

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11Ordinance/Resolution# 12-101For Meeting of _____
(Ordinance First Reading Date)For Meeting of December 19, 2011
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE FOURTH AMENDMENT TO THE CURRENT LEASE FOR THE LAS CRUCES MUSEUM OF NATURAL HISTORY AT THE MESILLA VALLEY MALL AND AUTHORIZING THE MAYOR TO EXECUTE THE LEASE EXTENSION FOR A TERM OF ONE YEAR WITH A MUTUAL RIGHT OF TERMINATION FOR EITHER PARTY UPON A NINETY (90) DAY WRITTEN NOTICE.

PURPOSE(S) OF ACTION: To approve a one (1) year extension to the lease agreement between the City of Las Cruces and Marathon Corporation (Mesilla Valley Mall) for space utilized by the Las Cruces Museum of Natural History.

COUNCIL DISTRICT: All		
<u>Drafter/Staff Contact:</u> Catherine Duarte	<u>Department/Section:</u> Public Works/Facilities Management	<u>Phone:</u> (575) 528-3121
<u>City Manager Signature:</u> 		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The initial lease agreement between the City of Las Cruces ("City") and Marathon Corporation ("Mesilla Valley Mall") was approved on October 19, 1994 via Resolution No. 95-087. Amendments to that Resolution were approved on November 7, 1994 (Resolution No. 95-149); a second amendment was approved on September 6, 2005 (Resolution No. 06-078); and, a third amendment was approved July 21, 2008 (Resolution No. 09-016), and will expire on December 31, 2011.

The Museum of Natural History is planning to relocate to their new site located at 411 North Main Street upon completion of the remodel and expansion of the existing location. The anticipated move date for the relocation of the museum is on or before December 31, 2012. City staff has contacted the Mesilla Valley Mall's management company requesting a fourth amendment to the current lease which would allow an extension for an additional year. The mall's management company is willing to recommend such an extension.

Under the new terms and conditions the City will be responsible for: A one (1) year lease with a one (1) year option to renew the term. The minimum annual rent of \$9.20 per sq. ft. did not change from the current rate and will be due to expire on December 31, 2012. This equates to a yearly rent of \$39,449.60. Should the City need to exercise the option to renew this extension for an additional year, the City must submit written notification 180 days prior to the expiration date of the extension.

The lease space being utilized by the Museum of Natural History includes 4,288 square feet at a cost of \$39,449.60 per year (approximately \$3,287.47 per month).

In addition to the rent rate, the City shall pay an estimated \$1.23 per sq. ft. per annum cost for utilities (\$5,274.24); a fixed \$2.95 per sq. ft. per annum cost for HVAC (\$12,649.60); an estimated \$0.35 per sq. ft. per annum cost for trash (\$1,500.80); an estimated usage charge of \$0.35 per sq. ft. per annum cost for water/sewer (\$1,500.80); for yearly additional charges of \$20,925.44 (\$1,743.79 per month); thereby, relieving City staff of maintenance issues, direct utility expenses, and the potential of costly HVAC unit replacement. Therefore, the total annual rent rate, plus the additional defined costs noted above, is estimated at \$60,375.12, or \$5,031.26 per month. Please note the rent rates and additional costs are based on a calendar year, and the funding noted below is calculated based on a fiscal year.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Fourth Amendment to Lease.
3. Attachment "A", Existing Lease Agreement

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The available budget shown in the fund expenditure summary below is sufficient for the remainder of the current fiscal year at \$5,031.26 per month. For FY 2012-2013, staff will budget the remaining \$30,187.56 needed to complete the lease. All amounts shown above related to the rental contract are based on calendar year calculations.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General Fund	10205120-723100	\$30,187.56	\$40,616.15	\$10,428.59	Rental fee for lease agreement

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the extension of the Fourth Amendment of the current lease for the Las Cruces Museum of Natural History at the Mesilla Valley Mall and authorizing the Mayor to execute the lease extension for a term of one year with a mutual right of termination for either party to terminate the lease upon a ninety (90) day written notice.
2. Vote "No"; this will not approve the Resolution, and will not authorize the lease agreement.
3. Vote to "Amend"; this would require re-negotiation of the lease terms and could result in commensurate adjustments to the costs associated with the lease.
4. Vote to "Table"; this would result in delay that might cause unfavorable changes to the terms of the lease.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 06-078
2. Resolution No. 95-087
3. Resolution No. 95-149
4. Resolution No. 09-016

RESOLUTION NO. 12-101

A RESOLUTION AUTHORIZING THE FOURTH AMENDMENT TO THE CURRENT LEASE FOR THE LAS CRUCES MUSEUM OF NATURAL HISTORY AT THE MESILLA VALLEY MALL AND AUTHORIZING THE MAYOR TO EXECUTE THE LEASE EXTENSION FOR A TERM OF ONE YEAR WITH A MUTUAL RIGHT OF TERMINATION FOR EITHER PARTY UPON A NINETY (90) DAY WRITTEN NOTICE.

The City Council of the City of Las Cruces is informed that:

WHEREAS, a lease agreement between the City of Las Cruces ("City") and Marathon Corporation ("Mesilla Valley Mall") was approved on October 29, 1994 on Resolution No. 95-087. Amendments to that Resolution were approved on November 7, 1994 (Resolution No. 95-149). A second amendment was approved on September 6, 2005 (Resolution No. 06-078) and, a third amendment was approved July 21, 2008 (Resolution No. 09-016), and will expire on December 31, 2011; and

WHEREAS, the Museum of Natural History is planning to relocate to their new site located at 411 North Main Street upon completion of construction; and

WHEREAS, City staff has contacted the Mesilla Valley Mall's management company requesting a fourth amendment to the current lease which would allow an extension for an additional year and they are willing to recommend extension; and

WHEREAS, the City and Mesilla Valley Mall shall have the option to renew and extend the current lease for an additional year with the same terms and conditions upon written notification 180 days prior to the expiration date of the extension.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT a recommendation to approve extending the current lease agreement under the modified terms and conditions for one year between the City and Mesilla Valley Mall.

(II)

THAT the City and Mesilla Valley Mall have the option to renew and extend the current lease, and the conditions that the City will be responsible for.

(III)

THAT the Mayor execute the lease extension for a term of one (1) year with a mutual right of termination for either party to terminate the lease upon a ninety-day written notice.

(IV)

THAT the Mayor is hereby authorized to execute the lease, designated as Exhibit "A", attached hereto and made a part hereof; and

(V)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this ____ day of _____, 2011.

APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

[Handwritten Signature]

City Attorney

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

FOURTH AMENDMENT TO LEASE
(Mesilla Valley Mall: Las Cruces Museum of Natural History)

THIS FOURTH AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the _____ day of _____, 2011, by and between MESILLA VALLEY MALL, LLC, a Delaware limited liability company ("Landlord"), and CITY OF LAS CRUCES, d/b/a Las Cruces Museum of Natural History ("Tenant").

RECITALS

A. Landlord, as successor-in-interest to Marathon U.S. Realities, Inc., and Tenant are parties to a written lease agreement dated as of December 1, 1994 for the lease of certain premises (the "Premises") known as Space Number 1608, consisting of approximately 4,288 square feet, and more particularly described in said lease, located in Mesilla Valley Mall, Las Cruces, New Mexico (the "Shopping Center").

B. Said lease has not been assigned or modified, except as follows:

First Amendment to Lease dated December 19, 2002;
Second Amendment to Lease dated September 16, 2005; and
Third Amendment to Lease dated August 4, 2008.

Said lease, together with the foregoing assignment and modification, is referred to as the "Lease".

C. Landlord and Tenant desire by this Amendment to extend the Term of the Lease and to otherwise amend the Lease as set forth below.

D. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Lease.

TERMS

NOW, THEREFORE, in consideration of the mutual agreements contained in this Amendment, Landlord and Tenant agree as follows:

1. Term. The Term of the lease shall be extended for a period of one (1) year commencing on January 1, 2012 and expiring on December 31, 2012. The extension period is referred to in this Amendment as the "Fourth Extension Term." All terms and conditions of the Lease will apply to the Fourth Extension Term, except as otherwise set forth in this Amendment.
2. Minimum Annual Rental. During the Fourth Extension Term, Tenant shall pay to Landlord as Minimum Annual Rental an amount equal to Thirty Nine Thousand Four Hundred Forty-Nine and 60/100 Dollars (\$39,449.60) per annum, payable in equal monthly installments of Three Thousand Two Hundred Eighty Seven and 47/100 Dollars (\$3,287.47) and otherwise in accordance with the terms of the Lease.
3. HVAC Charge. Notwithstanding any provision in the Lease to the contrary, during the Fourth Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("HVAC Charge") in the amount of Two and 95/100 Dollars (\$2.95) per square foot of floor area of the Premises per annum, subject to terms and conditions provided in Exhibit A attached hereto.
4. Trash Charge. Notwithstanding any provision in the Lease to the contrary, during the Fourth Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("Trash Charge") in the amount of Thirty-Five Cents (\$0.35) per square foot of floor area of the Premises per annum payable in equal monthly installments in the same manner as Minimum Annual Rental. The Trash Charge for any partial year or month shall be prorated on a per diem basis for partial months and partial years. Tenant trash, waste, and garbage must be stored within the Premises until brought by Tenant, if so directed by Landlord, to a common trash room in the common area of the Shopping Center. Landlord may assign each Tenant a trash room location by the Shopping Center, at such location as Landlord may determine in its sole discretion. Landlord has provided and will maintain trash pickup in the Shopping Center.
5. Water & Sewer Charge. Notwithstanding any provision in the Lease to the contrary, during the Fourth Extension Term, Tenant shall pay Landlord as Additional Rent a charge in the amount of Thirty-Five Cents (\$0.35) per square foot of floor area of the Premises per annum (the "Water and Sewer Charge"), payable in equal monthly installments on the first day of each month as consideration for Tenant's use of water and sewer services at the Premises (including the reasonable costs incurred by Landlord in connection with arranging, procuring and maintaining such water and sewer service). The Water and Sewer Charge for any partial year or month shall be prorated on a per diem basis for partial

months and partial years. Landlord may adjust the Water and Sewer Charge to reflect Landlord's actual cost of water and sewer service. Upon notice from Landlord, Tenant shall begin paying the adjusted amount until a subsequent adjustment is made.

6. Electrical Service Charge. Notwithstanding any provision in the Lease to the contrary, during the Fourth Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("Electrical Service Charge") in the amount of One and 23/100 Dollars (\$1.23) per square foot of floor area of the Premises per annum payable in equal monthly installments in the same manner as Minimum Annual Rental, subject to adjustment as provided in Article 16(a) of the Lease.

7. Effect on Additional Rent and Charges. Except as specifically provided herein, nothing contained in this Amendment shall affect Tenant's liability for any and all additional rent and charges payable by Tenant under the Lease.

8. Option to Renew. Provided Tenant is not in default or breach under any of the terms, covenants, or conditions of this Lease, Tenant shall have the one time option (the "Renewal Option") to renew this Lease for a period of one (1) year (the "Renewal Term"), upon written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the Fourth Extension Term, upon the same terms and conditions of this Lease existing at the expiration of the Fourth Extension Term.

9. Right to Terminate. At any time during the Fourth Extension Term, either Tenant or Landlord shall have the option to terminate the Lease upon not less than 90 days prior written notice to the other. In the event of any such termination, the term of the Lease will end upon the effective date of termination specified in the termination notice, and thereafter the parties will be released from all further obligations under the Lease except for accrued obligations then unpaid or unperformed. Tenant acknowledges that any and all tenant improvements and other improvements in and to the Premises are a part of the Premises and shall not be removed upon the early termination of the Lease. Tenant shall surrender the Premises to Landlord pursuant to the terms set forth in Article 24 of the Lease.

