or its agent to Tenant. Landlord may bring suits for amounts owed by Tenant hereunder or any portions thereof, as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor shall the same serve as any defense to any subsequent suit brought for any amount not theretofore reduced to judgment. Landlord may pursue one or more remedies against Tenant and need not make an election of remedies until findings of fact are made by a court of competent jurisdiction. All rent and other consideration paid by any replacement tenants shall be applied, at Landlord's option: first, to the Costs of Reletting, second, to the payment of all costs of enforcing this Lease against Tenant or any Guarantor, third, to the payment of all interest and service charges accruing hereunder, fourth, to the payment of Rent theretofore accrued, and the residue, if any, shall be held by Landlord and applied to the payment of other obligations of Tenant to Landlord as the same become due (with any remaining residue to be retained by Landlord). "Costs of Reletting" shall include without limitation, all reasonable costs and expenses incurred by Landlord for any repairs, maintenance, changes, alterations and improvements to the Premises (whether to prevent damage or to prepare the Premises for reletting), brokerage commissions, advertising costs, attorneys' fees, any economic incentives given to enter leases with replacement tenants, and costs of collecting rent from replacement tenants. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues after the date of any Default by Tenant. The times set forth herein for the curing of violations by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Law to redeem or reinstate this Lease or Tenant's right to possession after this Lease or Tenant's right to possession is terminated based on a Default by Tenant.

Notwithstanding anything contained herein to the contrary, on the first two occasions in any Lease Year that any sum or charge due under this Lease is delinquent, Landlord agrees that the service charge, the additional service charge and interest shall not begin to accrue on such unpaid sum or charge until ten (10) days after written notice to Tenant that such is due; provided, however, if the unpaid sum or charge is not paid within the ten (10) day period, interest and the service charge shall be deemed to have accrued on the first day such was due. Interest and the service charge shall begin to accrue on any subsequent payment which is not timely made during said Lease Year from the date it becomes due.

ARTICLE 23

LANDLORD'S RIGHT TO CURE

If Landlord shall fail to perform any obligation under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after written notice thereof by Tenant or such additional time as may be required due to Unavoidable Delays. If Landlord shall fail to cure within the time permitted for cure herein, Landlord shall be subject to such claims for damages and remedies as may be available to Tenant (subject to the other provisions of this Lease); provided, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, set off, or abate Rent.

ARTICLE 24

INDEMNIFICATION

Except to the extent arising from the intentional or ~~grossly~~ negligent acts of Landlord or Landlord's agents or employees, Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including without limitation, court costs and attorneys' fees arising from or relating to any violation of Law, loss of life, diminution in value of the Center, damage or injury to persons, property or business occurring in, about or from the Premises, or directly or indirectly caused by or in connection with any violation of this Lease or use of the Premises or Center by, or any other act or omission of, Tenant, any other occupant of the Premises, or any of their respective agents, employees, invitees or contractors. Without limiting the generality of the foregoing, Tenant specifically acknowledges that the indemnity undertaking herein shall apply to claims in connection with or arising out of any "Work" as described in Article 7, the use or consumption of any utilities in the Premises under Article 10, any repairs or other work by or for Tenant under Article 11 and the transportation, use, storage, maintenance, generation, manufacturing, handling, disposal, release or discharge of any "Hazardous Material" as described in Article 26 (whether or not such matters shall have been theretofore approved by Landlord), except to the extent that any of the same arises from the intentional or ~~grossly~~ negligent acts of Landlord or Landlord's agents or employees.

Except to the extent arising out of the intentional or negligent acts of Tenant or Tenant's agents, employees, contractors or invitees, Landlord shall indemnify, defend and hold Tenant harmless from and against any and all claims, liabilities, losses, damages and expenses in connection with all losses, including loss of life and injury to persons or property, arising from or out of any occurrence in the Common Areas, which occurrence arose out of the negligent act or omission of Landlord or Landlord's employees, agents or contractors.

ARTICLE 25

SAFETY AND SECURITY DEVICES, SERVICES AND PROGRAMS

Landlord shall have no obligation to provide any safety or security devices, services or programs for Tenant or the Center and shall have no liability for failure to provide the same or for inadequacy of any measures provided. However, Landlord may institute or continue such safety or security devices, services and programs as Landlord in its sole discretion deems necessary. The costs and expenses of instituting and maintaining such devices, services and programs shall be borne by Tenant as a part of Center Expenses; ~~or as a separate, additional charge to Tenant based on Tenant's Proportionate Share or such other reasonable factors as Landlord shall determine.~~ The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and enhance safety, may not in given instances prevent theft or other injurious acts or ensure safety of parties or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such acts and other losses, beyond that described in Article 13. Tenant agrees to cooperate in any safety or security program developed by Landlord or required by Law.

ARTICLE 26

HAZARDOUS MATERIALS

A. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (as defined below) upon or about the Center, or permit Tenant's employees, agents, contractors, invitees and other occupants of the Premises to engage in such activities upon or about the Center. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Premises of substances customarily used in the business or activity expressly permitted to be undertaken in the Premises under Article 1, provided: (a) such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises and the ordinary course of Tenant's business therein, strictly in accordance with applicable Law, highest prevailing standards, and the manufacturers' instructions therefor, (b) such substances shall not be disposed of, released or discharged in the Center, and shall be transported to and from the Premises in compliance with all applicable Laws, and as Landlord shall reasonably require, (c) if any applicable Law or Landlord's trash removal contractor requires that any such

substances be disposed of separately from ordinary trash. Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Landlord). (d) any remaining such substances shall be completely, properly and lawfully removed from the Center upon expiration or earlier termination of this Lease, and (e) for purposes of removal and disposal of any such substances, Tenant shall be named as the owner and generator, obtain a waste generator identification number, and execute all permit applications, manifests, waste characterization documents and any other required forms.

B. Tenant shall promptly notify Landlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material on the Premises, (iii) any release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Premises or in violation of this Article, and (iv) any matters where Tenant is required by Law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. Landlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety Law. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list, certified to be true and complete, identifying any Hazardous Material then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer therefor, and such other information as Landlord may reasonably require or as may be required by Law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

Except as otherwise
set forth herein it

C. If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant of the Premises, or their employees, agents or contractors, on or about the Center in violation of the foregoing provisions, Tenant shall immediately, properly and in compliance with applicable Laws clean up and remove the Hazardous Material from the Center and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's expense (without limiting Landlord's other remedies therefor). Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any court or governmental body having jurisdiction or reasonably required by Landlord. If Landlord or any Lender or governmental body arranges for any tests or studies showing that this Article has been violated, Tenant shall pay for the costs of such tests. If any Hazardous Material is released, discharged or disposed of on or about the Center and such release, discharge or disposal is not caused by Tenant or other occupants of the Premises, or their employees, agents or contractors, such release, discharge or disposal shall be deemed casualty damage under Article 14 to the extent that the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under such Article.

See Page 21A.#1

See Page 21A.#2

ARTICLE 27

CAPTIONS AND SEVERABILITY

The captions of the Articles and Paragraphs of this Lease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. If any term or provision of this Lease or portion thereof shall be found invalid, void, illegal, or unenforceable generally or with respect to any particular party, by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions or the remaining portion thereof, or its enforceability with respect to any other party.

ARTICLE 28

DEFINITIONS

A. "Center" shall mean the building or structure in which the Premises are located and any other buildings or structures owned or ground leased by Landlord from time to time and operated in conjunction therewith, whether or not shown on Exhibit A hereto, together with the Common Areas, and all parcels or tracts of land owned or ground leased by Landlord from time to time on which all or any portion of the foregoing items are located and any fixtures, Systems and Equipment, furniture and other personal property owned or leased by Landlord located thereon or therein and used in connection therewith. "Center" shall also include, at Landlord's election from time to time, Majors and other buildings, structures and parcels or tracts of land owned by other parties which adjoin the other areas of the Center or the Common Areas.

1. no way limiting Landlord's duties and obligations as set forth in this Lease, Landlord shall not place any Hazardous Materials in the Premises after Tenant's occupancy, and if the presence of any Hazardous Materials in the Premises which were placed in the Premises either prior to or after Tenant's occupancy of the Premises, by Landlord, any previous tenant or their respective agents, employees and/or contractors results in contamination of the Premises, Landlord shall, at its sole expense, promptly take all actions as it is required by Law to return the Premises to the condition existing prior to the introduction of any such Hazardous Materials to the Premises.

2. If subsequent to the date Tenant accepts possession of the Premises it is determined that there are any asbestos-containing materials or other Hazardous Materials in the Premises which were installed prior to Landlord's delivery of the Premises to Tenant, and such Hazardous Materials were not installed by Tenant or any affiliate of Tenant (or any party acting under Tenant or its affiliate) during a prior occupancy of the Premises or a portion thereof, and such Hazardous Materials are required by applicable Law to be removed, encapsulated or otherwise treated ("Remediated"), Landlord, at Landlord's expense, shall as soon as practicable after notice thereof from Tenant, Remediate said Hazardous Materials as Landlord deems appropriate so that Law is complied with. Such remediation shall be Tenant's sole remedy on account of such Hazardous Materials.

If subsequent to the date Tenant accepts possession of the Premises it shall be determined that there are any Hazardous Materials in the Premises which were installed by Tenant (or any affiliate of Tenant or any party acting under Tenant or its affiliate) prior to Tenant's taking possession of the Premises, or that there is any Hazardous Materials in the Premises which were installed after Tenant's acceptance of possession of the Premises, at Landlord's election (i) Landlord shall, at Tenant's expense, cause the Hazardous Material to be Remediated as Landlord determines or (ii) Tenant, at Tenant's expense, shall Remediate the Hazardous Materials in such manner as Landlord determines.

Notwithstanding anything contained herein to the contrary, if any Remediation of Hazardous Materials was necessitated by the negligence or intentional act of Tenant or Tenant's agent, employees or contractors, the Remediation shall be at Tenant's expense. Tenant shall cooperate with Landlord in connection with any Remediation Landlord performs at the Premises.

Except as otherwise
set forth herein.

B.

"Center Expenses" shall mean all expenses, costs and amounts of every kind and nature which Landlord shall pay during any calendar year any portion of which occurs during the Term in connection with the management, repair, maintenance, replacement, insurance and operation of the Center, including, without limitation, any amounts paid for: (a) utilities, including but not limited to electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, (b) permits, licenses and certificates necessary to operate and manage the Center, and costs of complying with other legal requirements, including, without limitation, the "ADA" (as described in Article 39), (c) insurance applicable to the Center, which may include without limitation, commercial liability insurance for personal injury, death, property damage, defamation and false arrest, "all risk" insurance on the Center, including without limitation, earthquake, flood, boiler and rent loss coverage, automobile, worker compensation and employer liability insurance, (d) supplies, materials, tools, equipment, and vehicles used in the operation, repair, maintenance and security, floor care and cleaning, landscaping, and other services for the Center, including rental, installment purchase and financing agreements therefor and interest thereunder, (e) accounting, legal, inspection, consulting and other services, (f) wages, salaries, bonuses, and other compensation and benefits for any manager, personnel and other parties engaged in the operation, maintenance or security of the Center, and employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits, data or payroll processing expenses relating thereto (if the manager or other personnel are located off-site and handle other properties, the foregoing expenses shall be allocated appropriately between the Center and such other properties), (g) payments under any easement, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs in any development of which the Center is part, (h) alarm monitoring and security service, janitorial service, trash removal, removal of ice and snow (and salting and sanding in connection therewith), (i) parking surcharges or fees that may result from any environmental or other Law or guideline, and the cost of obtaining, providing and operating public transportation or shuttle bus systems to bring customers or workers to or from the Center if required by such Laws or guidelines, or if otherwise deemed desirable by Landlord, (j) the costs of operating and maintaining any on-site office at the Center, including without limitation, the fair rental value thereof, telephone charges, postage, stationery and photocopying expenses, (k) music programs and equipment, whether rented or purchased, (l) telephone directory listings for the Center, (m) appropriate reserves for operation of the Center and for covering uninsured portions, including deductible amounts, of casualty damage and general liability claims relating to the Center, (n) operation, maintenance, repair, installation, replacement, inspection, testing, painting, decorating and cleaning of: (i) elevators, escalators, fire exits and stairways, (ii) sidewalks, curbs, gutters, guardrails, bumpers, fences, flagpoles, flags, banners, bicycle racks, Center identification and pylon signs, directional signs, traffic signals and markers, including those located off-site but installed for the benefit of the Center, (iii) parking structures, parking lots, loading and service areas and driveways (including sweeping, cleaning, re-striping, repairing, sealing, re-surfacing and replacement), (iv) storm and sanitary drainage systems, including disposal plants, lift stations and detention ponds and basins, (v) irrigation systems, (vi) any Systems and Equipment, (vii) interior and exterior planting, replanting and replacement of flowers, shrubbery, plants, trees, grass, sod and other landscaping, (viii) all portions of buildings, both interior and exterior, in the Center, including without limitation, Common Areas and fixtures, equipment and other items therein or thereon, including but not limited to floors, floor coverings, corridors, ceilings, foundations, walls, wall-coverings, restrooms, lobbies, canopies, skylights, trash and ash cans and receptacles, trash compactors, planters, waterfalls, fountains, pools, benches, furniture, doors, locks and hardware, windows, glass and glazing, (ix) gutters and downspouts, roof flashings and roofs (including repairs and replacements), and (o) an amount equal to fifteen percent (15%) of all of the foregoing costs and expenses as a liquidation of Landlord's general off-site overhead (which amount shall be in addition to the compensation and related expenses for the manager and other aforementioned expenses). The foregoing provision is for definitional purposes only and shall not be construed to impose any obligation upon Landlord to incur such expenses. Landlord reserves the right to: (x) determine and bill Tenant's Proportionate Share of insurance costs relating to the Center separately from other Center Expenses, and (y) include Taxes attributable to the Common Areas as a part of Center Expenses rather than determining and billing the same separately. Notwithstanding the foregoing, Center Expenses shall not, however, include:

except Taxes.