10. Ratification of Lease. The Lease as amended by this Amendment is ratified, confirmed and approved in all respects and remains in full force and effect.

11. Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter of this Amendment. There are no agreements between Landlord and Tenant relating to the Lease or the Premises other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth in this Amendment, either oral or written, as an inducement to enter into this Amendment.

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12. Successors and Assigns. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties, subject to the applicable provisions of the Lease.

IN WITNESS WHEREOF, this Amendment is made as of the day and year first above written.

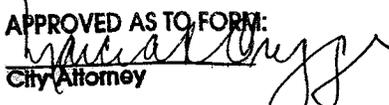
LANDLORD: MESILLA VALLEY MALL LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

TENANT: CITY OF LAS CRUCES,
d/b/a Las Cruces Museum of Natural History

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
AST 
City Attorney

**EXHIBIT A
HVAC EXHIBIT**

This Exhibit A provides information and sets forth requirements for Landlord supplied rooftop cooling system ("HVAC System") for use in connection with Tenant's operation of the Premises.

1. Landlord shall supply, construct, operate and maintain, or cause to be operated and maintained, an HVAC System designed to provide cooled air to, but not within the interior of the Premises, at Landlord's own cost and expense. Except for cooled air service being provided by Landlord, Tenant shall provide all systems, facilities and equipment necessary for the distribution and control of the cooled air delivered to the Premises.
2. Tenant is responsible for the maintenance of the HVAC System within the interior of the Premises, including but not limited to the controls, ducts, electrical wiring, temperature controls, heating and heat detection, at Tenant's sole expense. The HVAC System must be compatible with Landlord's energy management system. Interface with Landlord's energy management system shall be by Landlord's contractor at Tenant's sole expense.
3. For Tenant's use of the aforesaid HVAC System, Tenant agrees to pay Landlord as Additional Rent the following charges: (a) an annual charge equal to Two and 95/100 Dollars (\$2.95) per square foot multiplied by the total number of square feet within the Premises (the "HVAC Equipment Charge"); and (b) the costs of electricity to run the HVAC System, as determined herein (the "HVAC Electricity Charge"). The HVAC Equipment Charge and the HVAC Electricity Charge together are referred to in the Lease as the "HVAC Charge" and shall both be billed and paid in twelve (12) equal installments and payable together with installments of Minimum Rent. The HVAC Electricity Charge will be established each year based on usage by Tenant as set forth in the latest available engineering analysis of Tenant's mechanical plans conducted by or on behalf of Landlord. The kilowatts used by Tenant for the HVAC System operation will then be multiplied by the per kilowatt rate Tenant would pay to the utility providing electricity to the shopping center were the Tenant to pay those charges directly to such utility. Notwithstanding the foregoing, in no event shall the HVAC Charge be less than \$2,000 per year.
4. The HVAC Equipment Charge owed by Tenant hereunder will be increased effective as of January 1 of each calendar year during the term of this Lease by a percentage equal to the percentage (not to exceed five (5%) per annum) increase, if any, in (i) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-U.S. Cities Average (1982-84 - 100) (the "Index") applicable for the month of December of the immediately preceding calendar year, over and above (ii) the corresponding Index figure for the full calendar month of the term of this Lease; provided, that if such Index should be discontinued, such calculation shall be made by use of another reputable Index selected by Landlord; and provided further, that if the base period for the Index (currently 1982 -84 - 100) is hereafter changed, the new base period shall be used in making the foregoing calculation.
5. Landlord shall not be liable to Tenant in damages or otherwise if the said utilities or services are interrupted or terminated because of necessary repairs, installations or improvements, or any cause beyond the Landlord's reasonable control, nor shall any such interruption or termination relieve Tenant of the performance of any of its obligations hereunder. Landlord may cease to furnish any one or more of said services without responsibility to Tenant except to connect the service facilities with such other nearby sources of supply as may be available for the services discontinued, to adjust the charge accordingly and notify Tenant of such changes.
6. Tenant agrees to operate said HVAC System so that the temperature within the Premises will be nearly identical to that within the enclosed mall. Tenant shall operate the Premises in such manner as to not waste electricity, water or heating and cooling effect and shall not overburden the capacity of the mains, feeders, ducts, conduits or other facilities by which utilities are supplied to the Premises. Tenant shall be solely responsible for charges for all utilities consumed in the Premises. Tenant shall not install any equipment which can exceed the capacity of any utility facilities serving the Premises and if any equipment installed by Tenant requires additional utility facilities, the same shall be installed at Tenant's expense in compliance with all code requirements and plans and specifications, which must be approved in writing by Landlord.
7. Roof penetrations: All required penetrations of the roof related to that portion of the HVAC system that Tenant is required to maintain shall be performed by Landlord's roofing contractor at Tenant's sole expense, after notification in writing to Landlord and shall be subject to Landlord's prior written approval.

[continued on next page]

8. In the event Tenant desires at any time during the Term to add a supplemental HVAC unit or other equipment to the HVAC System, Tenant shall provide notice and all relevant details to Landlord for

its review. In the event Landlord approves such addition (which approval shall be in Landlord's sole discretion), Tenant shall enter into a separate agreement with Landlord regarding such addition.

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THIRD AMENDMENT TO LEASE
(Mesilla Valley Mall: Las Cruces Museum of Natural History)

THIS THIRD AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the _____ day of _____, 2008, by and between MESILLA VALLEY MALL, LLC, a Delaware limited liability company ("Landlord"), and CITY OF LAS CRUCES, d/b/a Las Cruces Museum of Natural History ("Tenant").

RECITALS

A. Landlord, as successor-in-interest and Tenant are parties to a written lease agreement dated as of December 1, 1994 for the lease of certain premises ("Premises") known as Space Number 1608, consisting of approximately 4,288 square feet, and more particularly described in said lease, located in Mesilla Valley Mall, Las Cruces, New Mexico (the "Shopping Center").

B. Said lease has not been assigned or modified, except as follows:

First Amendment to Lease dated December 19, 2002, and
Second Amendment to Lease dated September 16, 2005 (the "Second Amendment").

Said lease, together with the foregoing assignment and modification, is referred to as the "Lease".

C. Landlord and Tenant desire by this Amendment to extend the Term of the Lease and to otherwise amend the Lease as set forth below.

D. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Lease.

TERMS

NOW, THEREFORE, in consideration of the mutual agreements contained in this Amendment, Landlord and Tenant agree as follows:

1. Term. The Term of the lease shall be extended for a period of two (2) years commencing on January 1, 2008 and expiring on December 31, 2010. The extension period is referred to in this Amendment as the "Second Extension Term." The period between July 1, 2008 and December 31, 2008 is referred to in this Amendment as the "Modification Period." All terms and conditions of the Lease will apply to the Second Extension Term and Modification Period, except as otherwise set forth in this Amendment.

2. Minimum Annual Rental. During the Modification Period and Second Extension Term, Tenant shall pay to Landlord an amount equal to Thirty Nine Thousand Four Hundred Forty-Nine and 60/100 Dollars (\$39,449.60) per annum, payable in equal monthly installments of Three Thousand Two Hundred Eighty Seven and 47/100 Dollars (\$3,287.47) and otherwise in accordance with the terms of the Lease.

3. HVAC Charge. Notwithstanding any provision in the Lease to the contrary, during the Modification Period and Second Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("HVAC Charge") in the amount of Four and 13/100 Dollars (\$4.13) per square foot of floor area of the Premises per annum, subject to terms and conditions provided in Exhibit A attached hereto.

4. Trash Charge. Notwithstanding any provision in the Lease to the contrary, during the Modification Period and Second Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("Trash Charge") in the amount of Thirty-Five Cents (\$0.35) per square foot of floor area of the Premises per annum payable in equal monthly installments in the same manner as Minimum Annual Rental. The Trash Charge for any partial year or month shall be prorated on a per diem basis for partial months and partial years. Tenant trash, waste, and garbage must be stored within the Premises until brought by Tenant, if so directed by Landlord, to a common trash room in the common area of the Shopping Center. Landlord may assign each Tenant a trash room location by the Shopping Center, at such location as Landlord may determine in its sole discretion. Landlord has provided and will maintain trash pickup in the Shopping Center.

5. Water & Sewer Charge. Notwithstanding any provision in the Lease to the contrary, during the Modification Period and Second Extension Term, Tenant shall pay Landlord as Additional Rent a charge in the amount of Thirty-Five Cents (\$0.35) per square foot of floor area of the Premises per annum (the "Water and Sewer Charge"), payable in equal monthly installments on the first day of each month as consideration for Tenant's use of water and sewer services at the Premises (including the reasonable costs incurred by Landlord in connection with arranging, procuring and maintaining such water and sewer service). The Water and Sewer Charge for any partial year or month shall be prorated on a per diem basis for partial months and partial years. Landlord may adjust the Water and Sewer Charge to reflect Landlord's actual cost of water and sewer service. Upon notice from Landlord, Tenant shall begin paying the adjusted amount until a subsequent adjustment is made.

6. Electrical Service Charge. Notwithstanding any provision in the Lease to the contrary, during the Modification Period and Second Extension Term, Tenant shall pay Landlord as Additional Rent a charge ("Electrical Service Charge") in the amount of One and 31/100 Dollars (\$1.31) per square foot of floor area of the Premises per annum payable in equal monthly installments in the same manner as Minimum Annual Rental, subject to adjustment as provided in Article 16(a) of the Lease.

7. Effect on Additional Rent and Charges. Except as specifically provided herein, nothing contained in this Amendment shall affect Tenant's liability for any and all additional rent and charges payable by Tenant under the Lease.

8. Option to Renew. Provided Tenant is not in default or breach under any of the terms, covenants, or conditions of this Lease, Tenant shall have the one time option (the "Renewal Option") to renew this Lease for a period of one (1) year (the "Renewal Term"), upon written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the Second Extension Term, upon the same terms and conditions of this Lease existing at the expiration of the Second Extension Term.

9. Relocation of Leased Premises.

(a) In the event Landlord elects at any time during the Modification Period or Second Extension Term to do any of the following: to make any addition to or expansion of the Shopping Center which will directly affect the Premises; to relocate the food court; to alter the portion of the Shopping Center including the Premises for use as a food court, theater, Major Tenant or other purpose; or otherwise to redevelop the Shopping Center; then, in such event, Landlord shall have the option to require Tenant to relocate its business to other premises in the Shopping Center (the "Relocated Premises") subject to the terms and conditions set forth herein. If Landlord desires to exercise such option, Landlord shall send Tenant a written notice (the "Relocation Notice") specifying the location of the Relocated Premises, and the date Landlord will require Tenant to (i) surrender the Premises originally covered by this Lease (the "Surrender Date"), and (ii) open for business in the Relocated Premises (the

“Relocation Date”), neither of which date shall be less than 60 days from the date of the Relocation Notice.