(i) interest and amortization on Mortgages, and other debt costs or ground lease payments, if any, except as provided herein; depreciation of buildings and other improvements (except permitted amortization of certain capital expenditures as provided below); improvements, repairs or alterations to spaces leased to other tenants; the cost of providing any service directly to and paid directly by, any tenant; costs of any items to the extent Landlord receives reimbursement from insurance proceeds or from a third party (such proceeds to be deducted from Center Expenses in the year in which received); and

(ii) capital expenditures, except those: (a) made primarily to reduce Center Expenses, or to comply with any Laws or other governmental requirements, or (b) for repairs or replacements (as opposed to additions or new improvements, except that Landlord shall be permitted to include new improvements involving pylon or other signs for the Center or the upgrading or addition of lights in the parking and other Common Areas, provided, all such permitted capital expenditures (together with reasonable finance charges) shall be amortized for purposes of this Lease over three (3) years. Tenant shall be responsible for Tenant's Proportionate Share of such permitted amortization of capital expenditures during the Term, including any remaining amortization of permitted capital expenditures made prior to the Commencement Date.

(five (5))

See Page 22A

C.

"Common Areas" shall have the meaning specified therefor in Article 12.

Center Expenses shall not mean and will exclude any and all fees, charges, rent, additional rent, costs, and expenses not expressly authorized in this section, including but not limited to:

- (a) Enforcement Costs. Any and all of Landlord's costs to compel full performance under leases with all prior, existing, and prospective tenants at the Center, including, without limitation, all legal fees, costs and expenses to collect rent arrears and recover possession.
- (b) Leasing Costs. Any and all of Landlord's costs to lease space in the Center to all prior, existing and prospective tenants, including, without limitation, consulting and marketing fees, advertising expenses, brokerage commissions, legal fees, rent or other rent concessions.
- (c) Enclosure and Renovation Costs. Any and all of Landlord's costs to perform the enclosure and renovation of the Center which has been undertaken or completed prior to the date hereof.
- (d) Management Fees, Etc. Management fees; costs or other items included within the meaning of the term "Taxes"; depreciation; brokerage commissions; or professional expenses.
- (e) Landlord's Taxes. Any and all of Landlord's income, excise, franchise taxes, as well as any and all taxes which do not uniquely pertain to the Premises or Tenant's specific use thereof.

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D. "CPI" shall mean the Consumer Price Index for All Urban Consumers, All Items (Base year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, All City Average. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised index which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

E. "Default Rate" shall mean eighteen percent (18%) per annum, or the highest rate permitted by applicable Law, whichever shall be less. (ten percent (10%))

F. "Gross Sales" shall have the meaning specified therefor in Article 3.

G. "HVAC" shall mean heating, ventilating and air-conditioning.

H. "Landlord" and "Tenant" shall be applicable to one or more parties as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine; and if there be more than one, the obligations thereof shall be joint and several. For purposes of any provisions indemnifying or limiting the liability of Landlord, the term "Landlord" shall include Landlord's present and future partners, beneficiaries, trustees, officers, directors, employees, shareholders, principals, Lenders, agents, affiliates, successors and assigns.

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

J. "Lease Year" shall mean each calendar year or portion thereof during the Term, and any initial or final partial years are sometimes referred to herein as "Partial Lease Years"; provided, Landlord reserves the right to change the "Lease Year" to each consecutive twelve month period commencing on the Commencement Date or such other date as Landlord shall designate by notice to Tenant.

K. "Lender" shall mean the holder of any Mortgage at the time in question, and where such Mortgage is a ground lease, such term shall refer to the ground lessor.

L. "Major" shall mean any store of any type in excess of 25,000 square feet of 50,000 (cent square) rentable area in, or at Landlord's election from time to time adjoining, the Center, whether in buildings or on parcels owned by Landlord or other parties.

M. "Mortgage" shall mean all mortgages, deeds of trust, ground leases and other such encumbrances now or hereafter placed upon the Center or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon.

N. "Rent" shall have the meaning specified therefor in Article 4.

O. "Systems and Equipment" shall mean any plant, machinery, transformers, ducts, cables, wires, and other equipment, facilities, and systems designed to supply light, heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of any electrical, gas, steam, plumbing, water, sewer, sprinkler, communications, alarm, security, or fire/life/safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment for the Center, except to the extent that any of the same serves any tenant exclusively or is subject to shared tenant use as described in Article 11.

P. "Taxes" shall mean all federal, state, county, or local governmental, special district, improvement district, municipal or other political subdivision taxes, fees, levies, assessments, charges or other impositions of every kind and nature, whether foreseen or unforeseen, general, special, ordinary or extraordinary (unless required to be paid by Tenant under Article 4), respecting the Center, including without limitation, real estate and other ad valorem taxes, general and special assessments, interest on any special assessments paid in installments, transit taxes, water and sewer rents, taxes based upon the receipt of rent including, without limitation, gross receipts taxes applicable to the receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, Systems and Equipment, appurtenances, furniture and other personal property used in connection with the Center which Landlord shall pay during any calendar year, any portion of which occurs during the Term (without regard to any different fiscal year used by such government or municipal authority except as provided in Article 5). Notwithstanding the foregoing, Taxes shall not include excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Center). If the method of taxation of real estate prevailing at the time of execution hereof shall be, or has been altered, so as to cause the whole or any part of the taxes now, hereafter or theretofore levied, assessed or

imposed on real estate to be levied, assessed or imposed on Landlord, wholly or partially, as a capital levy or otherwise, or on or measured by the rents received therefrom, then such new or altered taxes attributable to the Center shall be included within the term "Taxes", except that the same shall not include any enhancement of said tax attributable to other income of Landlord. Tenant shall pay increased Taxes whether Taxes are increased as a result of increases in the assessment or valuation of the Center (whether based on a sale, change in ownership or refinancing of the Center or otherwise), increases in tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, elimination, invalidity or withdrawal of any tax abatement, or for any other cause whatsoever. In addition, Landlord may include in Taxes any actual, out-of-pocket expenses incurred by Landlord in attempting to protest, reduce or minimize Taxes (including without limitation, fees for attorneys, consultants, appraisers and other experts) in the calendar year such expenses are paid.

Q. "Tenant's Proportionate Share" shall be a fraction equal to the rentable square footage of the Premises set forth in Article 1 (as the same may be remeasured pursuant to Article 21) divided by the total square footage of all rentable floor space in the Center; provided Landlord may exclude from such rentable floor space of the Center, at Landlord's option, any portions of the Center: (i) not occupied and open for business during all or any portion of the subject year, (ii) leased to or used by other parties as Majors, theatres, restaurants, kiosks, storage areas, or premises which do not front on any enclosed mall area of the Center, where such parties are not required to pay a full prorata share of Center Expenses or Taxes, as the case may be, pursuant to a lease or other agreement with Landlord, and (iii) with respect to Taxes, areas of the Center for which separate Tax bills are received and which are the sole responsibility of separate parties pursuant to a lease or other agreement with Landlord; provided, Landlord shall also deduct from Center Expenses or Taxes, as the case may be, all amounts received from such excluded parties for Center Expenses or Taxes. If the Center shall be part of or shall include a group of buildings or structures collectively owned or managed by Landlord or its affiliates, or shall include any space used for office, medical, dental or other non-retail purposes, Landlord may determine separately and allocate Taxes or Center Expenses between such buildings and structures and the parcels on which they are located, and between the retail and non-retail areas of the Center, in accordance with sound accounting and management principles, in which event Tenant's Proportionate Share shall be based on the ratio of the rentable area of the Premises to the rentable floor space of the buildings, structures or areas for which Landlord separately determines such Taxes or Center Expenses, subject to the adjustments set forth above.

provided that, for purposes of determining Tenant's Proportionate Share, in no event shall less than eighty percent (80%) of the rentable floor area of the Center (excluding, at Landlord's option, the areas included in (ii) and (iii) below) be deemed occupied and open for business.

R. "Unavoidable Delays" shall mean delays due to strikes, lockouts, labor troubles, inability to procure labor or materials or reasonable substitutes therefor, failure of power, governmental requirements, restrictions or Laws, fire or other casualty damage, war or civil disorder, or other causes beyond the reasonable control of the party delayed; provided, Unavoidable Delays hereunder shall not include delays resulting from changes in economic or market conditions, or financial or internal problems of the parties or problems that can be satisfied by the payment of money. ~~As a condition to Tenant's right to claim an Unavoidable Delay, Tenant shall notify Landlord within seven (7) days after the delay occurs and on at least a weekly basis thereafter describing in reasonable detail the nature and the status of Tenant's diligent efforts to end the delay.~~

ARTICLE 29

RULES

Tenant shall comply with all of the rules which are set forth in Rider One attached to this Lease, as the same may be amended or supplemented hereunder (the "Rules"). ~~Landlord shall have the right by notice to Tenant or by posting at the Center to reasonably amend such Rules and supplement the same with other reasonable Rules relating to the Center or the promotion of safety, care, cleanliness or good order therein. Nothing herein shall be construed to give Tenant or any other party any claim against Landlord arising out of the violation of such Rules by any other tenant, occupant or visitor of the Center, or out of the enforcement, modification or waiver of the Rules by Landlord in any particular instance.~~

provided same are reasonable and non-discriminatory and do not result in increased monetary obligations being imposed upon Tenant

ARTICLE 30

NO WAIVER

No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and Landlord's consent respecting any action by Tenant shall not constitute a waiver of the requirement for obtaining Landlord's consent respecting any subsequent action. Acceptance of Rent by Landlord shall not constitute a waiver of any breach by Tenant of any term or provision of this Lease. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. The acceptance of Rent or of the performance of any other term or provision from any party other than Tenant, including any Transferee, shall not constitute a waiver of Landlord's right to approve any Transfer.

ARTICLE 31

ATTORNEYS' FEES, COUNTERCLAIMS, VENUE AND JURY TRIAL

If Landlord or any of its officers, directors, trustees, beneficiaries, partners, agents, affiliates or employees shall be made a party to any litigation commenced by or against Tenant and are not found to be at fault, Tenant shall pay all costs, expenses and reasonable attorneys' fees incurred by Landlord or any such party in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorneys' fees that may be incurred by Landlord in successfully enforcing this Lease. IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER AND ANY RIGHTS TO A TRIAL BY JURY UNDER ANY STATUTE, RULE OF LAW OR PUBLIC POLICY IN CONNECTION WITH ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS LEASE, THE PREMISES OR THE CENTER. Although such jury waiver is intended to be self-operative and irrevocable, Landlord and Tenant each further agree, if requested, to confirm such waivers in writing at the time of commencement of any such action, proceeding or counterclaim. If Landlord commences any detainer suit, summary proceedings or other action seeking possession of the Premises, Tenant agrees not to interpose by consolidation of actions, removal to chancery or otherwise, any counterclaim, claim for set-off, recoupment or deduction of Rent, or other claim seeking affirmative relief of any kind (except a mandatory or compulsory counterclaim which Tenant would forfeit if not so interposed). Any action or proceeding brought by either party against the other for any matter arising out of or in any way relating to this Lease, the Premises or the Center, shall be heard, at Landlord's option, in the County where the Center is located.

ARTICLE 32

PERSONAL PROPERTY TAXES

Tenant shall pay before delinquent all taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon Tenant's business operations, Tenant's leasehold interest, or based on Tenant's use or occupancy of the Premises, or Tenant's fixtures, furnishings, equipment, leasehold improvements, inventory, merchandise, and personal property located in the Premises (whether or not title shall have vested in Landlord pursuant to any provision hereof). Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord and other parties. If any such items shall be assessed and billed with the property of Landlord or another party, Landlord shall include the same or an appropriate portion thereof in Center Expenses, or shall reasonably allocate the same or an appropriate share thereof between Tenant and such other party (and Tenant shall promptly pay the amount so allocated to Tenant).

ARTICLE 33

CONVEYANCE BY LANDLORD AND LIABILITY

In case Landlord or any successor owner of the Center shall convey or otherwise dispose of any portion thereof in which the Premises are located to another party (and nothing herein shall be construed to restrict or prevent such conveyance or disposition), such other party shall thereupon be and become landlord hereunder and shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit. Tenant shall attorn to such other party, and Landlord or such successor owner shall, from and after the date of conveyance, be free of all liabilities and obligations hereunder. The liability of Landlord to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration, or any other matter relating to the Center or the Premises, shall be limited to the interest of Landlord in the Center (and rental proceeds). Tenant agrees to look solely to Landlord's interest in the Center (and rental proceeds) for the recovery of any judgment against Landlord, and Landlord shall not be personally liable for any such judgment or deficiency after execution thereon. Under no circumstances shall any present or future general or limited partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust) have any liability for the performance of Landlord's obligations under this Lease.