(b) The relocation of Tenant shall be subject to the following terms and conditions: (i) the Relocated Premises will have an area not more than 10% greater or less than the floor area of the then existing Premises; (ii) if Tenant elects to relocate to the Relocated Premises, then prior to the Relocation Date, Landlord, at its cost and expense, shall construct and deliver the Relocated Premises to Tenant in a condition and improved in a manner substantially similar to the condition and manner of improvement of the original Premises as then existing, exclusive of trade fixtures, equipment, furnishings, inventory, decorations and other items of Tenant’s personal property, provided that in the alternative, Landlord may elect in writing to have Tenant construct the Relocated Premises, and in such case Landlord will pay Tenant within 60 days after Tenant opens for business in the Relocated Premises an amount equal to the cost Landlord would have incurred to so construct the Relocated Premises had Landlord not elected to have Tenant construct the Relocated Premises; (iii) Tenant shall be allowed to stay open in its existing location during the above described improvements to the Relocated Premises; (iv) on the Surrender Date, Tenant shall surrender to Landlord the Premises originally covered by this Lease in the condition and in the manner provided for in this Lease for the surrender of the Premises at the end of the Term; (v) from and after the Relocation Date, all components of rent, including Minimum Annual Rent and all other charges that are based on the floor area of the Premises, will be payable based on the floor area of the Relocated Premises, with an abatement of rent and charges payable under this Lease for any period between the Surrender Date and the Relocation Date; and (vi) upon and following the Relocation Date, the Relocated Premises will be, for all purposes, the “Premises” covered by this Lease.

(c) Delivery of the Relocation Notice shall be deemed effective (i) when the same is personally delivered, if delivered in person, (ii) the fifth (5th) day after same is deposited in an official United States Post Office, certified or registered mail, return receipt requested, postage prepaid and properly addressed, if sent through the United States mail service or (iii) the first (1st) day after same is given to a courier service for next day delivery, fees prepaid and properly addressed, if given to a nationally recognized courier service. For a period of 45 days following delivery of the Relocation Notice, Tenant shall have the right to accept the offer by written notice of acceptance given to Landlord. Tenant shall execute and return to Landlord execution counterparts of a written lease amendment embodying the offered terms within 30 days after Landlord sends the same to Tenant. Tenant’s written notice of acceptance of Landlord’s offer will be effective only if Tenant executes and returns the execution counterparts of the lease amendment within the above period.

(d) If Tenant notifies Landlord that it is unwilling to relocate, or Tenant fails to so notify Landlord of its decision as to the relocation, or if Tenant fails to return the lease amendment execution counterparts within the period specified above, Landlord will have the right to terminate this Lease upon notice to Tenant, such termination to be effective as of the Surrender Date. In the event of such termination, upon the Surrender Date Tenant shall surrender possession of the Premises to Landlord in the condition and in the manner provided in this Lease for surrender of the Premises at the end of the Term. Thereafter, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed. If Landlord terminates this Lease pursuant to the provisions of this Section, provided that Tenant is not in default under this Lease beyond any applicable cure period and Tenant vacates the Premises by the date specified in the notice to Tenant described above, Landlord shall pay Tenant the Relocation Payment described below.

(e) The “Relocation Payment” means a sum equal to the unamortized cost of the leasehold improvements installed by Tenant at its expense within the Premises at the commencement of the Term (after deducting the amount of any tenant allowance paid to Tenant, including any allowance

taken in the form of a rent abatement or offsets), less the cost of any removable or reusable items. The Relocation Payment will be calculated as of the Surrender Date based on Tenant's costs as shown on its books and records maintained for Federal Income Tax purposes or equivalent purposes, not to exceed costs using the straight line method of accounting for such costs over the original Term of this Lease. If Landlord is due any money from Tenant, Landlord will have the right to deduct such amount from the Relocation Payment before paying the same to Tenant. As a condition to Landlord's obligation to pay the Relocation Payment, Tenant shall forward to Landlord such backup information as Landlord may reasonably request in connection with the determination of the Relocation Payment.

10. Landlord's Addresses. Tenant acknowledges that Landlord's addresses for notice and for receipt of payments are as follows:

To Landlord: Mesilla Valley Mall LLC
 124 Johnson Ferry Road, NE
 Atlanta, GA 30328
 Attn: Asset Manager/Mesilla Valley Mall

With a copy to: Jones Lang LaSalle
 3344 Peachtree Road NE, Suite 1200
 Atlanta, GA 30326
 Attn: Counsel/Mesilla Valley Mall

For Payment of Rent: Mesilla Valley Mall LLC
 PO Box 933873
 Atlanta, GA 31193-3873

11. Ratification of Lease. The Lease as amended by this Amendment is ratified, confirmed and approved in all respects and remains in full force and effect.

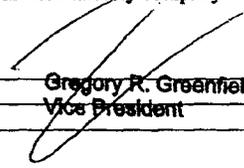
12. Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter of this Amendment. There are no agreements between Landlord and Tenant relating to the Lease or the Premises other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth in this Amendment, either oral or written, as an inducement to enter into this Amendment.

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13. Successors and Assigns. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties, subject to the applicable provisions of the Lease.

IN WITNESS WHEREOF, this Amendment is made as of the day and year first above written.

LANDLORD: MESILLA VALLEY MALL LLC,
a Delaware limited liability company

By: 
Name: Gregory R. Greenfield
Title: Vice President

TENANT: CITY OF LAS CRUCES,
d/b/a Las Cruces Museum of Natural History

By: 
Name: Kenneth D. Miyagishi
Title: Mayor

By: _____
Name: _____
Title: _____

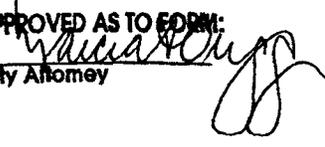
APPROVED AS TO FORM:
Asst. 
City Attorney

EXHIBIT A
HVAC EXHIBIT

This Exhibit A provides information and sets forth requirements for Landlord supplied rooftop cooling system ("HVAC System") for use in connection with Tenant's operation of the Premises.

1. Landlord shall supply, construct, operate and maintain, or cause to be operated and maintained, an HVAC System designed to provide cooled air to, but not within, the Premises, at Landlord's own cost and expense. Except for cooled air service being provided by Landlord, Tenant shall provide all systems, facilities and equipment necessary for the distribution and control of the cooled air delivered to the Premises.
2. Tenant is responsible for the maintenance of the HVAC System within the Premises, including but not limited to the controls, ducts, electrical wiring, temperature controls, heating and heat detection, at Tenant's sole expense. The HVAC System must be compatible with Landlord's energy management system. Interface with Landlord's energy management system shall be by Landlord's contractor at Tenant's sole expense.
3. For Tenant's use of the aforesaid HVAC System, Tenant agrees to pay Landlord as Additional Rent the following charges: (a) an annual charge equal to Two and 13/100 Dollars (\$2.13) per square foot multiplied by the total number of square feet within the Premises (the "HVAC Equipment Charge"); and (b) the costs of electricity to run the HVAC System, as determined herein (the "HVAC Electricity Charge"). The HVAC Equipment Charge and the HVAC Electricity Charge together are referred to in the Lease as the "HVAC Charge" and shall both be billed and paid in twelve (12) equal installments and payable together with installments of Minimum Rent. The HVAC Electricity Charge will be established each year based on usage by Tenant as set forth in the latest available engineering analysis of Tenant's mechanical plans conducted by or on behalf of Landlord. The kilowatts used by Tenant for the HVAC System operation will then be multiplied by the per kilowatt rate Tenant would pay to the utility providing electricity to the shopping center were the Tenant to pay those charges directly to such utility. Notwithstanding the foregoing, in no event shall the HVAC Charge be less than \$2,000 per year.
4. The HVAC Equipment Charge owed by Tenant hereunder will be increased effective as of January 1 of each calendar year during the term of this Lease by a percentage equal to the percentage (not to exceed five (5%) per annum) increase, if any, in (i) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price index-U.S. Cities Average (1982-84 - 100) (the "Index") applicable for the month of December of the immediately preceding calendar year, over and above (ii) the corresponding Index figure for the full calendar month of the term of this Lease; provided, that if such Index should be discontinued, such calculation shall be made by use of another reputable Index selected by Landlord; and provided further, that if the base period for the Index (currently 1982 -84 - 100) is hereafter changed, the new base period shall be used in making the foregoing calculation.
5. Landlord shall not be liable to Tenant in damages or otherwise if the said utilities or services are interrupted or terminated because of necessary repairs, installations or improvements, or any cause beyond the Landlord's reasonable control, nor shall any such interruption or termination relieve Tenant of the performance of any of its obligations hereunder. Landlord may cease to furnish any one or more of said services without responsibility to Tenant except to connect the service facilities with such other nearby sources of supply as may be available for the services discontinued, to adjust the charge accordingly and notify Tenant of such changes.
6. Tenant agrees to operate said HVAC System so that the temperature within the Premises will be nearly identical to that within the enclosed mall. Tenant shall operate the Premises in such manner as to

not waste electricity, water or heating and cooling effect and shall not overburden the capacity of the mains, feeders, ducts, conduits or other facilities by which utilities are supplied to the Premises. Tenant shall be solely responsible for charges for all utilities consumed in the Premises. Tenant shall not install any equipment which can exceed the capacity of any utility facilities serving the Premises and if any equipment installed by Tenant requires additional utility facilities, the same shall be installed at Tenant's expense in compliance with all code requirements and plans and specifications, which must be approved in writing by Landlord.

7. Roof penetrations: All required penetrations of the roof related to that portion of the HVAC system that Tenant is required to maintain shall be performed by Landlord's roofing contractor at Tenant's sole expense, after notification in writing to Landlord and shall be subject to Landlord's prior written approval.

[continued on next page]

8. In the event Tenant desires at any time during the Term to add a supplemental HVAC unit or other equipment to the HVAC System, Tenant shall provide notice and all relevant details to Landlord for its review. In the event Landlord approves such addition (which approval shall be in Landlord's sole discretion), Tenant shall enter into a separate agreement with Landlord regarding such addition.

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MESILLA VALLEY MALL
LEASE AGREEMENT

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EXHIBITS

EXHIBIT A	Plan of Leased Premises
EXHIBIT B	Site Plan
EXHIBIT C	Schedule for Tenant Improvements
EXHIBIT D	Tenant Sign Criteria

THIS LEASE made and entered into this 7th day of Nov. 1994 (hereinafter referred to as the "date hereof") by and between MARATHON U.S. REALTIES, INC. whose legal address for purposes of this Lease is One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240-6678 (hereinafter called "Landlord") and CITY OF LAS CRUCES d/b/a Las Cruces Museum of Natural History (hereinafter called "Tenant")

WITNESSETH:

LANDLORD and TENANT hereby agree as follows:

Landlord, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by both parties, does hereby demise and lease to Tenant (for the term hereinafter stipulated) the premises (hereinafter called the "Leased Premises") being that portion of a building shown hatched and dimensioned on the plan attached hereto and made a part hereof as "EXHIBIT A", to be located in the Mesilla Valley Mall (hereinafter called the "Shopping Center") in the City of Las Cruces, County of Dona Ana, State of New Mexico, as shown on the site plan attached hereto and made a part hereof as "EXHIBIT B."

ARTICLE 1
LEASED PREMISES, TERM AND USE

(a) LEASED PREMISES: An area consisting of approximately 4,288 square feet (floor area) with a front width of approximately 33 feet 0 inches and a depth of approximately 129 feet 0 inches (SPACE NO. 1608) measured to the center line of all walls, common to other tenant premises, to the exterior faces of all other walls, and to be the building line or common enclosed mall plane where there is no wall. If the Leased Premises is to be newly constructed and is not a previously completed room, the Landlord may confirm the measurements thereof upon completion, and upon notice to Tenant, the floor area stated in such notice shall be deemed to be the floor area of the Leased Premises for all purposes of this Lease unless, within ten (10) days after receipt of notice, Tenant notifies Landlord that Tenant believes Landlord's measurement to be inaccurate, in which event the Landlord shall cause its architect or engineer to make such measurement and certify the same to the parties. The floor area so certified (which may not exceed the floor area set forth above by more than ten percent (10%)) shall be accepted by the parties and the Minimum Annual Rental and other charges based on floor area shall be proportionately adjusted.