ARTICLE 34

NOTICES

Except as expressly provided to the contrary in this Lease, every notice, demand or other communication given by either party to the other with respect hereto or to the Premises or Center, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by national air courier service, or United States registered or certified mail, return receipt requested, postage prepaid, addressed, if to Tenant, at the address first set forth in the Lease, and if to Landlord, at the address at which the last payment of Rent was required to be made and to Urban Retail Properties Co. at 900 North Michigan Avenue, Chicago, Illinois, 60611,

Attn: Director of Lease Administration, or such other address or addresses as Tenant or Landlord may from time to time designate by notice given as above provided. Every notice or other communication hereunder shall be deemed to have been given as of the second business day following the date of such mailing or dispatch by national air courier service (or as of any earlier date evidenced by a receipt from such national air carrier service or the United States Postal Service) or immediately if personally delivered. Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein.

ARTICLE 35

REAL ESTATE BROKERS

Landlord and _____ Tenant shall defend, indemnify and hold Landlord harmless from all damages, judgments, liabilities and expenses (including attorneys' fees) arising from any claims or demands of any broker, agent or finder with whom Tenant has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation with Tenant of this Lease, other than a broker with whom Landlord has signed a written agreement relating to this Lease.

the party from whom such indemnity is being sought

ARTICLE 36

SECURITY DEPOSIT AND LANDLORD'S LIEN

Tenant shall deposit with Landlord the amount set forth in Article 1 as a Security Deposit upon Tenant's execution and submission of this Lease. The Security Deposit shall serve as security for the prompt, full and faithful performance by Tenant of the terms and provisions of this Lease. If Tenant commits a Default, or owes any amount to Landlord upon the expiration of this Lease, Landlord may use or apply the whole or any part of the Security Deposit for the payment of Tenant's obligations hereunder. The use or application of the Security Deposit shall not prevent Landlord from exercising any other right or remedy available to Landlord and shall not be construed as liquidated damages. If the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord within ten (10) days after written notice, an amount sufficient to restore the full amount of the Security Deposit. In the event of bankruptcy or other insolvency proceeding against Tenant or Tenant's guarantor, the Security Deposit shall be deemed automatically applied to the payment of overdue Rent from the earliest time such Rent became overdue prior to the filing of such proceeding. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit. Any remaining portion of the Security Deposit shall be returned to Tenant within sixty (60) days after Tenant has vacated the Premises in accordance with Article 16.

As further security for Tenant's performance under this Lease, to the extent not expressly prohibited by applicable Law, Tenant hereby grants Landlord a lien and security interest in all existing and after-acquired property of Tenant placed in or relating to Tenant's business at the Premises, including but not limited to, accounts receivable, insurance proceeds, good will, contracts, intangibles, fixtures, equipment, inventory, furnishings and personal property, and all proceeds thereof, and all rents and other consideration from any Transfer. Notwithstanding the foregoing, Tenant may freely use, replace and dispose of such property (provided Tenant immediately replaces the same with similar property of comparable or better quality), and receive such rents and consideration, in the ordinary course of Tenant's business, until such time as Tenant shall commit a Default, upon such Default, Tenant's right to remove or use such property shall terminate, and all other parties shall be entitled to rely on written notification thereof given by Landlord without requiring any proof of such Default or any other matter. Tenant agrees to execute such financing statements, collateral assignment of rents and subleases, and other documents necessary to perfect a security interest, as Landlord may now or hereafter reasonably request in recordable form. Landlord may at its election at any time execute such a financing statement and collateral assignment as Tenant's agent and attorney-in-fact or file a copy of this Lease as such financing statement and collateral assignment. Landlord shall be entitled hereunder to all of the rights and remedies afforded a secured party under the Uniform Commercial Code or other applicable Law in addition to any landlord's lien and rights provided by applicable Law.

ARTICLE 37

MISCELLANEOUS

A. Each of the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to the provisions of Article 20 respecting Transfers. However, if Tenant is an individual and dies or becomes incapacitated, Landlord reserves the right to terminate this Lease upon thirty (30) days' advance notice to Tenant or Tenant's legal representative.

B. Neither this Lease nor any memorandum of lease or short form lease shall be recorded by Tenant.

or Landlord

C. This Lease shall be construed in accordance with the Laws of the state and county in which the Center is located.

D. All obligations (including indemnity obligations) or rights of either party arising during or attributable to the period prior to expiration or earlier termination of this Lease shall survive such expiration or earlier termination, except as provided to the contrary in Article 33.

E. If the Commencement Date is delayed in accordance with Article 2 for more than one year, Landlord may declare this Lease terminated by notice to Tenant, and if the Commencement Date is so delayed for more than three years, this Lease shall thereupon be deemed terminated without further action by either party.

F. Landlord agrees that if Tenant timely pays the Rent and performs the terms and provisions hereunder, Tenant shall hold and enjoy the Premises during the Term, free of lawful claims by any party acting by or through Landlord, subject to all other terms and provisions of this Lease.

G. The parties agree that they intend hereby to create only the relationship of landlord and tenant. No provision hereof, or act of either party hereunder, shall be construed as creating the relationship of principal and agent, or as creating a partnership, joint venture or other enterprise, or render either party liable for any of the debts or obligations of the other party, except under any indemnity provisions of this Lease.

H. Tenant acknowledges that any site or lease plan of the Center attached as an Exhibit hereto shall not be deemed a representation, warranty or agreement by Landlord respecting the Center or any other matter shown thereon other than the approximate location of the Premises, and that Majors and other parties unrelated to Landlord may own or control portions of the Center shown on such Exhibit.

I. If applicable Laws require that this Lease be in the form of a deed, this Lease shall be deemed a deed of lease for all purposes, and Landlord shall be deemed to have granted and demised the Premises to Tenant for the Term hereof, subject to the other terms and provisions contained herein.

J. This Lease, and any Riders and Exhibits hereto, have been mutually negotiated by Landlord and Tenant, and any ambiguities shall not be interpreted in favor of either party. Any printed provisions that have been deleted shall not be used to interpret the remaining provisions.

ARTICLE 38

OFFER

The submission and negotiation of this Lease shall not be deemed an offer to enter the same by Landlord, but the solicitation of such an offer by Tenant. Tenant agrees that its execution of this Lease constitutes a firm offer to enter the same which may not be withdrawn for a period of six (6) weeks after delivery to Landlord. During such period and in reliance on the foregoing, Landlord may, at Landlord's option, deposit any Security Deposit and Rent, proceed with any alterations or improvements, and permit Tenant to enter the Premises and make alterations or improvements. If Landlord shall fail to execute and mail or deliver this Lease to Tenant within such period, Tenant may revoke its offer to enter this Lease by sending notice thereof to Landlord before Landlord mails or delivers an executed copy of this Lease to Tenant. In such case, Landlord shall return any Security Deposit and Rent to Tenant, and Tenant shall promptly remove any alterations, improvements, fixtures or personal property made or placed in or upon the Premises by Tenant or its contractors, agents or employees and restore the same to good condition as required under Article 16. If Tenant shall seek to revoke its offer to enter this Lease in violation of the foregoing provisions, Landlord shall have the options of forfeiting and retaining any Security Deposit and Rent theretofore paid, as liquidated damages without executing and delivering this Lease to Tenant, or executing and delivering this Lease to Tenant and enforcing the same as a valid and binding lease agreement.

ARTICLE 39

AMERICANS WITH DISABILITIES ACT

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and Center depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, ~~except as provided below~~; (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, and (c) Landlord ~~may perform, or require that Tenant perform, and~~ Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements ~~triggered by~~ alterations in the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

except where common area conditions create a need for ADA compliance within the Premises

(in the Com)

ARTICLE 40
ENTIRE AGREEMENT

This Lease, together with Riders One through Three, and Exhibits A through C (WHICH COLLECTIVELY ARE HEREBY INCORPORATED WHERE REFERRED TO HEREIN AND MADE A PART HEREOF AS THOUGH FULLY SET FORTH), contains all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect. Without limiting the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing and field personnel are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements, representations, understandings or obligations binding upon Landlord, respecting the present or future condition of the Premises or Center, suitability of the same for Tenant's business, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein shall be of any force or effect. TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE AND NOT ON ANY REPRESENTATIONS OR WARRANTIES MADE BY LANDLORD CONCERNING THE CONDITION OR SUITABILITY OF THE PREMISES OR CENTER FOR ANY PARTICULAR PURPOSE. * Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties.

IN TESTIMONY WHEREOF, the parties have caused this Lease to be signed under seal by their respective representatives designated below, or if either party is a corporation, it has caused these presents to be signed by its president or other officer designated below, attested by its secretary, and its corporate seal to be affixed, and if the Center is in Washington, D.C., does hereby appoint such president or other officer its true and lawful attorney-in-fact to acknowledge and deliver these presents as its act and deed as of the day and year first above written.

*except as otherwise
set forth in this Lease

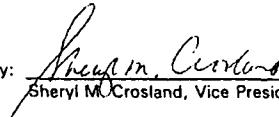
Witness Our Hands And Seals

ATTESTATION:

LANDLORD: MILITARY CIRCLE LIMITED PARTNERSHIP,
a Maryland limited partnership

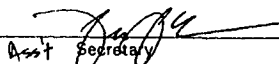
By: MCGP (Norfolk, Inc.), General Partner


Secretary

By: 
Sheryl M. Crosland, Vice President

TENANT: LARGE APPAREL OF VIRGINIA, INC.
a Virginia corporation [Seal]

By:


Asst Secretary

NAME TYPED: JOSEPH J. SITT, President

TITLE:

RIDER ONE

Rules

(1) **Common Areas.** Tenant shall not use the Common Areas, including areas adjacent to the Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these Rules. Without limiting the generality of the foregoing, Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants, occupants or invitees of the Center. Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping area, or other area outside the Premises. Janitorial closets, utility closets, telephone closets, broom closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.

(2) **Deliveries.** Furniture, inventory and all other deliveries may be brought into the Center only at times and in the manner designated by Landlord, in compliance with all Laws, and always at Tenant's sole risk. Landlord may inspect items brought into the Center or Premises with respect to weight or dangerous nature or compliance with this Lease or applicable Laws. Tenant's use of any freight elevators, loading and service areas at the Center shall be subject to scheduling by Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Center, any item normally taken, or which Landlord otherwise requires to be taken, in or out through service doors or on freight elevators. Tenant shall move all inventory, supplies, furniture, equipment and other items as soon as received directly to the Premises. Any hand-carts used at the Center shall have rubber wheels and side guards and no other material handling equipment may be brought upon the Center except as Landlord shall approve in writing in advance.

(3) **Trash.** All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Article 26 respecting Hazardous Materials. If Landlord designates a service to pick up such items, Tenant shall use the same at Tenant's cost. If Landlord shall provide or arrange for such service, Tenant shall pay Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) to Landlord on or before the first day of each calendar month in advance, or Landlord may include such charges in Center Expenses. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.

provided the costs thereof are competitive

(4) **Fire Protection.** If Landlord installs or has heretofore installed a supervised fire sprinkler and/or alarm system for the protection of the Center, Tenant shall pay Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) to Landlord on or before the first day of each calendar month in advance, or Landlord may include such charges in Center Expenses.

of operation, maintenance and repair

(5) **Pest Control.** Tenant shall use, at Tenant's cost, such pest and rodent extermination contractor as Landlord may direct and at such intervals as Landlord may require. In the alternative, from time to time, Landlord may arrange for pest control (in which case, Tenant shall pay Tenant's Proportionate Share of the cost thereof, or such other share as Landlord may fairly and reasonably determine to Landlord on or before the first day of each calendar month in advance, or Landlord may include such charges in Center Expenses). Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five (5) days after Landlord's written request.

provided the costs thereof are competitive

(6) **Signs and Display Windows.** Tenant shall not place any sign or other thing of any kind outside the Premises (including without limitation, exterior walls and roof), or on the interior or exterior surfaces of glass panes or doors, except such single sign as Landlord shall expressly approve in writing for or in connection with Tenant's storefront. Within the Premises, Tenant shall not: (i) install any sign that advertises any product, (ii) install any sign within 24 inches of any window, or (iii) install any sign that is visible from outside the Premises or that is illuminated without Landlord's prior written approval. If Landlord approves or requires illuminated signs, Tenant shall keep the same illuminated each day of the Term during the hours designated by Landlord from time to time. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises or the Center and shall comply with the sign criteria attached hereto as Exhibit C or otherwise developed by Landlord from time to time. After the initial installation of Tenant's storefront sign as approved in writing by Landlord in accordance with these provisions, Landlord reserves the right to require from time to time that Tenant change or replace such sign in order to comply with any new sign criteria developed by Landlord, at Landlord's expense. The term "sign" in this Rule shall mean any sign, placard, picture, name, direction, lettering, insignia or trademark, advertising material, advertising display, awning or other such item, except that Tenant's storefront sign shall be an actual sign. Blinds, shades, drapes or other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, design, color, material and make thereof is first approved by Landlord in writing.

unless same are professionally prepared, reasonably

Tenant shall be required to keep its show room windows lit only during hours Tenant is required to be open for business.

(7) **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or item or display any merchandise: (i) outside the Premises, or (ii) anywhere inside the Premises within six (6) feet of any entrance to the Premises (except that for any recessed entry of the Premises, Tenant shall not so place or maintain fixtures within three (3) feet of such entrance). All displays of merchandise shall be tasteful and professional.

three (3)

one (1)

(8) **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and Tenant shall properly install, maintain, clean, repair and replace adequate grease traps.