(b) TERM: The term of this Lease shall commence upon the date hereof and shall end upon the January 1st next following the seventh (7th) anniversary of the date upon which rental is determined to commence under the provisions of ARTICLE 3 hereof, unless such date upon which rental shall be determined to commence shall be January 1st, in which event the term hereof shall end upon the seventh (7th) anniversary of such date of commencement.

(c) USE: The Leased Premises shall be used and occupied only for the purpose of:

operating a not for profit natural history museum for the general public including a retail gift shop offering for retail sale only, merchandise relating to nature, the earth, astronomy and the environment to include gifts, books, tapes, recordings, jewelry, apparel, greeting cards limited to one display rack, tote bags, toys, games, fossils, minerals and decorative items for the home that relate to nature and for no other purpose whatsoever. SEE ADDENDA - ARTICLE 59

(d) TENANT TRADE NAME:

LAS CRUCES MUSEUM OF NATURAL HISTORY

(c) TENANT NOTICE ADDRESS(es):

(i) Legal Address for Notice:
Las Cruces Museum of Natural History
700 Telsbor
Las Cruces, NM 88001 with a copy to:

City of Las Cruces
Attn: City Manager
200 North Church Street
Las Cruces, NM 88004

(ii) Billing Address (if different from above): Same as above

ARTICLE 2
EXHIBITS AND ORIGINAL CONSTRUCTION

(a) The exhibits listed below and attached to this Lease are incorporated herein by this reference:

EXHIBIT "A" Location of the Leased Premises within the enclosed mall.

EXHIBIT "B" Site Plan of Shopping Center.

EXHIBIT "C" Schedule for Tenant Improvements,
Description of Landlord Work and Tenant Work.

EXHIBIT "D" Tenant Sign Criteria.

(b) The construction of the Shopping Center has as of the date of execution of this Lease been completed. Notwithstanding Exhibits A, B, C or D or anything else in this Lease, Landlord reserves the right to change or modify and add to or subtract from the size and dimensions of the Shopping Center or any part thereof, the number, location and dimensions of buildings and stores, dimensions of hallways, malls and corridors, the number of floors in any building, the location, size and number of tenant spaces and kiosks which may be erected in or fronting on any mall or otherwise, the identity, type and location of other stores and tenants, and the size, shape, location and arrangement of joint use areas, and to design and decorate any portion of the Shopping Center as it desires, but the general character of the Shopping Center and the size and the approximate location of the Leased Premises in relation to the major department stores and the main entrances to the enclosed mall portion of the Shopping Center shall not be substantially changed.

(c) Landlord's ability to perform Landlord's construction obligations hereunder, if any, is dependent upon prompt receipt of Tenant's plans.

In the event Tenant shall not have commenced Tenant's Work, or any remodelling work required hereunder, during the time period specified herein, Landlord shall have the right and option to cancel and terminate this Lease by so notifying Tenant in writing, in which event Tenant agrees to pay to Landlord, as liquidated damages, the cost of any work done by Landlord for Tenant's account (on the basis of the actual cost plus twenty percent (20%) for overhead and supervision), including, but not limited to, sprinkler and electrical work, plumbing, concrete floor slabs, and cooled air equipment and facilities, if any. In the event Tenant shall not have completed Tenant's Work, or any remodelling work required hereunder, or shall not have opened its store for business as provided herein, then Tenant's rental shall nevertheless commence on the date on which Tenant should have opened for business in accordance with the schedule contained herein at the rate of one-fifteenth (1/15th) of the monthly amount of Tenant's Minimum Annual Rental payments per day until Tenant shall open for business.

(d) Subject to the provisions of this Lease, Landlord agrees, at Landlord's expense, to perform Landlord's Work in the construction of the Leased Premises substantially in accordance with the outline specifications entitled "Schedule for Tenant Improvements, Description of Landlord Work and Tenant Work" attached hereto and made a part hereof as "EXHIBIT C." All work on the Leased Premises other than that to be so performed by Landlord is to be done by Tenant, at Tenant's expense (hereinafter called "Tenant's Work"). Tenant's Work shall include, but not be limited to, those items listed in Exhibits C and D.

Tenant agrees to commence, proceed diligently with, and complete, its Tenant Work, or any remodeling work required hereunder, in strict accordance with the provisions of this Lease pertaining thereto including those set forth in Exhibit C (including the installation of all store and trade fixtures equipment, stock and inventory).

NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, OTHER THAN ARTICLE 43 HEREOF, TENANT IS REQUIRED TO OPEN THE LEASED PREMISES FOR BUSINESS TO THE PUBLIC ON OR BEFORE APRIL 1, 1995, OCTOBER 1, 1994.

(e) In the event Landlord is to perform any Landlord Work under this Lease, Landlord agrees, at Landlord's expense, to obtain and maintain public liability insurance and Workmen's Compensation insurance adequate to fully protect Tenant as well as Landlord from and against any and all liability for death of or injury to person or damage to property caused in or about, or by reason of, construction of Landlord's Work. Tenant agrees, at Tenant's expense, to maintain a self insurance fund adequate to fully pay ~~obtain and maintain public liability insurance and Workmen's Compensation Insurance adequate to fully protect Landlord as well as Tenant from and against any and all liability for death of or injury to person or damage to property caused in or about, or by reason of, the construction of Tenant's Work or any remodeling work done by Tenant to the extent that Tenant has any liability under the New Mexico Tort Claims Act and to protect Landlord from having to pay on account thereof.~~

(f) In the event Landlord's Work and Tenant's Work shall progress simultaneously, Landlord shall not be liable for any injury to person or damage to property of Tenant, or of Tenant's employees, licensees or invitees, from any cause whatsoever occurring upon or about the Leased Premises, and Tenant shall and will indemnify and save Landlord harmless from any and all liability and claims arising out of or connected with any such injury or damage.

(g) Tenant hereby agrees that Landlord shall not be in default under this Lease for any delay in delivery of possession of the Leased Premises to Tenant, except Tenant shall have no obligation to pay rental hereunder prior to the date that Landlord makes the Leased Premises available to Tenant. Tenant agrees to accept possession of the Leased Premises when made available by Landlord and releases Landlord from any claim whatsoever for damages for any such delay.

(h) During any period of construction or remodeling of the Leased Premises, Tenant agrees to conduct its labor relations and its relations with its employees and contractors in such a manner as to avoid all strikes, picketing and boycotts of, on, or about the Leased Premises and the Shopping Center. Tenant further agrees that if, during the period of construction or remodeling of the Leased Premises, any of its employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant or its employees, or any of them, on or about the Leased Premises or the Shopping Center, Tenant shall, at Landlord's sole option, immediately close the Leased Premises and remove all employees therefrom until the dispute giving rise to such strike, picket line, boycott or objectionable activity has been settled to Landlord's satisfaction.

ARTICLE 3 DATE ON WHICH RENT BEGINS

(a) The Minimum Annual Rental, and additional rentals and charges, ~~except percentage rental which shall begin to accrue pursuant to Article 4(e)~~ shall begin to accrue on the earlier of the following dates:

(i) the date which is set forth in ARTICLE 2 (d) as the date on which Tenant is required to open for business;
OR

(ii) the date on which Tenant completes the remodel referred to in Article 57 and opens the entire Leased Premises shall ~~open the Leased Premises~~ for business to the public.

ARTICLE 4 RENTAL

Tenant agrees to pay as rental for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided, the following sums of money:

(a) MINIMUM ANNUAL RENTAL: Tenant, in consideration of said demise, does hereby covenant and agree with Landlord to pay to Landlord, per annum as minimum annual rental (the "Minimum Annual Rental") for said Leased Premises, without deduction or set-off of any kind, the following amounts:

NINE THOUSAND FOUR HUNDRED THIRTY THREE THOUSAND ~~EIGHTEEN THOUSAND~~ AND NO/100 DOLLARS (\$9,433.00) ~~46,000.00~~ per annum from the rental commencement date set forth in ARTICLE 3(a), through the first twelve (12) months thereafter; SIXTEEN THOUSAND FOUR HUNDRED TWENTY THREE ~~TWENTY FIVE THOUSAND~~ AND NO/100 DOLLARS (\$16,423.00) ~~25,000.00~~ per annum for the thirteenth (13th) month from the rental commencement date through the twenty fourth (24th) month thereafter; THIRTY EIGHT THOUSAND FOUR HUNDRED TWENTY ~~FOUR SEVEN THOUSAND~~ AND NO/100 DOLLARS (\$38,420.00) ~~47,000.00~~ per annum for the twenty fifth (25th) month from the rental commencement date through the thirty sixth (36th) month thereafter; and THIRTY NINE THOUSAND FOUR HUNDRED TWENTY FOUR ~~FOURTY EIGHT THOUSAND~~ AND NO/100 DOLLARS (\$39,424.00) ~~46,000.00~~ per annum for the thirty seventh (37th) month from the rental commencement date through the expiration of this Lease term as minimum annual rental (the "Minimum Annual Rental") for said Leased Premises.

The Minimum Annual Rental shall be payable in twelve (12) equal monthly installments, in advance, without notice or invoice from Landlord, upon the first day of each and every month during the term hereof, commencing upon the date on which rental is determined to commence under the provisions of ARTICLE 3 hereof and ending upon the termination date of this Lease. In the event such rental shall be determined under the provisions of ARTICLE 3 hereof to commence on a day other than the first day of a month, then the Minimum Annual Rental for the period from such commencement date until the first day of the month next following shall be prorated accordingly. All past due rentals, additional rentals, and/or other sums due to Landlord under the terms of this Lease shall bear interest at the maximum legal rate, from the due date thereof until paid by Tenant. All rentals in this Lease provided (those hereinafter stipulated as well as Minimum Annual Rental) shall be paid or mailed to:

McSilla Valley Mall
P.O. Box 71534
Chicago, IL 60694

or to such other payee or address as Landlord may designate, in writing, to Tenant.

Notwithstanding anything to the contrary contained in this Lease, in order to cover the extra expense involved in handling delinquent payments, Tenant, at Landlord's sole option, shall pay a "late charge" of \$200.00 when any installment of rent (minimum, percentage or other, as may be considered additional rental under this Lease) is received at the address listed above more than five (5) days after the due date hereof. It is hereby understood that this amount is charged as additional rent, and not as penalty or interest, for the purpose of defraying Landlord's expenses incident to the processing of such overdue payments.

(b) If the Shopping Center shall at any time during the term of this Lease contain in excess of four department stores, the Minimum Annual Rental herein provided for shall automatically be increased ten percent (10%) upon the date that each additional department store opens for business.

(c) **PERCENTAGE RENTAL.** ~~Commencing on the thirty seventh (37th) month after the date Minimum Annual Rental begins to accrue pursuant to Article 3(a) through the expiration of this Lease, in addition to the Minimum Annual Rental, Tenant agrees to pay the Landlord, in the manner and upon the conditions and at the times hereinafter set forth, during and for each calendar year thereafter of the term hereof and as "percentage rental" hereunder an amount equal to ten percent (10%) of all "net sales" (as defined in ARTICLE 5 hereof) in excess of the following amounts made by Tenant in the Leased Premises during any calendar year of the term hereof: **FOUR HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$480,000.00).** These amounts shall be prorated for the proportionate part, if any, of (i) the first calendar year of the term hereof commencing on the date upon which rental shall commence under ARTICLE 3 hereof and ending on the next following December 31; (ii) any year during which rental payments are terminated as a result of a casualty or condemnation or otherwise as expressly provided for in this Lease and (iii) any year in which these amounts change on a date other than the first day of such year. The percentage rental shall be first paid for the month in which the aggregate net sales for such calendar year shall first have exceeded the breakpoint for such calendar year and thereafter shall be paid monthly on all additional net sales made during the remainder of such calendar year (or partial year, as the case may be), such payments to be made not later than the fifteenth (15th) day of the next following month.~~

(d) Landlord shall have the one time right to elect to have a portion of the average percentage rental paid by Tenant during prior years included within the Minimum Annual Rental due hereunder. Landlord shall exercise this right by written notice delivered to Tenant. In the event of such exercise, the rental described in ARTICLE 4 shall be amended to equal eighty five percent (85%) of the average Minimum Annual and percentage rental paid by Tenant over the preceding three (3) calendar years or since the Commencement Date, whichever period is shorter. Landlord's notice of exercise shall be accompanied by a letter agreement: (i) amending ARTICLE 4 in accordance with this ARTICLE 4(d), (ii) increasing the breakpoint described in ARTICLE 4(c) in such a manner that the adjusted breakpoint bears the same proportion to the new Minimum Annual Rental that the previous breakpoint bears to the previous Minimum Annual Rental, and (iii) deleting ARTICLE 4(d) and 4(e) from the Lease. Such notice shall also be accompanied by a summary sheet showing in detail the calculations of the new Minimum Annual Rental and breakpoint. Upon receipt of Landlord's notice, Tenant shall promptly execute and return the letter agreement, which shall be effective on the first day of the month following the month in which Landlord exercises its right hereunder.

(e) If Tenant shall fail to generate and to pay percentage rental in an amount equal to at least twenty five percent (25%) of the Minimum Annual Rental payable pursuant to this ARTICLE 4 in at least one (1) of either the fourth (4th) or fifth (5th) calendar year of the term of this Lease, then Landlord may elect to terminate this Lease by notice to Tenant given within six (6) months after the end of the fifth (5th) calendar year and this Lease shall terminate and be null and void ninety (90) days after delivery of such notice. Tenant may render such notice of termination inoperative if Tenant shall, within thirty (30) days after receipt of such notice, agree in writing to increase the Minimum Annual Rental payable for the sixth (6th) calendar year and each calendar year thereafter by an amount equal to twenty five percent (25%) of the Minimum Annual Rental payable for the sixth (6th) calendar year and each calendar year thereafter.

ARTICLE 5 DEFINITION OF NET SALES

The term "net sales" as used in this Lease shall mean and include (as of the date of the transaction) the sale price of all goods and merchandise sold or leased (including gift and merchandise certificates) and charges for all services and all other receipts from the business performed by Tenant or any person, firm or corporation selling or leasing goods, merchandise or services in, upon or from any part of the Leased Premises, whether such amounts shall be for cash, charge accounts or credit cards, paid or unpaid, collected or uncollected. Each

installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Tenant receives payment therefor. The term "net sales" shall also mean and include gross sales from vending machines, (except telephone and postage stamp); mail or telephone orders received or filled at the Leased Premises; all deposits not refunded to purchasers; orders taken, although such orders may be filled elsewhere; insurance proceeds realized for loss of sales, profits, or business; but deducting or excluding, as the case may be, the following: (a) refunds and allowances to customers made upon transactions included within net sales, but not exceeding the selling price of the merchandise returned by the purchaser and accepted by Tenant; (b) the amount of all sales, use, excise, retailer's occupation or similar taxes imposed in a specific amount, or percentage upon, or determined by the amount of retail sales made at the Leased Premises to the extent that such taxes were added to or absorbed within the sale price of the merchandise sold and paid directly to the taxing authority by Tenant; (c) interest, service, finance or sales carrying charges paid by customers for extension of credit on sales and where not included in the merchandise sales price; (d) returns to shippers and manufacturers; (e) the amount of sales, not in the ordinary course of Tenant's business, of fixtures, machinery or equipment which Tenant has the right to remove from the Leased Premises after use thereof in the conduct of the Tenant's business in the Leased Premises; and (f) the value of any exchange or transfer of merchandise between stores of Tenant where such exchange or transfer is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at, or from the Leased Premises. No deduction shall be allowed for uncollected or uncollectible credit amounts, and no deduction shall be allowed for trade ins.

ARTICLE 6 RECORDS AND AUDITS

Tenant agrees to record all sales in accordance with generally accepted accounting principles, which records, together with all sales and income tax reports, shall be preserved by Tenant for three (3) years, either (a) at the Leased Premises or (b) at the home or regional offices of Tenant in the continental United States and made available to Landlord at the Leased Premises or such offices upon demand. Tenant agrees to deliver to Landlord a statement of each month's sales on or before the twelfth (12th) day of the following month and, by January 30th of each year of the term of this Lease, a statement, certified by a certified public accountant or a financial officer, owner or partner of Tenant satisfactory to Landlord of the net sales made during the preceding calendar year. Landlord shall be entitled, at Landlord's expense, to audit the net sales made during the period covered by such statements either by Landlord or an auditor designated by Landlord, and to recalculate the rentals payable for such period. If it shall be determined as a result of such audit or such certified statement that there has been a deficiency in the payment of percentage or additional rentals, then such deficiency shall become immediately due and payable with interest at the maximum legal rate, from the date when said payments should have been made. In addition, if net sales have been understated by more than two percent (2%) and Landlord is entitled to an increase in percentage or additional rental as a result of such understatement, then Tenant shall pay all costs of such audit, including a \$500 administrative charge. In the event Tenant shall be delinquent in furnishing to Landlord any monthly sales statement or statements required hereunder, then Landlord shall have the right, without notice, to conduct such audit as provided by this ARTICLE 6 and any and all charges occasioned by reason thereof shall be the sole obligation of Tenant, which obligation shall be deemed an item of additional rental. If net sales are determined to have been understated by more than five percent (5%), Landlord may elect to terminate this Lease by notice to Tenant given within six (6) months after receipt of such statement and this Lease shall terminate and be null and void sixty (60) days after delivery of such notice.

ARTICLE 7 TAXES

In addition to the Minimum Annual Rental provided for in ARTICLE 4(a) hereof, Tenant agrees to pay to Landlord additional rental as follows:

~~(a) Tenant shall pay its proportionate share of all real property taxes and assessments which may be levied or assessed against the Shopping Center by any lawful authority for each calendar year commencing on the date on which rental shall be determined to commence under ARTICLE 3 hereof, excluding taxes or assessments levied or assessed against land and/or buildings owned or leased by department stores which may be located in the Shopping Center. Tenant's proportionate share shall be equal to the product obtained by multiplying such taxes and assessments, and Landlord's expenses in obtaining or attempting to obtain any refund or reduction thereof, by a fraction, the numerator of which shall be the number of square feet of floor area in the Leased Premises and the denominator of which shall be the total number of square feet of leased floor area in the Shopping Center, excluding the floor area contained in the department store buildings and the spaces of tenants occupying 10,000 square feet or more. Should the state in which the Shopping Center is located or any political subdivision thereof or any government authority having jurisdiction thereover, impose a tax and/or assessment (other than a net income or franchise tax) upon or against the rental payable to Landlord in respect of the Shopping Center, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, such tax and/or assessment shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this ARTICLE 7.~~

~~(b) Tenant's proportionate share of all real property taxes and assessments during the term hereof shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord, provided, that in the event Landlord is required under a mortgage covering the Shopping Center to escrow real estate taxes, Landlord may, but shall not be obligated to, use the amount required to be escrowed as a basis for its estimate of the monthly installments due from Tenant hereunder. Upon receipt of all tax bills and assessment bills attributed to any calendar year during the term hereof, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's proportionate share of the taxes and assessments for such year. If the total amount paid by Tenant under this ARTICLE 7 for any calendar year during the term of this Lease shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the deficiency within ten (10) days after demand therefor by Landlord; and if the total amount paid by Tenant hereunder for any such calendar year shall exceed such amount due from Tenant for such calendar year, Tenant shall be entitled to offset the excess against payments next thereafter becoming due under this ARTICLE 7. For the calendar years in which this Lease commences or terminates, the provisions of this ARTICLE 7 shall apply and Tenant's liability for its proportionate share of any taxes and assessments for any such year shall be subject to a prorate adjustment based on the number of days of any such year during which the term of this Lease is in effect. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of taxes and/or assessments levied or assessed against the property to which such bill relates. Prior to or at the commencement of the term of this Lease and from time to time thereafter throughout the term hereof, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder. Landlord's and Tenant's obligations under this ARTICLE 7 shall survive the expiration of the term of this Lease. No taxes, assessments, fees or charges referred to in this paragraph shall be considered as taxes under the provisions of ARTICLE 13 hereof.~~

ARTICLE 8 SUBORDINATION AND ATTORNMENT

(a) Upon written request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant will, and in writing, subordinate its rights hereunder to the lien of any mortgage or deed of trust now or hereafter in force against the land and building of which the Leased Premises are a part, and upon any building hereafter placed upon the land of which the Leased Premises are a part and to all advances made or hereafter to be made upon the security thereof; provided, however, that the mortgagee or trustee named in said mortgage or trust deed shall agree that Tenant's peaceable possession of the Leased Premises will not be disturbed on account thereof, as long as no default exists under this Lease by Tenant.

(b) In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Leased Premises, Tenant shall attorn to

the purchaser upon any such foreclosure or sale pursuant thereto and recognize such purchaser as the Landlord under this Lease, provided, however, that said Purchaser shall agree that Tenant's peaceable possession of the Leased Premises will not be disturbed on account thereof, as long as no default exists under this Lease by Tenant.

ARTICLE 9 ADDITIONAL CONSTRUCTION

Landlord hereby reserves the right at any time to make alterations or additions to, and to build additional stories on, the building in which the Leased Premises are contained and to build adjoining the same. Landlord also reserves the right to add to and subtract land from the Shopping Center, and to construct other buildings or improvements, including elevated or double-deck parking facilities in the Shopping Center, from time to time and to make alterations or additions thereto, and to build additional stories on any such building or buildings, and to build adjoining same. ~~Landlord also reserves the right, at Landlord's expense, to relocate Tenant to another location in the Shopping Center of similar size and comparable finish out, in which case this Lease shall remain in full force and effect and unmodified except that the provisions of this Lease shall apply to Tenant's new space upon such relocation. Tenant shall, if requested by Landlord, execute an amendment to this Lease which sets forth the new space being leased hereunder and such other items as Landlord may reasonably require. In the event Tenant is unwilling to relocate to the new space proposed by Landlord, Landlord may, at its sole option, terminate this Lease by giving Tenant at least thirty (30) days advance written notice of its election to terminate.~~

ARTICLE 10 CONDITION OF PREMISES

Tenant's taking possession of the Leased Premises shall be conclusive evidence of Tenant's acceptance thereof and that the Leased Premises are in good order and satisfactory condition. Tenant agrees that no representations respecting the condition of the Leased Premises and no promises to decorate, alter, repair or improve the Leased Premises either before or after the execution hereof, have been made by Landlord or its agents to Tenant unless the same are contained herein or made a part hereof. Landlord also makes no warranties, express or implied, in respect of the Leased Premises and Tenant waives any and all warranties arising by operation of law or otherwise in that connection, including without limitation, any implied warranty of suitability.