(9) **Roof; Awnings and Projections.** Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls or Common Areas of the Center. Tenant may install and have access to rooftop HVAC equipment only to the extent approved or required by Landlord from time to time in connection with Tenant's obligations under Articles 10 and 11 of this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the building of which it is a part.

(10) **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises or Center including any public corridors or elevators therein, and Landlord may direct and control the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

(11) **Locks and Keys.** Upon termination of the Lease or Tenant's right to possession, Tenant shall: (i) return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items shall pay Landlord therefor, and (ii) advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

(12) **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

(13) **Energy Conservation.** Subject to Rule (6) concerning illumination, Tenant shall not waste electricity, water, heat or air conditioning, or other utilities or services, and agrees to cooperate fully with Landlord and comply with any Laws to assure the most effective and energy efficient operation of the Center.

(14) **Food, Beverages, Game and Vending Machines.** Except to the extent expressly permitted under Article 1 of this Lease, Tenant shall not: (i) use the Premises for the manufacture, preparation, display, sale, barter, trade, gift or service of food or beverages, including without limitation, intoxicating liquors, or (ii) install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services including, but not limited to, pay telephones, pay lockers, pay toilets, scales, and amusement devices; provided, however, that Tenant may install vending machines for the sale of non-alcoholic beverages, food, and candy in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

(15) **Going-Out-Of-Business Sales and Auctions.** Tenant shall not use, or permit any other party to use, the Premises for any distress, fire, bankruptcy, close-out, "lost our lease" or going-out-of-business sale or auction. Tenant shall not display any signs advertising the foregoing anywhere in or about the Premises. This prohibition shall also apply to Tenant's creditors.

(16) **Labor Relations.** Tenant shall conduct its labor relations and relations with employees so as to avoid strikes, picketing, and boycotts of, on or about the Premises or Center. If any employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors, or subcontractors in or about the Premises or Center, Tenant shall immediately close the Premises and remove or cause to be removed all such employees, agents, contractors, and subcontractors until the dispute has been settled.

(17) **Landlord's Trade Name and Trademarks.** No symbol, design, name, mark or insignia adopted by Landlord for the Center or picture or likeness of the Center shall be used by Tenant without the prior written consent of Landlord, except as provided in Article 9 of this Lease.

(18) **Prohibited Activities.** Tenant shall not: (i) use strobe or flashing lights in or on the Premises or in any signs therefor, (ii) use, sell or distribute any leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas of the Center), (iii) operate any loudspeaker, television set, phonograph, radio, CD player or other musical or sound producing instrument or device so as to be heard outside the Premises, (iv) operate any electrical or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception from or in the Center or elsewhere, (v) bring or permit any bicycle or other vehicle, or dog (except in the company of a blind party) or other animal, fish or bird in the Center, (vi) make or permit objectionable noise, vibration or odor to emanate from the Premises or any equipment serving the same, (vii) do or permit anything in or about the Premises that is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Center, (viii) use or permit upon the Premises anything that violates the certificates of occupancy issued for the Premises or the Center, or

of which Tenant has notice, it being understood that Tenant's compliance with such requirements may be deferred if Tenant in good faith contests the requirement and during the contest the application of such requirement is suspended by the carrier, Association or underwriters, as the case may be, without the cancellation, abatement or suspension of any insurance coverage or increase in premium and if Tenant's contest of such requirement is unsuccessful Tenant shall promptly comply therewith

causes a cancellation of Landlord's insurance policies or increases Landlord's insurance premiums (and Tenant shall comply with all requirements of Landlord's insurance carriers, the American Insurance Association, and any board of fire underwriters.), (ix) use the Premises for any purpose, or permit upon the Premises anything, that may be dangerous to parties or property (including but not limited to flammable oils, fluids, paints, chemicals, firearms or any explosive articles or materials), nor (x) do or permit anything to be done upon the Premises in any way tending to disturb, bother or annoy any other tenant at the Center or the occupants of neighboring property.

(19) **Parking.** Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated by Landlord for tenant and employee parking and shall use such areas only for parking cars (or at Landlord's option, Landlord may require that any or all such employees park off-site). Tenant shall furnish Landlord with a list containing the description and automobile license numbers (and State of issuance) of the cars of Tenant and its employees within five (5) days of any request by Landlord, ~~and shall thereafter advise Landlord of any changes, additions or deletions to such list.~~ Landlord reserves the right to: (i) adopt additional requirements pertaining to parking, including without limitation, a parking system with charges favoring carpooling for tenants and their employees, and any other parking system by validation, metering or otherwise, (ii) assign specific spaces, and reserve spaces for small cars, handicapped individuals, and other tenants, customers of tenants or other parties (and Tenant and its employees and visitors shall not park in any such assigned or reserved spaces) and (iii) restrict or prohibit full size vans and other large vehicles. In case of any violation of these provisions or any applicable Laws, Landlord may: (a) refuse to permit the violator to park, and remove the vehicle owned or driven by the violator from the Center without liability whatsoever, at such violator's risk and expense and/or (b) charge Tenant such reasonable rates as Landlord may from time to time establish for such violations, which shall be at least \$50.00 per day for each vehicle that is parked in violation of these Rules. These provisions shall be in addition to any other remedies available to Landlord under this Lease or otherwise.

(20) **Responsibility for Compliance.** Tenant shall be responsible for ensuring compliance with these Rules, as they may be amended, by Tenant's employees and as applicable, by Tenant's agents, invitees, contractors, subcontractors, and suppliers.

RIDER TWO

1. **HVAC Equipment Charge.** Tenant shall pay to Landlord a charge (the "HVAC Equipment Charge") in the amount set forth in Article 1(M) for the furnishing by Landlord of the heating, ventilating and air-conditioning equipment and systems which serve the Premises and other tenant spaces at the Center (the "HVAC System"), in advance on the first day of each calendar month.

2. **HVAC Operating Charge.** Tenant shall pay to Landlord a charge (the "HVAC Operating Charge") in connection with the operation by Landlord of the HVAC System. For each calendar year or partial calendar year during the Term Tenant shall pay a share (as described below) of the total (the "Total HVAC Operating Costs") of (i) the cost for the year of all energy used for or in connection with the HVAC System, (ii) the cost for the year of all the maintenance and repair and other operating costs of the HVAC System, and (iii) the costs expended by Landlord for any consultants or other persons in determining HVAC Factors of tenants. Landlord shall, after a review of appropriate information, assign Tenant an "HVAC Factor" which, in relation to the total of all HVAC Factors of all tenants at the Center who utilize the HVAC System, shall fairly represent the relationship between Tenant's use, or projected use, of the HVAC System, and the use, or projected use, of the HVAC System by all tenants at the Center on the HVAC System. Landlord may from time to time review and adjust Tenant's HVAC Factor. Tenant's HVAC Operating Charge for each year or partial year shall equal the Total HVAC Operating Costs for the year multiplied by a fraction, the numerator of which is Tenant's HVAC Factor and the denominator of which is the total of the HVAC Factors of all tenants at the Center open and operating during the year who were on the System (with appropriate adjustment made in the HVAC Factors of tenants open only a portion of the year). Tenant shall pay during each year, by the first day of each month, installments toward the Tenant's HVAC Operating Charge for the year based upon one-twelfth of Landlord's reasonable estimate of Tenant's HVAC Operating Charge for the year, which estimate Landlord may adjust from time to time by notice to Tenant. After the end of each year Landlord shall determine Tenant's actual HVAC Operating Charge for the year and notify Tenant thereof and, if the installments paid by Tenant were less than the total amount due for the year, Tenant shall pay the deficiency within thirty (30) days, and if the installments paid by Tenant exceed the amount due for the year, Tenant may take a credit for the excess against installments of the HVAC Operating Charge next coming due. The initial estimated monthly HVAC Operating Charge shall be as set forth in Article 1(M).

3. **Sprinkler Charge.** Tenant shall pay to Landlord a charge (the "Sprinkler Main Charge") in the amount set forth in Article 1(M) for the installation, maintenance, repair and replacement of the fire protection sprinkler main line to the Premises, in advance on the first day of each calendar month.

4. **Water Charge.** Tenant shall pay to Landlord a charge (the "Water Charge") in the amount set forth in Article 1(M) for the providing of water to the Premises, in advance on the first day of each month. Landlord may increase the Water Charge from time to time during the term in proportion to increases in the rates Landlord pays to obtain water for distribution to the tenants.

RIDER THREE

Rider Three to Lease with
ASHLEY STEWART OF VIRGINIA, INC.
for Space 1113 at Military Circle,
Norfolk, Virginia

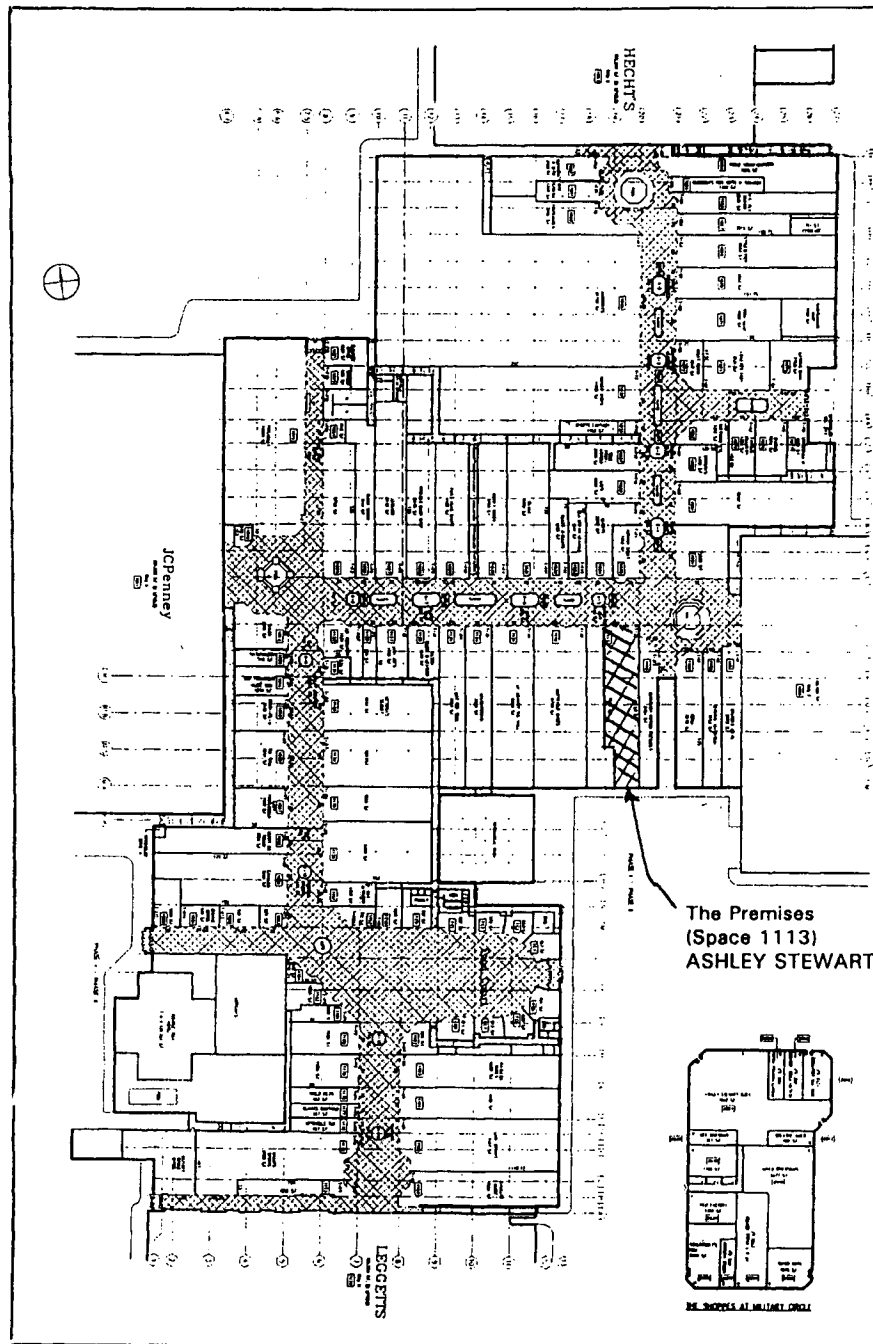
Construction Allowance

A. Landlord shall furnish Tenant a construction allowance (the "Allowance") for Tenant's initial improvement work at the Premises in an amount equal to all the rents and charges accruing under this Lease for the first twelve (12) months of the Term, excluding the HVAC Operating Charge, Sprinkler Charge, Trash Removal Charge, and Water Charge and (if Tenant is charged by Landlord therefor) the electrical charge (such excluded charges herein referred to as the "Excluded Charges") provided that in no event shall the Allowance exceed the actual cost of the initial improvement work by Tenant at the Premises. Tenant shall receive the Allowance by taking an abatement of all rents and charges accruing during the first twelve (12) months of the Term, excluding the Excluded Charges, provided that, after the one hundred twentieth (120th) day of the Term, the abatement of the balance of the Allowance shall be conditional upon the following conditions being met:

- (i) Tenant has performed all of the work (including punch list items) in accordance with the approved plans and specifications and in accordance with all other applicable provisions of this Lease;
- (ii) Tenant has obtained a certificate of occupancy with respect to the Premises;
- (iii) Tenant has furnished Landlord (a) an affidavit from Tenant listing all contractors and suppliers whom Tenant has contracted with in connection with the work, together with the cost of each contract, and (b) an affidavit from Tenant's general contractor listing all subcontractors and suppliers whom the general contractor has contracted with in connection with the work, together with the cost of each contract;
- (iv) Tenant has fully paid for all of the work and has furnished to Landlord a certificate from an officer of Tenant stating that all the work has been paid for and setting forth the total cost of the work;
- (v) Tenant has furnished Landlord mechanic's lien releases from the general contractor and all other contractors and suppliers who performed work or furnished supplies for or in connection with Tenant's work at the Premises (including all parties listed in the affidavits referenced in (iv) above) and such other evidence as Landlord may reasonably request to evidence that no liens can arise from the work; and
- (vi) Tenant has opened for business at the Premises and is not in default under this Lease beyond any applicable grace and cure period.