ARTICLE 11 REPAIRS AND MAINTENANCE

Landlord agrees, at its expense, to keep the foundations, sprinkler mains, structural systems and masonry walls of the Leased Premises in good condition and repair, but Landlord shall not be liable to Tenant for any damage caused by the same being or becoming out of repair until it has had reasonable opportunity to have the necessary repairs made after being notified in writing of the need for repair by Tenant. Without limiting the generality of the foregoing, Landlord shall not be liable to Tenant for any damage to merchandise, trade fixtures, floor coverings, drywall, ceilings, lighting or personal property of Tenant in the Leased Premises caused by water leakage from water lines, roof leaks, sanitary sewage, storm drain, sprinkler or cooled air equipment. Tenant shall continue to pay Minimum Annual Rental, percentage rental and all other charges or items of additional rent during any period of repair. Tenant agrees, at Tenant's expense, to keep all other parts of the Leased Premises in good order and repair, and in a clean, sanitary and safe condition, including the replacement of equipment, fixtures and all plate glass, and to paint the interior and store front when necessary in order to maintain at all times a clean and slightly appearance. If Tenant refuses or neglects to make repairs and/or maintain the Leased Premises or any part thereof in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or

perform such maintenance on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant as additional rental promptly upon receipt of a bill therefor.

If any damage is caused by any act, omissions or negligence of Tenant or Tenant's permittees, Tenant shall upon demand pay, or cause its insurance carrier to pay, for any necessary repairs.

ARTICLE 12 ALTERATIONS

Tenant shall not make any structural alterations in any portion of the Leased Premises, nor any alterations in the storefront or the exterior of the Leased Premises, nor any interior alterations without, in each instance, first obtaining the written consent of Landlord. All alterations, additions, improvements, and Tenant's Work provided for herein, shall become, upon completion, the property of Landlord, subject to the terms of this Lease.

ARTICLE 13 FIXTURES AND PERSONAL PROPERTY

Any trade fixtures, signs and other personal property of Tenant not permanently affixed to the Leased Premises shall remain the property of Tenant, subject to Landlord's lien for unpaid rent, and Landlord agrees that Tenant shall have the right, at any time, and from time to time, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Leased Premises, including, but not limiting the same to counters, shelving, showcases, mirrors and other moveable personal property. Nothing contained in this ARTICLE 13 shall be deemed or construed to permit Tenant to remove so much of such personal property, without the immediate replacement thereof with similar personal property of comparable or better quality, as to render the Leased Premises unsuitable for conducting the type of business specified in ARTICLE 1(c) hereof. Tenant, at its expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such trade fixtures, signs, and other personal property, and upon expiration or earlier termination of this Lease, shall leave the Leased Premises in a neat and clean condition, free of debris. All trade fixtures, signs, and other personal property installed in or attached to the Leased Premises by Tenant must be new when so installed or attached. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation in the Leased Premises as well as upon its trade fixtures, leasehold improvements (including, but not limited to, those Tenant is required to make in accordance with the provisions of ARTICLE 2 hereof), merchandise and other personal property in, or upon, the Leased Premises. If any such items of property are assessed with property of Landlord, then such assessment shall be equitably divided between Landlord and Tenant to the end that Tenant shall pay only its equitable portion of such assessment. Landlord shall determine the basis of so prorating any such assessments and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees or charges referred to in this paragraph shall be considered as taxes under the provisions of ARTICLE 7 hereof except any such taxes, assessments, fees or charges which are apportioned to the Landlord pursuant to the second preceding sentence.

ARTICLE 14 LIENS

Tenant shall not permit to be created nor to remain undischarged any lien, encumbrance or charge arising out of any work or work claim of any contractor, mechanic, laborer or any material supplied or claimed to be supplied by any materialman which might be or become a lien, encumbrance or charge upon the Leased Premises or the Shopping Center of which the Leased Premises is a part or the income therefrom and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Leased Premises or in the Shopping Center of which the Leased Premises is a part might be impaired. If any lien or

notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work in the Leased Premises shall be filed against the Leased Premises or the Shopping Center of which the Leased Premises is a part, Tenant shall, within ten (10) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit or bond in the amount required by a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien or notice of lien to be discharged within the period provided, then Landlord, in addition to any other rights or remedies, may, but shall not be obligated to, discharge the same by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings; and in any such event, Landlord shall be entitled, if Landlord so elects, to defend any prosecution of an action for foreclosure of such lien by the lienor or to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount paid by Landlord and all costs and expenses, including attorney's fees, incurred by Landlord in connection therewith, together with interest thereon at the maximum legal rate from the respective dates of Landlord's making of the payment or incurring of the cost and expense, shall be paid by Tenant to Landlord on demand.

ARTICLE 15 LAWS AND ORDINANCES

(a) Tenant agrees to comply with all laws, ordinances, orders and regulations affecting the use and occupancy of the Leased Premises and the cleanliness, safety or operation thereof. Tenant agrees to comply with the recommendations and requirements of any insurance underwriter, inspection bureau or similar agency with respect to that portion of the Leased Premises installed by Tenant. Tenant also agrees to permit Landlord to comply with such recommendations and requirements with respect to that portion of the Leased Premises installed by Landlord. In addition, Tenant agrees to comply, to the extent that the same may be applicable to the Leased Premises, with the standards and requirements and subsequent amendments thereto of the Williams-Steiger Act (PL 91-596), known as the "Occupational Safety and Health Act of 1970," notwithstanding the fact that Tenant may otherwise be exempted from the provisions of said Act and with the standards and requirements and subsequent amendments thereto of the Americans with Disabilities Act.

(b) Tenant agrees not to: (i) permit any illegal or immoral practice to be carried on or committed on the Leased Premises; (ii) make use of or allow the Leased Premises to be used for any purpose other than that permitted under ARTICLE 1(c) hereof or that might invalidate or increase the rate of insurance therefor; (iii) keep, use or permit to be kept or used on the Leased Premises any flammable fluids, gases, or explosives without the prior written permission of Landlord; (iv) use the Leased Premises for any purpose whatsoever which might create a nuisance or injure the reputation of the Leased Premises or of the Shopping Center; (v) deface or injure the building of the Leased Premises; (vi) overload the floors; (vii) commit or suffer any waste; or (viii) install any electrical equipment that overloads lines.

(c) In connection with the installation of any electrical equipment, Tenant shall, at Tenant's own expense, make from time to time whatever changes are necessary to comply with the requirements of the insurance inspectors, underwriters, government authorities and codes.

ARTICLE 16 SERVICES

(a) Landlord agrees to cause the necessary mains, conduits and other facilities to be provided to make water, sewer and electricity available to the Leased Premises and other occupied space in the Shopping Center and to make available to Tenant water and electrical services through the plumbing and electrical systems to be provided within the Leased Premises by Tenant, in accordance with and subject to the provisions of EXHIBIT C hereof.

Tenant shall be solely responsible for and promptly pay all charges for the use or consumption of sewer, gas, electricity, water and all other utility services.

~~_____~~
~~_____~~
~~_____~~

If Landlord makes available electrical service, it shall be made available as provided in EXHIBIT C, and Tenant agrees to purchase the same from Landlord and to pay Landlord, as additional rental on the first day of each month in advance, for the electrical service at the same cost as would be charged to Tenant from time to time by the utility company which otherwise would furnish such services and meter the same directly to the Leased Premises. Landlord shall compute Tenant's monthly electrical demand and consumption from the electrical information provided by Tenant in Tenant's plans, the operating hours of the center, the shell construction and local weather data. Landlord shall provide Tenant with the computations of demand and consumption totals. Review of the totals may be initiated at Tenant's request or Landlord's option.

If Landlord elects to supply water, Tenant shall pay Landlord at the same rate as would be charged to Tenant by the utility company which otherwise would furnish such service and meter the same directly to the Leased Premises, but in any event not less than the minimum monthly charge which would have been charged by the water utility company for the size of meter which would have been installed by Tenant in or for the Leased Premises.

(b) Tenant Landlord agrees, at its own cost and expense, to construct, operate and maintain, or cause to be operated and maintained, the a Cooled Air System designed to provide cooled air to, and but not within, the Leased Premises in accordance with the provisions of EXHIBIT C hereof, provided that Tenant's plans and specifications (EXHIBIT C 2) have been received by Landlord during the time period required hereunder. If Tenant shall delay Landlord's installation of said system by failure to submit plans or for any other reason, then and in that event (in addition to all other remedies for such breach of lease contained herein) any overtime labor costs or other additional costs resulting from such delay shall be charged back to Tenant. Landlord's complying with its obligation under this ARTICLE 16 shall be contingent upon Tenant's compliance with EXHIBIT C. Tenant agrees to operate said Cooled Air System so that the temperature within the Leased Premises will be reasonably identical to that within the enclosed mall.

(c) ~~Tenant agrees to pay Landlord for Tenant's use of the aforesaid Cooled Air System as additional rental, an annual charge payable monthly in the same manner as Minimum Annual Rental equal to* _____ AND NO/100 DOLLARS (\$* _____) per square foot multiplied by the total number of square feet within the Leased Premises. This charge (the "Cooled Air Charge") will be billed and paid in twelve (12) equal installments. However, in no event shall the Cooled Air Charge be less than* _____ AND NO/100 DOLLARS (\$* _____). The Cooled Air Charge owed by Tenant hereunder will be increased effective as of January 1 of each calendar year during the term of this Lease by a percentage equal to the percentage increase, if any, in (i) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-U.S. Cities Average (1982-84-100) (the "Index") applicable for the month of December of the immediately preceding calendar year, over and above (ii) the corresponding Index figure for the first full calendar month of the term of this Lease; provided, that if such Index should be discontinued, such calculation shall be made by use of another reputable Index selected by Landlord; and provided further, that if the base period for the Index (currently 1982-84-100) is hereafter changed, the new base period shall be used in making the foregoing calculation.~~

(d) If Tenant fails to pay any Cooled Air Charge installment payment to Landlord within ten (10) days from the date such payment is due, Landlord may, without limitation, cut off and discontinue any such utilities and services furnished to the Leased Premises, without any liability to Tenant. Any action by Landlord pursuant to the provisions of this ARTICLE 16(d) shall not be construed as an eviction or disturbance of Tenant's possession of the Leased Premises, or as an election by Landlord to terminate this Lease.

(c) Landlord shall not be liable to Tenant in damages or otherwise if the said utilities or services are interrupted or terminated because of necessary repairs, installations or improvements, or any cause beyond the Landlord's reasonable control, nor shall any such interruption or termination relieve Tenant of the performance of any of its obligations hereunder. Tenant shall operate the Leased Premises in such manner as to not waste electricity, water or heating and cooling effect. Landlord may cease to furnish any one or more of said services without responsibility to Tenant except to connect the service facilities with such other nearby source of supply as may be available for the services so discontinued and to adjust the charge accordingly.

(f) Tenant shall not install any equipment which can exceed the capacity of any utility facilities as specified in EXHIBIT C and if any equipment installed by Tenant requires additional utility facilities, the same shall be installed at Tenant's expense in compliance with all code requirements and plans and specifications, which must be approved in writing by Landlord.

(g) Landlord has the right to take any energy management measures Landlord may deem necessary for energy conservation which shall include, but not be limited to, control of all Tenant's energy consumption.

(h) If Landlord shall provide or designate a service for collection of refuse and garbage, Tenant shall use same, at Tenant's expense, provided the cost thereof is competitive to any identical service available to Tenant.