All documentation to be furnished by Tenant to Landlord herein shall be sent to Landlord c/o Urban Retail Properties Co., 880 N. Military Circle, Norfolk, VA 23502, Attn: Mall Manager, or such other address of which Landlord shall notify Tenant.

EXHIBIT A



THIS EXHIBIT IS DIAGRAMMATIC ONLY AND IS INTENDED ONLY TO SHOW THE GENERAL LOCATION OF THE PREMISES, AND NOT THE EXACT LEASING LINES OF THE PREMISES. FURTHER, REFERENCES TO STORE NAMES ON THIS EXHIBIT SHALL IN NO MANNER CONSTITUTE ANY KIND OF REPRESENTATION AS TO PRESENT OR FUTURE OCCUPANCY OF SPACES AT THE CENTER BY SUCH STORES.

MILITARY CIRCLE MALL
NORFOLK, VIRGINIA

May 1996

Name of Center:

Military Circle, Norfolk, Virginia

Exhibit B

CONSTRUCTION EXHIBIT

This Exhibit B is subject to and shall be supplemented by the Design Criteria (defined below) for the Center. All terms herein that are defined in the body of the Lease to which this Exhibit is attached shall have the meanings provided for them in the body of the Lease. The Term "Tenant's Work" shall mean any work performed by Tenant, whether Tenant's Initial Work or work subsequent thereto.

Attachment 2 hereto contains special provisions that pertain to most or all of the tenants at the Center, or to certain types of tenants at the Center, or to tenants in certain locations at the Center, as noted in said Attachment. With respect to such tenants, said provisions on Attachment 2 shall govern in case of any conflict with the other provisions of this Exhibit.

SECTION I. DELIVERY OF PREMISES BY LANDLORD

1. Except as may be otherwise specifically set forth in this Lease, Tenant shall take the Premises in an "as is" condition and all work to be performed at the Premises shall be performed by Tenant at Tenant's expense.

2. Landlord does not warrant any information Landlord may have furnished or will furnish Tenant regarding the Premises. It shall be Tenant's responsibility to verify existing field conditions of the Premises. Tenant's failure to verify the existing conditions of the Premises shall not relieve Tenant of any expenses or responsibilities resulting from such failure, nor shall Landlord have any liability or obligations to Tenant arising from such failure.

3. Landlord has provided the following at Landlord's expense:

- a. A basic structure for the Premises.
- b. A tappable sanitary drain located below the floor slab of the Premises.
- c. A tappable water line for distribution of cold water stubbed to the Premises.
- d. Designated connection point on a distribution backboard within Common Area for Tenant's telephone line. If the Premises are not adjacent to a service corridor, an empty conduit shall be provided to the Premises from the nearest service corridor.
- e. Designated connection point within Common Area for Tenant's electric service. See Attachment 1 hereto for further information regarding electrical.

- f. Sprinkler trunk lines leading up to the Premises. A sprinkler grid may or may not exist within the Premises and, if existing, Tenant, at Tenant's cost, shall be responsible for making all modifications to it such that it will be adequate for Tenant's use and in compliance with applicable Law and the Design Criteria.
 - g. Neutral piers at the front lease line.
 - h. If any demising walls for the Premises are not in place, metal studs at the demising line extending from the floor to the deck above
 - i. For tenants on the lower level of a two-level mall, a sanitary vent located at or near the Premises having a plugged connection. For a one level shopping center or mall, and for tenants on the upper level of a two-level mall, at Landlord's option, there shall be a sanitary vent located at or near the Premises with a plugged connection, or, alternatively, there shall be no such vent and Tenant shall install a sanitary vent through the roof. If the mall has more than two levels, refer to Design Criteria.
 - j. For tenants on the lower level of a two-level mall, a common toilet exhaust main duct located at or near the Premises. For a one level shopping center or mall, and for tenants on the upper-level of a two level mall, at Landlord's option, there shall be a common toilet exhaust duct located at or near the Premises, or, alternatively, there shall be no such duct and Tenant shall install its own toilet exhaust through the roof. If the mall has more than two levels, refer to Design Criteria.
 - k. If there is a central fire alarm system at the Center for tenant spaces, Landlord shall furnish a designated connection point within the Center for connection by Tenant.
 - l. See Attachment 1 hereto with respect to HVAC for the Premises.
 - m. Landlord may or may not have gas service available at the Center. If gas service is not available and Tenant needs gas service, Tenant shall be responsible for obtaining gas service at its cost.
4. If any of the Landlord Work described above is not already in place, and Tenant wishes to perform such work, Landlord, at Landlord's option, may agree to Tenant performing the work. Tenant shall not perform any such work unless it has received prior written consent from Landlord.

SECTION II. TENANT'S WORK.

PART ONE. General Criteria for Tenant's Work.

- 1. Subject to the provisions of this Lease, including this Exhibit, Tenant shall remodel the Premises as provided in Article 6 of the Lease.
- 2. Tenant shall perform Tenant's Work in accordance with all Laws including, without limitation, the building code of the jurisdiction in which the Center is located and all requirements of the Americans with Disabilities Act.
- 3. Tenant shall prepare its plans and specifications for its Work in accordance with this Exhibit, Landlord's design criteria for the Center, as the same may be revised or supplemented from time to time, and

such other criteria as Landlord may furnish Tenant (such criteria herein referred to as the "Design Criteria"). The Design Criteria contains specific criteria for the design and performance of the Work, including the mechanical and electrical work. The Design Criteria may contain "Standard Project Details" as issued from time to time with which Tenant shall comply.

4. Tenant's Initial Work and, except to the extent as may be specifically otherwise provided in the Lease, all subsequent Work in the Premises which Tenant may wish to perform, shall be subject to the advance written approval by Landlord.
5. Tenant shall, prior to commencement of Work, obtain all required building and other permits at Tenant's expense and post said permits at the Premises as required.
6. The loads imposed by Work at the Premises (including dead and live loads) shall not exceed the allowable load capacity of the existing structural systems and components thereof.
7. Tenant shall use only new materials for the Work, including improvements, equipment, trade fixtures and all other fixtures. Notwithstanding the foregoing, Tenant may reuse portions of existing improvements subject to Landlord's prior written approval, provided that said approval shall in no manner relieve Tenant from the requirement that all Work comply with this Lease, the Design Criteria and all Laws. Reuse of existing improvements shall be clearly indicated on Tenant's Drawings (as defined below). Landlord makes no warranty or representation as to the condition or suitability of existing improvements reused by Tenant.
8. Tenant shall make no marks or penetrations into the roof, upper floor decks, exterior walls, or floors, unless approved by Landlord in advance.
9. If any Work being performed by Tenant to connect to Landlord's utilities requires access through the premises of any other tenant or otherwise will affect any other tenant and Landlord has approved the such Work, Tenant shall be responsible for coordinating such Work with such other tenant, restoring said tenant's premises to its original condition following the Work, and compensating said other tenant for any costs incurred by it on account of such Work.
10. If any of Tenant's Work necessitates any special work outside the Premises, such as, but not limited to, increasing the size of electric conduit or adding or relocating water service or sanitary service, Landlord, at Landlord's election, may perform such work and Tenant shall reimburse Landlord the cost thereof plus 15% thereof for administration, or require Tenant perform the work at Tenant's cost.
11. Tenant shall retain Landlord's identification signs or, at Tenant's cost, provide new signs for Landlord's utilities, valves, and other such devices in the Premises.
12. Landlord may at its election require any aspect of Tenant's Work to be tested, and Tenant shall cooperate with any such testing procedure.
13. No approval from Landlord with respect to any aspect of Tenant's Work shall be valid unless in writing.

PART TWO. Certain Specific Criteria for Tenant's Work

A. Walls; Partitions; Doors; Floors.

1. All partitions within the interior of the Premises shall be of metal stud construction, and shall extend to the structure with gypsum board to the ceiling (except if required as a rated wall in which case the gypsum board shall extend to the structure), and shall have gypsum board finish on all sides with taped and sanded joints. Any combustible materials applied to partitions shall be covered with a fire retardant coating.
2. Tenant shall install and finish gypsum board at the demising walls for the Premises and, if the Premises have a service corridor, at the service corridor walls. If the Premises have existing walls and Landlord consents to Tenant retaining said walls, Tenant shall be responsible for causing the walls to comply with the fire rating requirements of any and all applicable jurisdictional authorities.
3. Where the Premises have been previously occupied Tenant shall repair all structural fireproofing to comply with the fire rating requirements.
4. Commercial grade finish hardware, labeled where required, shall be used throughout.
5. Tenant shall install appropriate waterproofing material to make the Premises water-tight, and shall properly maintain said material during the Term. If any part of the floor of the Premises may be exposed to liquids, either accidentally or for cleaning purposes, Tenant shall provide adequate waterproofing protection beneath its finished flooring. Tenant shall sleeve, fire stop, flash and caulk all penetrations of floors so that odors or liquids will not penetrate the slab at openings. Such sleeves shall extend two (2) inches above the finished floor and be installed according to the Design Criteria. All floor shaft openings to be installed by Tenant, if any, shall have six (6) inch high enclosing curbs integral with Tenant's floor and partition construction in accordance with the Design Criteria.
6. Tenant shall install base building standard flooring as the finished floor material between the storefront lease line and Tenant's storefront closure. Landlord may at its option require Tenant to purchase the flooring material from Landlord and in such event the cost to Tenant shall be as set forth in Attachment 1.
7. Tenant shall not use flooring or tile at the Premises containing vinyl or similar material, nor use any adhesives containing asbestos.
8. If Tenant has a door leading to a service corridor, Tenant shall install on the door an identification sign setting forth Tenant's name and address number. Landlord may furnish said sign at a cost to Tenant of \$50.00.

B. Ceilings.

1. Ceilings shall be non-combustible construction, and shall be gypsum board or acoustical tile of concealed suspension type, or, at a minimum, a tegular type regressed metal grid lay-in type incorporating a 2' x 2' tegular type acoustical tile. 2' x 4' grid systems shall be permitted only in stock areas not visible to the public. The color of the gypsum board or tile shall match the grid. Other ornamental or acoustical tile ceilings may be permitted only if Landlord shall so approve in writing.
2. Ceilings shall be of the accessible type, or access panels shall be provided as required.
3. Furring, framing, and blocking above ceiling shall be of non-combustible materials meeting codes.
4. No wood (even if fire treated) or any other combustible material shall be permitted above the ceiling.

C. Structural.

1. Without limitation, any alterations, additions or reinforcements to Landlord's structure, piping, conduit or duct work to accommodate Tenant's Work, or any work that may otherwise affect Landlord's structure, including mezzanines, shall not be performed without in each instance the prior written approval of Landlord.
2. Following its Work Tenant shall leave Landlord's structure as strong or stronger than the original design and with finishes unimpaired. Landlord may elect to require that structural modifications be performed by Landlord's contractor at Tenant's cost.
3. Tenant shall submit detailed and certified engineering documents to show any proposed work involving Landlord's structure, and Landlord may require said documents to be reviewed by Landlord's structural engineer at Tenant's cost. Also, Landlord may require Tenant to use, at Tenant's cost, Landlord's structural engineer to design Tenant's structural modifications.
4. No welding to building structure shall be permitted.
5. Channelling or cutting of the suspended structural slabs shall not be permitted (except coring of the slab shall be permitted subject to Landlord's prior written approval of core size and location). Tenant may channel or cut slabs on grade with Landlord's prior written approval.
6. Support of all mechanical equipment shall be subject to Landlord's advance written approval. If in the Landlord's opinion structural analysis of the method of support is necessary, Tenant shall at Tenant's expense utilize Landlord's structural engineer to evaluate the support.

D. **Roofs.** All work affecting or pertaining to the roof, including roof penetration and installation of structural supports, curbing and flashing on or to the roof, shall be subject to Landlord's prior written consent and, if consented to, shall be performed only in the manner specifically approved by Landlord. All such approved work (including repair or maintenance of such work) shall be performed by Landlord's designated roofing contractor at Tenant's expense.

E. **Fire Protection.**

1. Tenant shall contract with a sprinkler contractor approved by Landlord to install within the Premises a sprinkler system as required in the Design Criteria. If feasible Tenant may use any existing sprinkler system within the Premises provided Tenant makes all modifications and additions necessary to bring the system into compliance with the Design Criteria and applicable Law.
2. All sprinkler work shall be done without interrupting service to the remainder of the Center during occupied hours. Draindown and recharge of sprinkler system will be performed by Landlord. Tenant shall give Landlord three (3) days' notice of any requested draindown. Tenant shall reimburse Landlord for each draindown the amount set forth on Attachment 1 hereto.
3. All sprinkler work shall be in accordance with the requirements of, and be approved by, Landlord's insurance underwriter and any governmental and quasi-governmental authorities having jurisdiction.
4. If Tenant is modifying an existing sprinkler system or installing a new system, Tenant's sprinkler contractor shall prepare shop drawings and sepiu reproducible prints of the proposed work, with appropriate calculations, and submit them to the local Fire Marshall and Landlord's insurance underwriter for approval prior to commencing work. Approved sepiu reproducible shop drawings shall be filed with Landlord prior to commencement of fire protection construction activity. Upon completion of work, copies of the material and test certificates shall be filed with all agencies and the Landlord prior to occupancy of the Premises.
5. Should Tenant's Work or use of the Premises require increases in Landlord's maintained main trunk lines or underground service, Tenant shall be responsible for the cost of providing such increase in service to meet its requirements.
6. Any damage to Landlord's sprinkler system caused by Tenant's Work will be repaired by Landlord at Tenant's expense.
7. Automatic sprinkler equipment and any required fire alarm system shall be tested by a party approved by Landlord before Tenant opens for business in the Premises. The introduction of stock, furniture, fixtures, equipment, or other combustible material to the Premises is prohibited until automatic sprinklers are placed in service.
8. Tenant shall install a fire alarm system for the Premises if required by Law and, if there is a central alarm system at the Center, Tenant shall connect up to Landlord's designated connection point, as further set forth in the Design Criteria.

Landlord may require Tenant to use at Tenant's expense an alarm contractor designated by Landlord for any work that could affect Landlord's central system, such as, but not limited to, reprogramming or reconnection to the central system.

9. Landlord's fire insurance underwriter shall from time to time during the Term have the right to inspect the fire protection system and its component parts. Said system shall at all times comply with the reasonable requirements of said underwriter, and any alterations, improvements, repairs, or maintenance required by such underwriter shall be Tenant's sole responsibility and shall be performed promptly at Tenant's expense upon notice of the necessity for such work.
10. Tenant shall install fire dampers as required by Law and by the Design Criteria.

F. **Plumbing.** Tenant shall at its expense furnish and install all required plumbing work for the Premises and shall at its expense make connections to plumbing services provided by Landlord as follows:

1. Connect to Landlord designated tappable sanitary line at locations approved by Landlord.
2. Connect to Landlord designated tappable domestic water line at locations approved by Landlord. Tenant shall install a water meter if required by applicable Law or if required by Landlord.
3. Connect to Landlord's sanitary vent, or alternatively, install a sanitary vent through the roof, all as specifically set forth in the Design Criteria. (The Design Criteria shall state which alternative applies.)
4. Provide domestic hot water using electric storage type water heaters.
5. Insulate all hot and cold water piping and all piping and connections for refrigeration or cold condensate water waste in the Premises and all above ground horizontal waste piping.
6. Install accessible sanitary drain cleanouts which terminate within the Premises.

G. **Heating, Ventilating, and Air Conditioning.**

1. Tenant shall design, provide, and install a complete heating, ventilating, and cooling system within the Premises as specified in Attachment 1 hereto and the Design Criteria.
2. Tenant shall provide toilet room exhaust at a ventilation rate complying with applicable Law. Tenant shall connect up to Landlord's common toilet exhaust main duct or, alternatively, shall install a Landlord-approved toilet exhaust duct with fan through the roof, all as specifically set forth in the Design Criteria. (The Design Criteria shall state which alternative applies.)

3. If odors, excessive heat, moisture, smoke or other air contaminants, can be expected to emanate from the Premises when Tenant's business is in operation, then Tenant shall provide a separate exhaust system for the Premises such that no odors or other contaminants emanate beyond the Premises. In the event of a dispute, Landlord's reasonable determination that a separate exhaust system is needed shall govern. Without limitation, Landlord may require a separate exhaust system for restaurants, beauty salons, tenant that do film developing, and pet stores. All exhaust systems shall comply with NFPA standards, applicable Law and the Design Criteria.
 4. Tenant's air supply, and if Tenant has a chilled/hot water system, Tenant's water supply distribution and exhaust systems, shall be balanced at Tenant's expense prior to opening for business to comply with Law and Tenant's Working Drawings, as approved by Landlord. Such balancing shall be performed by a Landlord-approved independent air balance contractor not affiliated with Tenant's mechanical contractor. Tenant shall furnish Landlord a certified air-balance report after completion of Tenant's Work.
 5. The support Tenant intends to use for its mechanical equipment shall be subject to Landlord's prior written approval.
 6. Tenant shall not permit any rooftop ducts, piping or equipment with respect to the Premises to be visible from the exterior of the Center.
- H. **Electrical.** Subject to and in accordance with Attachment 1, Tenant shall design and install a complete electrical system for the Premises as specified in the Design Criteria, which system shall include the following:
1. Dry-type transformers as may be necessary to accommodate Tenant's requirements.
 2. All work required to connect the electrical system within the Premises to the power source at the location designated by Landlord, using appropriate sized electrical conduit and feeders to connect up to Premises. (If existing conduit and feeders are adequate for Tenant's electrical load and are otherwise in compliance with the Design Criteria and Law, Tenant may use them.) Tenant shall have its electrical contractor coordinate the electrical connection with Landlord.
 3. Electrical meters if required by the Design Criteria or if otherwise required by Landlord.

Without limitation to any other requirements in connection with the electrical work, (i) all wiring shall be installed in conduit and (ii) Tenant shall balance all phases of Tenant's electrical system upon completion of construction to a tolerance of ten percent (10%).

- I. **Telephone.** Tenant shall make arrangements with the telephone company and provide all telephone system panels, outlets, and conduits in the Premises and wire to the distribution point outside the Premises. All telephone wire in the ceiling shall be installed to conform to applicable requirements of Law for a ceiling return air plenum if one exists.
- J. **Storefront.** Tenant shall install a new storefront in accordance with the Design Criteria.
- K. **Restroom.** Tenant shall install a restroom (or restrooms) within the Premises in accordance with the Design Criteria.
- L. **Security Devices.** Tenant's freestanding security devices, if any, shall not be installed or placed in operation unless the size, location and design of such security devices are shown on the Working Drawing and have specifically been approved by Landlord. Any such device installed without such prior consent shall be subject to removal by Landlord without notice to Tenant or liability therefor. Landlord's approval of the Working Drawings shall not be deemed as its approval of such security devices unless such devices are specifically shown as approved on said Working Drawings.
- M. **Grease Traps.** Food service or other tenants who produce grease to any extent shall install a grease trap in accordance with the Design Criteria.
- N. **Gas Service.** Subject to Landlord's advance written approval, if Landlord has gas service available at the Center, and if Tenant desires gas service at the Premises, Tenant shall at Tenant's sole expense arrange for connecting up the Premises to Landlord's gas service at Landlord's designated connection point and arrange with the local gas company for gas service to the Premises.

SECTION III. PROCEDURES AND SCHEDULES FOR THE COMPLETION OF PLANS AND SPECIFICATIONS

- 1. All prints, drawing information, and other materials to be furnished by Tenant as required hereinafter, shall be delivered to Landlord in care of Urban Retail Properties Co., 900 N. Michigan Avenue, Suite 1300, Chicago, Illinois 60611, Attention Tenant Coordinator, or such different address as Landlord may designate to Tenant from time to time. Tenant's preliminary drawings and specifications are herein referred to as the "Preliminary Drawings" and Tenant's final drawings and specifications are herein referred to as the "Working Drawings". The Preliminary Drawings and Working Drawings are sometimes referred to herein as the "Drawings."
- 2. Tenant shall, at its sole expense, utilize the services of an architect and engineer to prepare all Drawings. Said architect and engineer shall be registered in the state in which the Center is located. All Drawings shall be submitted to Landlord for approval in the form of one (1) set of reproducible sepia prints and one (1) set of blueline prints. Tenant shall, with the Drawings, furnish sample boards indicating materials, color selections and finishes to be used. Tenant shall also submit to Landlord such further information on Tenant's planned electrical and mechanical usage at the Premises as requested by Landlord (herein referred to as "Mechanical/Electrical Design

Submittal Forms"). Tenant shall accurately indicate on the Plans any existing equipment or conditions that Tenant proposes to reuse.

3. Unless this Lease is a renewal or extension of a previous lease with Tenant for the same Premises, Landlord will furnish Tenant a drawing that shows the dimensions and square footage of the Premises (the "Layout Drawing"). The Layout Drawing may also show the location of certain existing improvements, such as utility lines. Also, unless Tenant is not required to perform, and is not electing to perform, any Work at the Premises, Landlord shall furnish Tenant the Design Criteria for the Center. If, pursuant to the foregoing, Tenant is supposed to receive the Layout Drawing and/or the Design Criteria, and has not received the same by the date this Lease is fully executed, Tenant shall promptly notify Landlord and Landlord shall furnish said item(s) to Tenant as soon as reasonably possible. Landlord does not warrant the information shown on the Layout Drawing, or on any other drawings it furnishes to Tenant with respect to the Premises.
4. Tenant shall submit the Preliminary Drawings promptly, and in no event later than four (4) weeks after receipt of the Layout Drawing (if applicable) and Design Criteria. The Preliminary Drawings shall show a general rendering of the storefront, interior layout, signage, and any other work Tenant intends to perform. With the Preliminary Drawings Tenant shall submit a color rendering of Tenant's proposed storefront and signage, and a sample board of the materials to be used in the storefront and interior of the Premises. Landlord shall use reasonable efforts to send notification to Tenant that it approves or disapproves the Preliminary Drawings within thirty (30) days after receipt thereof. If Landlord disapproves, Landlord shall specify the reasons for the disapproval. If Landlord disapproves, Tenant shall within ten (10) days after receipt of Landlord's disapproval, send Landlord revised Preliminary Drawings addressing Landlord's comments. This procedure shall be repeated until Landlord has approved the Preliminary Drawings. Landlord may give approval "as noted" in which event the changes noted by Landlord shall be deemed incorporated into the Preliminary Drawings; provided, if Tenant notifies Landlord within five (5) days thereafter that it does not accept said changes, then the Preliminary Drawings shall be deemed disapproved on account of the changes Landlord had requested.
5. Within twenty-eight (28) days after Landlord approves the Preliminary Drawings, but in no event later than sixteen (16) weeks prior to the Commencement Date, Tenant shall submit the Working Drawings. The Working Drawings shall include detailed final drawings for architectural, electrical, mechanical, sprinkler and plumbing and all other work to be performed by Tenant and shall be prepared consistent with the approved Preliminary Drawings. Landlord shall use reasonable efforts to send notification to Tenant that it approves or disapproves of the Working Drawings within thirty (30) days after receipt thereof. If Landlord disapproves, Landlord shall specify the reasons for the disapproval. If Landlord disapproves, Tenant shall within twenty-one (21) days after receipt of Landlord's disapproval, send Landlord revised Working Drawings addressing Landlord's comments. This procedure shall be repeated until Landlord has approved the Working Drawings. Landlord may give approval "as noted" in which event the changes noted by Landlord shall be deemed incorporated into the Working Drawings; provided, if Tenant notifies Landlord within five (5) days thereafter that it does not accept said changes, the Working Drawings shall be deemed disapproved on account of the absence of the changes Landlord had requested.

6. Working Drawings shall include, but not be limited to, the following:

| <u>ITEM</u> | <u>MINIMUM SCALE</u> |
|---|----------------------|
| a. Key plan showing location of Premises | No minimum scale |
| b. Floor and fixture layout plans | 1/4" = 1 foot |
| c. Overall sections | 1/4" = 1 foot |
| d. Reflected ceiling plans | 1/4" = 1 foot |
| e. Plan, elevations & section of storefront | 1/4" = 1 foot |
| f. Details of storefront | 1-1/2" = 1 foot |
| g. Details of special conditions encountered | 1-1/2" = 1 foot |
| h. Interior elevations | 1/4" = 1 foot |
| i. Full sections of types of partitions | 1/2" = 1 foot |
| j. Door schedule with jamb details, including list of hardware | 1/2" = 1 foot |
| k. Storefront and interior finish color sample board (maximum size 11" x 17") | Not Applicable |
| l. Sprinkler, plumbing riser diagram, heating, ventilating, and cooling plans | 1/4" = 1 foot |
| m. Mechanical details | No minimum scale |
| n. Electrical plans (circuited lighting plan, and circuited power plan) | 1/4" = 1 foot |
| o. Electrical details, fixture schedules, diagram, and phase balanced panelboard schedules, riser | No minimum scale |
| p. Mechanical/Electrical Design Submittal Forms. | See Design Criteria |
| 7. The approval by Landlord or Landlord's agent of any Drawings or of Tenant's Work shall not constitute an implication, representation or certification by Landlord or Landlord's agent that either said Drawings or Tenant's Work is accurate, sufficient, efficient or in compliance with insurance and indemnity requirements, or any Laws, including but not limited to code and the Americans with Disabilities Act, the responsibility for which belongs solely to Tenant. | |
| 8. In those instances where multiple standards and requirements apply with respect to Tenant's Work, the strictest of such standards and/or requirements shall control unless prohibited by applicable Law. | |
| 9. Upon completion of Tenant's Work and before Tenant opens for business at the Premises, Tenant shall submit to Landlord written proof from Landlord's insurance underwriter that the fully installed sprinkler system was approved by said underwriter, and Tenant shall submit to Landlord and Landlord's insurance underwriter copies of all material and test certificates. | |

SECTION IV. CONSTRUCTION

1. Tenant may not commence any Work until this Lease has been fully executed, Landlord has approved Tenant's Working Drawings, all required insurance certificates have been furnished Landlord, all building permits have been obtained, and Tenant has complied with all other requirements herein and elsewhere in this Lease.
2. A representative of Tenant shall meet with Landlord at the mall office prior to start of construction to discuss construction-related items. Tenant's representative shall contact the mall office in advance to schedule said meeting at a mutually satisfactory time.
3. Without limitation to any provision of this Lease, prior to commencement of any Work at the Premises Tenant shall furnish Landlord the following:
 - a. The names, addresses, representatives and telephone numbers of the general contractor and all subcontractors ("Tenant's Contractors").
 - b. Amounts of the general contract and each subcontract.
 - c. Certificates of Insurance evidencing the insurance required of Tenant and Tenant's general contractors as provided in this Lease, including this Exhibit B.
 - d. A copy of the building permit(s).
 - e. A detailed construction schedule.
 - f. If required by Landlord, a deposit (the "Construction Deposit") to cover damage to Landlord's property during Tenant's construction and payment of any charges due from Tenant. The amount of the Construction Deposit shall be as set forth in Attachment 2. The Construction Deposit shall be returned to Tenant upon completion of all Tenant's Work in accordance with the approved Working Drawings, provided Tenant owes no amounts to Landlord in connection with the construction.
4. All Tenant's Contractors shall be bondable, licensed contractors, having good labor relations, capable of working in harmony with Landlord's general contractor and other contractors in the Center. Tenant shall coordinate Tenant's Work with other construction work at the Center, if any. Landlord specifically reserves the right to approve Tenant's Contractors. If Landlord does not give Tenant such approval with respect to any contractor(s) Tenant shall contract with another general contractor and/or subcontractors(s), as the case may be, for the completion of Tenant's Work.
5. In addition to the items in paragraph 3 of this Section IV above, Landlord may require either or both of the following.
 - a. Proof in form satisfactory to Landlord of Tenant's financial ability to cause Tenant's Work to be completed and fully paid for prior to opening for business.