ARTICLE 17 JOINT USE AREAS

(a) The "joint use areas," as herein referred to, shall consist of all parking areas (including covered parking areas), landscaped areas, floors, ceilings, walls, benches, fountains, stairs, fire exits, windows, glass, doors and hardware, streets, sidewalks, malls, roof (over any portion of the Shopping Center), driveways, loading platforms, canopies, elevators, escalators, washrooms, lounges and shelters, and other facilities available for joint use, all as they may from time to time exist and be available to all the tenants in the Shopping Center, their employees, agents, customers, licensees and invitees.

(b) Landlord shall, subject to events beyond its reasonable control, maintain, or cause to be maintained, the joint use areas in good order and repair.

~~(c) It is understood that certain department stores may be occupants of the Shopping Center and that one or more other department store companies may become occupants of a part or parts of Landlord's tract or tracts. Said department stores may participate in the "joint use area costs" (as hereinafter defined) incurred by Landlord for the repair and maintenance of all the Shopping Center in accordance with the terms of their respective agreements with Landlord.~~

~~(d) As used in this Lease, the term "joint use area costs" means the total of all items of expense and cost relating to operating, managing, equipping, policing and protecting, lighting, repairing, replacing and maintaining the utility of the joint use areas in at least as good condition as when originally installed. Such costs and expense shall include, but not be limited to, maintenance and repair of all parking areas (including covered parking areas), removal of snow, ice, trash, garbage, rubbish, dirt and debris, all costs of seasonal decor, costs of planting, replanting and replacing landscaping and supplies required therefor, and all costs of utilities used in connection therewith, including, but not by way of limitation, all costs of maintaining elevators, speed ramps and escalators, lighting facilities and storm drainage systems, maintenance, repair and depreciation of all items used in the operation and maintenance of the joint use areas, the costs of heating and cooling the enclosed malls, labor salaries and benefits, security, all premiums for Workmen's Compensation insurance, wages, unemployment taxes, social security taxes and personal property taxes and all premiums for other insurance carried by Landlord in connection with the joint use areas; fees for required licenses and permits and administrative costs equal to fifteen percent (15%) of the total costs of operating and maintaining the "joint use area".~~

(e) ~~Effective upon the date on which rental shall be determined to commence under the provisions of ARTICLE 3 hereof, and at any time thereafter, Tenant shall pay to Landlord as additional rental hereunder, upon demand, but not more often than once a month, Tenant's share of the joint use area costs (based upon Landlord's estimates, subject to readjustment as hereinafter provided in paragraph (f) of this ARTICLE 17), which share shall be computed as follows: Tenant's proportionate share of joint use area costs shall be equal to the product obtained by multiplying such joint use area costs (less any contributions to said costs made by the department stores) by a fraction, the numerator of which shall be the number of square feet of floor area in the Leased Premises and the denominator of which shall be the total number of square feet of leased floor area in the Shopping Center, excluding the floor area contained in the department store buildings and the spaces of tenants occupying 10,000 square feet or more. Notwithstanding any other provisions of this ARTICLE 17, in no event will Tenant's share of total joint use area costs be less than an annual minimum payment of \$ AND NO/100 DOLLARS (\$).~~

(f) ~~Within ninety (90) days following the end of each calendar year Landlord shall furnish to Tenant a statement showing the total joint use area costs for the calendar year just expired, the amount of Tenant's share of such joint use area costs and payments made by Tenant during such calendar year under paragraph (e) of this ARTICLE 17. If Tenant's share of such joint use area costs for such calendar year shall exceed Tenant's payment so made, Tenant shall pay to Landlord the deficiency within ten (10) days after receipt of said statement. If the total amount paid by Tenant shall exceed such amount due for such calendar year, Tenant shall be entitled to offset the excess against payments next thereafter becoming due.~~

ARTICLE 18 DAMAGES TO PREMISES

In the event the Leased Premises are hereafter damaged or destroyed or rendered partially untenable for their accustomed uses by fire or other casualty insured under the coverage which Landlord is obligated to carry pursuant to ARTICLE 19(a) hereof, then, except as hereinafter provided, Landlord shall promptly repair said premises and restore the same to substantially the condition in which they were immediately prior to the happening of such casualty, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered as a result of such damage and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, interior partitions, fixtures, equipment, furniture, furnishings, wall covering, floor covering and draperies. From the date of such casualty until the Leased Premises are so repaired and restored, Minimum Annual Rental payments and all items of additional rental, except Taxes and Insurance, shall abate in such proportion as the square footage of the Leased Premises thus destroyed or rendered untenable bears to the total square footage of the Leased Premises, provided, however, that in the event fifty percent (50%) or more of the Leased Premises or the Shopping Center of which they are a part be hereafter destroyed or rendered untenable by fire or other casualty during the term of this Lease (based upon the cost to replace the premises immediately prior to such fire or other casualty as shown by certificate of Landlord's architect) or if one (1) or more department stores are damaged by fire or other casualty such that they will likely remain closed for business for a period exceeding twelve (12) months, then Landlord shall have the right to terminate this Lease effective as of the date of such casualty, by giving Tenant, within thirty (30) days after the happening of such casualty, written notice of such termination. If said notice be given within said thirty (30) day period, this Lease shall terminate and Minimum Annual Rental and all other charges and items of additional rental shall abate as aforesaid from the happening of such casualty, and Landlord shall promptly repay to Tenant any rental theretofore paid in advance which has not been earned at the date of such casualty. If said notice be not given and Landlord is required or elects to repair or rebuild the Leased Premises as herein provided, then Tenant shall repair and replace its merchandise, trade fixtures, furnishings and equipment in a manner and to at least a condition equal to that prior to its damage or destruction. Except as herein expressly provided to the contrary, this Lease shall not terminate nor shall there be any abatement of rental or other charges or items of additional rental as the result of a fire or other casualty.

**ARTICLE 19
INSURANCE**

(a) Landlord agrees to carry, or cause to be carried, during the term hereof public liability insurance on the joint use areas, providing coverage of not less than Three Million Dollars (\$3,000,000.00) for personal injury or death arising out of any one occurrence. Landlord also agrees to carry, during the term hereof, insurance for fire, extended coverage, vandalism and malicious mischief, insuring the improvements located on Landlord's property in the Shopping Center, including the Leased Premises and all appurtenances thereto (excluding Tenant's interior partitions, merchandise, trade fixture, furnishings, equipment and personal property) for the full insurable value thereof, such insurance coverage to include Tenant's Work (but excluding Tenant's merchandise, trade fixtures, furnishings, equipment, wall coverings, floor covering, drapes, interior partitions and other personal property). Upon request of Landlord, Tenant shall provide Landlord with a certificate setting forth the cost of said Tenant's Work. ~~During the term of this Lease or any renewals or extensions thereof, Tenant agrees to reimburse to Landlord as additional rental, a prorata share of Landlord's annual total costs for the premiums for such insurance. Tenant's proportionate share for the costs of the premiums for such insurance shall be equal to the product obtained by multiplying Landlord's total costs for such premiums by a fraction, the numerator of which shall be the number of square feet of floor area in the Leased Premises and the denominator of which shall be the total number of square feet of leased floor area in the Shopping Center, excluding the floor area contained in the department store buildings and spaces of tenants occupying 10,000 square feet or more. Tenant's prorata share of the costs for such premium shall be due and payable, in advance, as follows:~~

~~(i) Within ten (10) days after opening, Tenant shall pay to Landlord Tenant's prorata share of the costs for such premiums for the first full calendar year of the term of this Lease;~~

~~(ii) On the commencement of the payment of rental Tenant shall pay, in advance, on the first day of each month one twelfth (1/12th) of Tenant's annual prorata share of such premium for the next succeeding calendar year. Tenant's prorata share for the next succeeding calendar year shall be based upon an estimate determined by Landlord.~~

~~In the event that Landlord's estimate for any year is less than Tenant's actual prorata share, Tenant shall promptly pay such excess to Landlord upon demand. If the total amount paid by Tenant shall exceed Tenant's actual prorata share for any year, Tenant shall be entitled to offset the excess against payments next thereafter becoming due. As deductibles are paid, Tenant will be assessed its prorata share of the deductible.~~

(b) Tenant agrees to carry public liability insurance including product and/or completed operations liability on the Leased Premises; and if the Tenant is in the business of selling or serving alcoholic beverages, Tenant shall also carry liquor legal liability insurance (in a State having a Dram Shop Statute, then wording shall be changed to Dram Shop Liability) during the term hereof, covering Tenant as an insured, Landlord as an additional insured, and, if Landlord elects, any owner and/or occupant of a tract in the Shopping Center which adjoins Landlord's tract or tracts, as additional insureds, with terms and companies satisfactory to Landlord and giving Landlord, Tenant and other additional insureds a minimum of ten (10) days written notice by the insurance company prior to cancellation, termination or change in such insurance. Such insurance shall initially be for limits of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, including death, and personal injury, arising out of any one occurrence; and not less than Five Hundred Thousand Dollars (\$500,000.00) for damage to property arising out of any one occurrence, or a policy having a combined single limit of Two Million Dollars (\$2,000,000.00), and Landlord shall have the right, from time to time, to require Tenant to increase such limits to reasonable amounts.

Tenant agrees to maintain a self insurance fund adequate to pay any and all liability for death of or injury to persons or damage to property caused by the operation of Tenant or by the use or operation of any automobiles by Tenant to the extent that Tenant has any liability under the New Mexico Tort Claims Act, or which occur in, at or on the Leased Premises.

Tenant further agrees to ~~self insure adequately carry insurance~~ against fire and such other risks as are, from time to time, included in standard extended coverage insurance, for the full insurable value, covering all of Tenant's merchandise, interior partitions, trade fixtures, furnishings, wall covering, floor covering, draperies, equipment and all other items of personal property of Tenant located on or within the Leased Premises. Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the terms thereof. Tenant shall at all times maintain Workmen's Compensation Insurance (or other comparable insurance) under applicable law and in accordance with applicable statutory minimums covering all persons employed by Tenant in connection with any work done in or about the Leased Premises. Tenant shall also carry automobile insurance with respect to all automobiles used by Tenant in the conduct of its business from the Leased Premises. Such automobile insurance shall be for limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury, arising out of any one occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for damage to property arising out of any one occurrence or a combined single limit policy of One Million Dollars (\$1,000,000.00).

(c) Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefitting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease.

(d) Tenant shall be responsible for the maintenance of the plate glass in or on the Leased Premises, but shall have the option either to insure the risk or to self-insure.

ARTICLE 20 INDEMNIFICATION

Except for the negligent or wrongful acts of Landlord, its agents, employees or contractors, Tenant shall and will indemnify, defend and save harmless Landlord, owner and/or operator of the Shopping Center, their agents, officers and employees, from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with Tenant's use, occupancy, management or control of the Leased Premises and/or Tenant's operations or activities in the Shopping Center. This obligation to indemnify shall include reasonable legal and investigation costs and all other reasonable costs, expense and liabilities from the first notice that any claim of demand is to be made or may be made.

ARTICLE 21 ASSIGNMENT, SUBLETTING AND OWNERSHIP

(a) Tenant shall not transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or Tenant's interest in and to the Leased Premises without first procuring the written consent of Landlord, which Landlord may grant or refuse to grant at its sole discretion. Any attempt at transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation without Landlord's written consent shall be void and confer no rights upon any third person. The prohibitions of this ARTICLE 21 shall be construed to refer to any acts or events which occur by operation of law, legal process, receivership, bankruptcy or otherwise. Without limiting the generality of the foregoing, Tenant shall not sublease all or any portion of its interest in the Leased Premises or this Lease for an amount of rent determined in whole or in part on the income or profits derived by any person from such interest (other than an amount based on a fixed percentage or percentages of receipts or sales). Notwithstanding anything herein to the contrary, Tenant may without Landlord's consent, sublease a minor portion of the Leased Premises to the operator of the gift shop at the Leased Premises provided that any such sublease shall be subject and subordinate to all of the terms and conditions of this Lease.