- b. A completion bond or an irrevocable letter of credit in Landlord's favor in the amount of the cost of Tenant's Work which Landlord may draw upon in order to pay the Tenant's Contractors if Tenant fails to pay for any of its Work.
- 6. Tenant's Work shall be subject to the inspection of Landlord's representative from time to time during the period in which the Work is being performed.
- 7. Tenant's general contractor shall maintain at the Premises during construction a complete set of approved Working Drawings bearing Landlord's approval stamp.
- 8. Temporary Facilities.
 - a. If not already available in the Premises, Tenant shall provide temporary heat, air-conditioning and ventilation for the Premises during construction if Tenant desires the same.
 - b. Tenant shall make the necessary electrical connections (as provided in Section II, Part 2, Paragraph H above) prior to beginning its Work at the Premises so that it shall have electricity during its construction period. Tenant shall pay for said electricity as billed by the electrical company or by Landlord (as Landlord reasonably determines), as is applicable.
 - c. If Tenant requires water service during construction and Landlord is able to provide it, Landlord shall do so and bill Tenant as Landlord reasonably determines.
 - d. Tenant shall place all trash in trash containers at a pick-up area or areas designated by Landlord. Tenant shall be responsible for breaking down boxes. Tenant shall furnish its own trash containers at its cost unless Landlord elects to furnish the containers. Tenant shall provide trash removal service at Tenant's own cost from the pick-up areas unless Landlord elects to provide the trash removal service. Tenant shall not permit trash to accumulate within the Premises or in the corridor or mall adjacent to the Premises. Should Landlord elect to remove Tenant's trash from the designated pick-up areas for any reason, the charge to Tenant shall be equal to Landlord's actual costs for such removal (as Landlord reasonably determines), plus 15% thereof for administrative costs. If Landlord furnishes the trash containers Tenant shall pay Landlord Landlord's actual costs therefor.
- 9. Tenant shall not perform any work at the Premises without a temporary construction barricade in front of the entire Premises. At Landlord's election either (i) Landlord shall provide and install (or Landlord has provided and installed) the barricade, and Tenant shall pay Landlord the amount shown on Attachment 1 hereto, or (ii) Tenant shall at Tenant's cost install its own barricade in which event Landlord may designate the specific type of design required for the barricade or have Tenant prepare the design for the barricade which design shall be subject to Landlord's advance written approval. No signs shall be allowed on any barricades except those, if any, provided by Landlord. Landlord shall have the right to remove any nonpermitted signs without liability or prior notice.

10. The cost of any work permitted or required to be performed by Landlord on behalf of Tenant under this Exhibit shall become due and payable in full within thirty (30) days after Tenant has been invoiced for same by Landlord and said charges shall be deemed Rent under the Lease.
11. Upon completion of Tenant's Initial Work, Tenant shall notify the management office of the Center. Upon said notification, Landlord's designated representative shall inspect the Premises and, if the Premises are constructed in accordance with the approved Drawings, said representative shall issue a Letter of Acceptance for the Premises. If Landlord believes the Premises have not been constructed in accordance with the approved Drawing, Landlord shall so notify Tenant or Tenant's Contractor. Tenant shall not open prior to Landlord's issuance of a Letter of Acceptance. Tenant shall furnish Landlord a copy of a certificate of occupancy for the Premises before Tenant opens for business.
12. All work performed by Tenant during its construction period, or otherwise during the Term, shall be performed so as to cause the least possible interference with other tenants and the operation of the Center, and Landlord shall have the right to impose reasonable requirements with respect to timing and performance of the Work in order to minimize such interference. Work causing noise, odor or vibration outside the Premises shall be performed only during hours the stores at the Center are not open. Tenant shall take all precautionary steps to protect its facilities and the facilities of others affected by the Work and shall police same properly. Construction equipment and materials are to be located in confined areas and truck traffic is to be routed to and from the site as directed by Landlord so as not to burden the construction or operation of the Center. All Work shall be confined to the Premises. Tenant's Contractor shall coordinate with Landlord's on-site representative for the delivery and removal of its equipment and materials. Landlord shall have the right to order Tenant or any Tenant's contractor or subcontractor who willfully violates the above requirements to cease work and to remove its equipment and employees from the building.
13. Contractor Insurance. Tenant shall cause its general contractor and all subcontractors to maintain during the construction period the following insurance: (i) commercial general liability insurance, with limits of not less than \$4 million per occurrence (the portion of such coverage over \$1 million may be provided under an umbrella or excess liability policy), for personal injury, bodily injury or death, or property damage or destruction, arising out of or relating to the contractor's work at or in connection with the Premises, (ii) workers' compensation insurance with respect to each contractor's workers at the site or involved in the Work, in the amount required by statute, (iii) employer's liability insurance in the amount of at least \$500,000 per accident and at least \$500,000 for disease, each employee, (iv) comprehensive automobile liability insurance covering all owned, hired or non-owned vehicles, including the loading and unloading thereof, with limits of not less than \$2 million per occurrence (the portion of such coverage over \$1 million may be provided under an umbrella or excess liability policy), and (v) builder's risk property insurance upon the entire Work to the full replacement cost value thereof. Landlord, Landlord's managing agent, and such other parties as are designated by Landlord, shall be additional insureds under (i), (iv) and (v) above. All insurance required hereunder shall be provided by responsible

insurers rated at least A and X in the then current edition of Best's Key Rating Insurance Guide and shall be licensed in the State in which the Center is located. Tenant shall provide, or cause its contractors to provide, such certificates prior to any Work being performed at the Premises. Such certificates shall state that the coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Landlord. All such insurance shall provide for a waiver of subrogation by the insurance carriers.

Attachment 1 to Exhibit B for
MILITARY CIRCLE CENTER Shopping Center
located in Norfolk, Virginia.

1. Electrical. Landlord shall make available to Tenant electrical capacity based on tenant occupancy type at 15 volt/amps per square foot of the leasable area of the Premises at 277/480 volt 3 phase. If Tenant's total electrical power requirements exceed such amount, Landlord may require Tenant to arrange to obtain power directly from the local utility company at Landlord's designated location. Tenant shall extend to a point designated by Landlord, 277/480 volt, 3 phase, 4 wire feeders in order to obtain the electricity.

2. HVAC. Tenant shall perform the following with respect to HVAC (the alternative which is checked shall apply):

X FOR FOOD COURT TENANTS AND SHOPPES TENANTS: Tenant shall install a roof-top HVAC unit and shall connect the Premises thereto, all as specifically set forth in the Design Criteria.

X FOR ALL TENANTS OTHER THAN FOOD COURT TENANTS AND SHOPPES TENANTS: The Center has a chilled and hot water supply system. Tenant shall connect the Premises HVAC system to the said Landlord system, as specifically set forth in the Design Criteria.

3. Flooring Cost. Cost to Tenant of Building Standard Flooring purchased from Landlord: \$6.00 per square foot.

4. Barricade Cost. Cost to Tenant of Barricade installed by Landlord: \$35.00 per lineal foot, plus \$100 for barricade signage.

5. Sprinkler Draindown. Cost to Tenant per sprinkler draindown: \$75.00 each First one free, thereafter. draindown.

6. Construction Deposit. \$1,000.00.

Attachment 2 to Exhibit B for
MILITARY CIRCLE Shopping Center
located in Norfolk, Virginia.

Special Provisions.

1. The last sentence of paragraph 3(d) in Section I is deemed deleted.
2. Notwithstanding anything contained to the contrary in Section I of this Exhibit, Tenant shall reimburse Landlord the cost of installing the neutral piers for the Premises.
3. Notwithstanding the language of paragraph A8 of Section II, Part One, the cost to Tenant of the service door sign shall be \$75.00.
4. Tenant is required to install an electrical meter for the Premises.
5. Notwithstanding the language of Paragraph 2 of Section II to the contrary, Tenant shall furnish Landlord four (4) sets of blueline prints.
6. Tenant shall pay Landlord the barricade charge prior to Tenant beginning any construction activity.
7. Tenant must install a 4 wire meter socket with bypass lever. Must be purchased from mall management office at cost of, for 100 amp, \$116.15; for 200 amp, \$146.05.
8. Restaurants, beauty salons, pet stores, tenants that do film developing, and other tenants for whom Landlord so directs, shall install a water meter in a readily accessible area to measure Tenant's water use.
9. Unless Landlord expressly directs otherwise, in all cases Landlord shall install the barricade for the Premises, the cost to Tenant therefor to be as set forth in Attachment 1.
10. The Design Criteria for Food Court tenants and Shoppes tenants may contain certain provisions that differ from the provisions of this Exhibit B. In the event of such conflict, the provisions in the Design Criteria will control.

Exhibit C

SIGN EXHIBIT

Tenant's storefront sign shall be subject to Landlord's sign criteria and other requirements relating to the storefront sign (the "Sign Criteria") which Landlord has furnished or will furnish to Tenant. The Sign Criteria may be part of the overall store design criteria Landlord has furnished, or will furnish, to Tenant, or it may be separate therefrom. Without limitation, Tenant's storefront sign may contain only Tenant's approved trade name, and, without limitation, may not include any slogans or mottos.

All references in the Lease to Exhibit C or to sign criteria shall be deemed to mean the Sign Criteria. Without limitation to anything in the Lease or the Sign Criteria, all aspects of Tenant's storefront sign are subject to Landlord's advance written approval.

FIRST AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT, made this 25th day of September 2000, by and between M.C. PROPERTIES (NORFOLK), INC., a Delaware Corporation, successor in interest to MILITARY CIRCLE LIMITED PARTNERSHIP, a Maryland limited partnership, with offices at c/o Urban Retail Properties Co., 900 North Michigan Avenue, Chicago, Illinois 60611-1957 (hereinafter called "Landlord") and LARGE APPAREL OF VIRGINIA, INC., a Virginia corporation, with offices at 100 Metro Way, Secaucus, NJ 07094 (hereinafter called "Tenant").

RECITALS

WHEREAS, ON THE 21ST DAY OF MAY, 1998, Landlord and Tenant entered into a Lease for the approximate Four Thousand (4,000) square feet of premises commonly known as 880 North Military Highway, Norfolk, Virginia; and

WHEREAS, said Lease expires the 31ST day of January, 2009; and

WHEREAS, Landlord and Tenant desire to amend and modify certain provisions of the Lease, to wit: Tenant's minimum annual rental and Tenant's early termination date.

AGREEMENT

NOW THEREFORE, in consideration of mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Notwithstanding anything contained in the Lease or any amendments or modifications thereof, effective as of August 1, 2000, and continuing thereafter for a period of two (2) years, through and including July 31, 2002, Tenant shall pay to

Landlord as minimum annual rent the greater of eighty thousand (\$80,000.00) dollars or eight percent (8%) of annual gross sales which amount shall include rent and all other extra charges, other than utility charges (including electrical charge, HVAC operating charge and water charge). Tenant shall continue to pay, in addition to the foregoing the electrical charge, HVAC operating charge and water charge, and any other utility charges as defined in the Lease.

2. In the provision at page 16A of the Lease (Article 21G. Insufficient Gross Sales), in the first line, the words "second full Lease Year" are changed to "fourth (4th) full Lease Year i.e., calendar year ending December 31, 2002)".

3. Commencing August 1, 2002, the Lease shall revert to the original rental terms.

4. All other terms and conditions of the Lease (except as modified herein) shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereunder have executed this Agreement the day and year first above written.

WITNESS:

LANDLORD
M.C. PROPERTIES (NORFOLK), INC.
a Delaware Corporation

BY: Sheryl M. Crosland
Sheryl M. Crosland, Vice President

WITNESS:

TENANT
LARGE APPAREL OF VIRGINIA, INC.

BY: Joseph J. Sitt
Joseph J. Sitt
ITS: President

SECOND AMENDMENT TO LEASE

THIS AGREEMENT is made and entered as of the 1st day of April, 2002, by and between M.C. PROPERTIES (NORFOLK), INC., a Delaware corporation ("Landlord") and LARGE APPAREL OF VIRGINIA, INC., a Virginia corporation ("Tenant").

WITNESSETH:

A. Landlord, successor to the original landlord, is the landlord, and Tenant is the tenant (d/b/a Ashley Stewart) under that certain lease dated May 21, 1988, for premises (the "Premises") described as Space Number 1113, initially containing approximately 4,000 square feet, in the property (the "Property") known as Military Circle located in Norfolk, Virginia, which lease was amended by a Lease Amendment dated September 26, 2000 ("First Amendment") (said lease, as amended, the "Lease").

B. Under the Lease, as amended, Tenant has an early termination right based upon gross sales in the 4th full Lease Year being less than a certain amount.

C. The parties mutually desire to amend the Lease to modify Tenant's termination right, all on and subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual terms and conditions herein contained, the parties hereby agree as follows:

1. Amendment. The parties agree that the Lease shall be amended as follows:

(a) On page 18A of the Lease (Article 21G, Insufficient Gross Sales) the following changes are made:

(i) In the first line, "fourth (4th) full Lease Year, i.e., calendar year ending December 31, 2002" is changed to "fifth (5th) full Lease Year, i.e., calendar year ending December 31, 2003"; and

(ii) In lines 2 and 3, "Nine Hundred Fifty Thousand and No/100 Dollars (\$950,000.00)" is changed to "Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00)".

(b) The gross rental arrangement provided for in Paragraph 1 of the First Amendment shall continue beyond July 31, 2002, and shall now expire on December 31, 2003. Commencing January 1, 2004, the Lease shall revert to its original rental terms.

2. Whole Agreement. This Agreement sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as specifically amended herein, the Lease between the parties shall remain unamended in full force and effect.

3. No Offer. This Agreement shall not be binding until executed and delivered by both parties.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Lease as of the date first above written.

LANDLORD:

M.C. PROPERTIES (NORFOLK), INC.,
a Delaware corporation

By: 

Sheryl M. Creeland, Vice President

Attest: 

Secretary

TENANT:

LARGE APPAREL OF VIRGINIA, INC.,
a Virginia corporation

By: 

Attest: 

ROBERT S. BLAND
President

Secretary

EXHIBIT D

THIRD AMENDMENT OF LEASE

THIS THIRD AMENDMENT OF LEASE ("Third Amendment"), made as of this ^{27th} day of February, 2004, between Thor Gallery at Military Circle LLC, a Virginia limited liability company, having a place of business c/o Thor Equities, LLC, 139 Fifth Avenue, New York, New York, 10010 ("Landlord"), and Large Apparel of Virginia, Inc., a Virginia corporation d/b/a Ashley Stewart Woman ("Tenant").

Recitals

WHEREAS, by Second Amendment dated April 1, 2002 ("Second Amendment"), First Amendment dated September 22, 2000 ("First Amendment") and Lease dated May 31, 1998 (the "Lease"), MC Properties (Norfolk), Inc., Landlord's predecessor-in-interest, did demise and let unto Tenant, and Tenant did hire and take from Landlord that certain retail space designated as space no. 1113, consisting of approximately 4,000 square feet (the "Premises"), in the Shopping Center known as The Gallery at Military Circle (formerly known as Military Circle Mall), 880 North Military Highway, Norfolk, Virginia (the "Premises"); and

WHEREAS, the term of the Lease expires on January 31, 2009 (the "Term"); and

WHEREAS, Landlord and Tenant desire to amend and extend the minimum annual rental agreement and Tenant's early termination date.

WHEREAS, Landlord and Tenant desire to add a right to recapture with respect to the Premises.

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

1. Amendment. The Lease is amended as of the date hereof as follows:
2. The minimum annual rental agreement provided for in paragraph 1 of the First Amendment and paragraph 1(b) of the Second Amendment has been extended for an additional two (2) year period, from January 1, 2004 and shall now expire on December 31, 2005. Commencing January 1, 2006, the Lease shall revert to its original rental terms.
3. Notwithstanding anything to the contrary contained in the Lease, both parties agree that, upon the execution of this agreement and for the remainder of the Term, Landlord reserves the right to recapture the Premises or any portion thereof, for any reason, upon sixty (60) days prior written notice to Tenant.

4. **Article 21G (Insufficient Gross Sales):** Pursuant to the Lease and as further amended by the Second Amendment, commencing January 1, 2004 and ending December 31, 2004, the Tenant kick-out has been extended for an additional calendar year – Now the “sixth (6th) full Lease Year”. Further, the gross sales threshold under paragraph 1(a)(ii) of the Second Amendment shall remain the same. Notwithstanding the foregoing, Landlord and Tenant agree that, during this period, the Premises will not close during the months of April 1st through May 31st and November 1st through December 31st (the “Restricted Period”).

5. Tenant represents and warrants to Landlord that it has dealt with no broker, finder or like agent in connection with this Amendment of Lease, and Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, damages and expenses (including, without limitation, attorneys’ fees and other charges) incurred by Landlord by reason of any claim of or liability to any broker, finder or like agent who shall claim to have dealt with Tenant in connection with this Amendment of Lease.

6. Except as modified and amended by this Amendment of Lease, all of the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect throughout the remainder of the term thereof.

7. This Amendment of Lease shall not be binding upon or enforceable against Landlord unless and until Landlord shall have executed and unconditionally delivered to Tenant an executed counterpart of this Amendment of Lease.

8. This Amendment of Lease may not be modified, amended or terminated nor may any of its provisions be waived except by an agreement in writing signed by the party against whom enforcement of any modification, amendment, termination or waiver is sought.

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

10. Tenant acknowledges that no uncured default, event of default, or breach by Landlord or Tenant currently exists under the Lease. Tenant has made no claim against Landlord alleging Landlord's default under the Lease. Tenant is obligated to pay rent to Landlord at the rate set forth in the Lease. Tenant acknowledges and agrees that except as provided herein, Landlord has fully performed all of its obligations under the Lease with respect to work to be performed by or on behalf of Landlord in the Premises.

11. Tenant acknowledges and agrees that, as of the date hereof, its obligations under the Lease, as modified and amended by this Agreement, are not subject to any reduction, limitation, impairment or termination for any reason whatsoever, including, without limitation, any claim of waiver, release, surrender or compromise and are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Tenant's obligations under the Lease, as modified by this Agreement, or otherwise.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed these presents, the day and year first written above.

**THOR GALLERY AT MILITARY
CIRCLE, LLC, Landlord**

By: Thor MM Gallery at Military
Circle, LLC, its managing member

By: Thor MM Military Corporation,
its managing member

By: 

Peter Lockhart

Secretary

LARGE APPAREL OF VIRGINIA, INC.
a Virginia corporation, Tenant

By: 

Print Name:

ETHAN SHAPIRO

Title:

PRESIDENT AND

CHIEF EXECUTIVE OFFICER

Attest: 

Secretary

FOURTH AMENDMENT OF LEASE AGREEMENT

THIS FOURTH AMENDMENT OF LEASE ("Fourth Amendment") is made as of Sept. 4, 2009, between THOR GALLERY AT MILITARY CIRCLE LLC, a Delaware limited liability company ("Landlord"), having a place of business c/o Thor Equities, LLC located at 25 West 39th Street, 11th Floor, New York, NY 10018 and Large Apparel of Virginia, Inc., a Virginia corporation d/b/a Ashley Stewart Woman ("Tenant") whose principal place of business is located at 100 Metro Way, Secaucus, NJ 07094.

WITNESSETH:

WHEREAS, predecessor in interest to Landlord entered into lease with Tenant dated May 21, 1998 as amended by First Amendment of Lease dated September 25, 2000, Second Amendment to Lease dated April 1, 2002, Third Amendment of Lease dated February 27, 2004 (collectively, the "Lease"), Military Circle Limited Partnership, Landlord's predecessor-in-interest, did demise and let unto Tenant, and Tenant did hire and take from Landlord that certain retail space designated as space no. 1113, consisting of approximately 4,000 square feet (the "Premises"), in the Shopping Center known as The Gallery at Military Circle (formerly known as Military Circle Mall), 880 North Military Highway, Norfolk, Virginia (the "Shopping Center");

WHEREAS, the term of the Lease shall expire on January 31, 2009; and

WHEREAS, landlord and Tenant desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

AGREEMENT

1. The terms of the preamble are incorporated herein by reference as though set forth at length and verbatim herein.
2. Capitalized terms used herein but not otherwise defined shall have the same meaning ascribed to them in the Lease.
3. The Term of the Lease is hereby extended for a period of two (2) years ("Extended Term"), and such Extended Term shall commence on February 1, 2009 ("Extended Term Commencement"), and shall expire on January 31, 2011 (the "Expiration Date"), unless sooner terminated as provided in the Lease. During the Extended Term, except as expressly provided for herein, all of the terms, conditions and provisions of the Lease shall be applicable and shall continue in full force and effect.

4. During the Extended Term, Annual Basic Rent shall be \$84,000.00 annually (\$7,000.00 monthly). Tenant's payment of Annual Basic Rent shall represent and constitute payment of Tenant's Proportionate Share of Center Expenses, Insurance and Taxes. However, Tenant shall continue to pay all other charges, including but not limited to Promotional Contributions, Sprinkler Charge, Water and Sewer Charge, HVAC Operating Charge, Trash Removal Service Charge and Electricity.

5. During the Extended Term, Tenant shall continue to pay Percentage Rent and all other applicable charges under the Lease. Tenant shall pay twelve percent (12%) of Gross Sales exceeding a natural breakpoint of Seven Hundred Thousand Dollars (\$700,000.00)

6. Notwithstanding anything in the Lease or any prior correspondence between the parties hereto to the contrary, the addresses set forth below shall be the addresses of Landlord used for notices required to be given under the Lease:

To Landlord: Thor Gallery At Military Circle, LLC
c/o Thor Equities, LLC
25 West 39th Street, 11th Floor
New York, NY 10018
Attn: Legal Department

To Tenant: Urban Brands, Inc.
d/b/a Ashley Stewart #113
100 Metro Way
Secaucus, NJ 07094
Attn: Lease Administration

7. Each party represents and warrants to the other that it has taken all corporate or other action necessary to execute and deliver this Fourth Amendment, and this Amendment constitutes a legally binding obligation of said party, enforceable in accordance with its terms. Each party shall hold the other party harmless from any claims or damages, including reasonable attorneys' fees, arising from any misrepresentation of its authority to enter into and execute this Fourth Amendment.

8. This Fourth Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and/or assigns. This Fourth Amendment shall be governed by and construed in accordance with the laws of the state in which the Shopping Center is located.

9. In the event of any conflict between the Lease and this Fourth Amendment, the terms, conditions and provisions of the latter shall govern.

10. This Fourth Amendment may be executed in one or more counterparts, provided that any aggregate number of counterparts having at least one original execution of each party affixed, shall constitute one and the same agreement.

11. Except as modified by this Fourth Amendment, all of the terms, covenants and provisions of the Lease including any and all guaranties, are and shall remain in full force and effect and are hereby ratified in all respects.

12. This Fourth Amendment together with the Lease sets forth the entire agreement between the Parties, superseding all prior agreements and understandings, written or oral, and may not be altered or modified except in writing and signed by both parties.

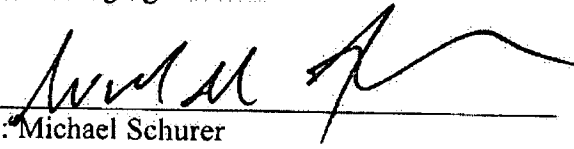
IN WITNESS WHEREOF, the parties hereto have duly executed this Fourth Amendment as of the date first above written.

LANDLORD

THOR GALLERY AT MILITARYCIRCLE, LLC

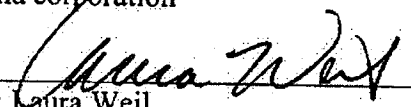
By: Thor MM Gallery at Military Circle, LLC,
its managing member

By: Thor MM Military Corporation,
its managing member

By: 
Name: Michael Schurer
Title: Authorized Signatory

TENANT

LARGE APPAREL OF VIRGINIA, INC., a
Virginia corporation

By: 
Name: Laura Weil
Title: Chief Executive Officer



ATTORNEYS AT LAW

HOWARD I. ELMAN
JOSEPH LEE MATALON
BARBARA R. SHWEKY

YOSEF ROTHSTEIN

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

VIA FEDERAL EXPRESS

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

Re: UBI Liquidating Corp, et al. Case No. 10-13005 (KJC)
Administrative Expense Claim
Thor Gallery At Military Circle LLC
Ashley Steward Woman Store No. 1113

Dear Claims Processing Department:

Enclosed please find the original and one copy of Thor Gallery At Military Circle LLC's Administrative Expense Claim in the amount of \$2,779.84.

Kindly file the original Expense Claim with the United States Bankruptcy Court for the Southern District of New York, and return a "filed" stamped copy to us in the enclosed, self-addressed, stamped envelope provided for your convenience.

Thank you.

Very truly yours,

Allen Mukaida
Paralegal

Enclosures