(b) Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this Lease (even if future assignments and subletting occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Tenant's approval has been obtained for such future assignments and subletting). In any event of assignment or subletting, it is understood and agreed that all rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord, to be forwarded immediately to Landlord without offset or reduction of any kind; and upon election by Landlord such rental shall be paid directly to Landlord. The consent by Landlord to any transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation shall not constitute a waiver of the necessity for such consent to any subsequent attempted transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation. If Landlord grants its consent Tenant shall pay to Landlord promptly upon demand, a fee of Twelve Hundred and No/100 Dollars (\$1,200.00) plus any costs (including, without limitation, legal fees) incurred by Landlord in connection with such transfer, assignment, subletting, license or concession agreement, change in ownership or hypothecation.

(c) Each transfer, assignment, subletting, license or concession agreement and hypothecation to which there has been consent shall be by instrument in writing, in form satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire, or mortgagee shall agree in writing for the benefit of Landlord to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this ARTICLE 21 shall operate to prevent any such transfer, assignment, subletting, license, concession agreement or hypothecation from becoming effective.

(d) If Tenant is a corporation, and if the control thereof changes at any time during the term hereof, then Landlord, at its option, may, by giving sixty (60) days prior written notice to Tenant, declare such a change a breach of this Lease, subject to the remedies provided for breach in ARTICLE 23 hereof. The provisions of the preceding sentence, however, shall not be applicable if control of the corporation changes as the result of a public offering. If, at any time during the term of this Lease, any part or all of its outstanding voting stock, if Tenant is a corporation, or any interest in the partnership, if Tenant is a partnership, shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other dispositions so as to result in a change in the present effective voting control of Tenant by the person or persons owning a majority of said outstanding voting stock or a majority interest in the partnership, as the case may be, on the date of this Lease, then such event shall constitute an assignment for the purposes of this Lease. In the event there is a guarantor of this Lease, then if at any time during the term of this Lease (a) any part or all of such guarantor's outstanding voting stock, if such guarantor is a corporation, or any interest in the partnership, if such guarantor is a partnership, shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other disposition so as to result in a change in the present effective voting control of such guarantor by the person or persons owning a majority of said outstanding voting stock or a majority interest in the partnership, as the case may be, on the date of this Lease, or (b) such guarantor is dissolved, Tenant shall so notify Landlord. Such notice shall be effective in accordance with this ARTICLE 21, paragraph (d) only if said notice shall include or state all of the following: (a) that said notice is given pursuant to ARTICLE 21, paragraph (d) of this Lease; (b) the occurrences giving rise to such notice, stated with particularity as to the effective date, parties involved or affected and the shares or interests affected; (c) in the event of a transfer of shares or a partner's interest, a recent financial statement (certified by an independent certified public accountant) of the transferee or transferees; and (d) that Landlord shall have thirty (30) days from receipt of such notice to terminate this Lease as described in this ARTICLE 21, paragraph (d). Landlord shall have the right, at its option, to terminate this Lease by notice to Tenant given within thirty (30) days after Landlord's receipt of such notice from Tenant. In the event Landlord receives other notice of such transfer or of the dissolution of such guarantor, then Landlord shall have the right, at its option, within ninety (90) days after receipt of such other notice, to terminate this Lease or to declare an event of default under ARTICLE 23 of this Lease. The foregoing provisions shall not apply to any corporation if, and so long

as, all the outstanding voting stock of such corporation is listed on a National Securities Exchange as defined in the Securities Exchange Act of 1934, as amended. For the purposes of this paragraph (d), stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1954, as the same existed on August 16, 1954, and the term "voting stock" shall refer to the shares of stock regularly entitled to vote for the election of directors of the corporation.

**ARTICLE 22
ACCESS TO PREMISES**

Tenant agrees that Landlord, its agents, employees or servants, or any person authorized by Landlord, may enter the Leased Premises for the purpose of: (a) inspecting the condition of same; (b) making such repairs, additions or improvements thereto, or to the building of which they are a part, as Landlord may elect or be required to make; (c) exhibiting the same to prospective purchasers of the building in which the Leased Premises are contained; and (d) placing notices, during the last sixty (60) days of the term hereof, in and upon the Leased Premises at such places as may be determined by Landlord. Tenant agrees that neither Tenant nor any person within Tenant's control will interfere with such notices. Landlord shall use reasonable efforts to minimize its disturbance of Tenant's business, except in cases of emergency.

**ARTICLE 23
DEFAULTS BY TENANT AND REMEDIES**

(a) The following events shall be deemed to be events of default by Tenant under this Lease:

(i) Tenant shall fail to pay any installment of rental or any other obligation hereunder involving the payment of money and such failure shall continue for a period of five (5) days after written notice thereof to Tenant; provided, however, that for each calendar year during which Landlord has already given Tenant written notice of the failure to pay an installment of rental, no further notice shall be required (i.e., the event of default will automatically occur on the fifth (5th) day after the date upon which the rental was due).

(ii) Tenant shall fail to comply with any term, provision or covenant of this Lease (including the timely commencement of any Tenant work required under any provision of this Lease or any Exhibit thereto), other than as described in subsection (i) above, and shall not cure such failure within ten (10) days after written notice thereof to Tenant.

(iii) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(iv) Tenant or any guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the federal bankruptcy code, as amended, or under any similar law or statute of the United States or any state thereof; or Tenant, or any guarantor of Tenant's obligations under this Lease, shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligation under this Lease.

(v) A receiver or Trustee shall be appointed for the Leased Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

(vi) Tenant shall desert or vacate or shall commence to desert or vacate the Leased Premises or any substantial portion of the Leased Premises or shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial amount of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property.

(vii) Tenant shall do or permit to be done anything which creates a lien upon the Leased Premises or any portion of the Shopping Center.

(b) Upon the occurrence of any such events of default, Landlord shall have the option to pursue any one or more of the following remedies.

(i) Without any further notice or demand whatsoever, Tenant shall be obligated to reimburse Landlord for the damages suffered by Landlord as a result of the event of default, and Landlord may pursue a monetary recovery from Tenant. In this regard, and without limiting the generality of the immediately preceding sentence, it is agreed that if Tenant fails to open for business as required in this Lease or, having opened for business, subsequently deserts or vacates the Leased Premises or otherwise ceases to conduct business in the Leased Premises as required in this Lease, then Landlord at its option may seek monetary recovery for the loss of Tenant's anticipated contribution to commerce within the Shopping Center; moreover, Landlord and Tenant further agree that inasmuch as the exact amount of damages would be difficult to determine, liquidated damages will be due monthly in an amount equal to fifteen percent (15%) of the Minimum Annual Rental payable for that month (i.e., Tenant will pay Minimum Annual Rental equal to one hundred fifteen percent (115%) of the amount specified in ARTICLE 4(a) of this Lease).

(ii) Without any further notice or demand whatsoever Landlord may take any one or more of the actions permissible at law to insure performance by Tenant of Tenant's covenants and obligations under this Lease. In this regard, and without limited the generality of the immediately preceding sentence, it is agreed that if Tenant fails to open for business as required in this Lease or, having opened for business deserts or vacates the Leased Premises, Landlord may enter upon, change the door locks to and take possession of such premises in order to protect them from deterioration and continue to demand from Tenant the monthly rentals and other charges provided in this Lease, without any obligation to relet; however, if Landlord does, at its sole discretion, elect to relet the Leased Premises, such action by Landlord shall not be deemed as an acceptance of Tenant's surrender of the Leased Premises, unless Landlord expressly notifies Tenant of such acceptance in writing pursuant to this subsection (ii), Tenant hereby acknowledging that Landlord shall otherwise be reletting as Tenant's agent and Tenant furthermore hereby agreeing to pay to Landlord on demand any deficiency that may arise between the monthly rentals and other charges provided in this Lease and that actually collected by Landlord. It is agreed in this regard that in the event Landlord changes the door locks to the Leased Premises, Landlord will not be required to give Tenant a new key unless Tenant cures all its defaults hereunder and delivers a security deposit to Landlord in an amount deemed appropriate by Landlord under the circumstances. Upon the changing of the door locks, Landlord shall give Tenant written notice as herein provided stating the name and address or telephone number of the party from whom, and stating the times at which, a new key may be obtained. The new key shall be provided only during such party's regular business hours and only after Tenant has cured all defaults and delivered the security deposit as provided above. Tenant will reimburse Landlord on demand for Landlord's attorneys' fees and other expenses in entering the Leased Premises and changing the door locks, and Landlord shall not be liable for any damages resulting to Tenant as a result therefrom. It is further agreed in this regard that in the event of any default described in subsection (ii) ARTICLE 23 (a) of this Lease, Landlord shall have the right to enter upon the Leased Premises by force if necessary without being liable for prosecution or any claim or damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.

(iii) Landlord may terminate this Lease by written notice to Tenant, in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to do so, Landlord may,

without prejudice to any other remedy which Landlord may have for possession or arrearages in rent (including any interest which may have accrued pursuant to ARTICLE 4(a) of this Lease), enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant hereby waives any statutory requirement of prior written notice for filing eviction or damage suits for nonpayment of rent. In addition, Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any termination effected pursuant to this subsection (iii), said loss and damage to be determined by either of the following alternative measures of damage:

(1) Until Landlord is able, through reasonable efforts, the nature of which efforts shall be at the sole discretion of Landlord, to relet the Leased Premises, Tenant shall pay to Landlord on or before the first day of each calendar month the monthly rentals and other charges provided in this Lease. After the Leased Premises have been relet by Landlord, Tenant shall pay to Landlord on the twentieth (20th) day of each calendar month the difference between the monthly rentals and other charges provided in this Lease for the preceding calendar month and that actually collected by Landlord for such month. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have a right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies. Any amount collected by Landlord from subsequent tenants for any calendar month, in excess of the monthly rental and other charges provided in this Lease, shall be credited to Tenant in reduction of Tenant's liability for any calendar month for which the amount collected by Landlord will be less than the monthly rentals and other charges provided in this Lease; but Tenant shall have no right to such excess other than the above-described credit.

(2) When Landlord desires, Landlord may demand a final settlement. Upon demand for a final settlement, Landlord shall have a right to, and Tenant hereby agrees to pay, the difference between the total of all monthly rentals and other charges provided in this Lease for the remainder of the term and the reasonable rental value of the Leased Premises for such period, such difference to be discounted to present value at a rate equal to the rate of interest which is allowed by law in the state in which the Shopping Center is located when the parties to a contract have not agreed on any particular rate of interest.

If Landlord elects to exercise the remedy prescribed in subsection (ii) above, this election shall in no way prejudice Landlord's right at any time thereafter to cancel said election in favor of the remedy prescribed in subsection (iii) above, provided that at the time of such cancellation Tenant is still in default. Similarly, if Landlord elects to compute damages in the manner prescribed by subsection (iii)(1) above, this election shall in no way prejudice Landlord's right at any time thereafter to demand a final settlement in accordance with subsection (iii)(2) above.

(c) It is expressly agreed that in determining "the monthly rentals and other charges provided in this Lease", as that term is used throughout subsection (iii)(1) and (iii)(2) above, there shall be added to the Minimum Annual Rental (as specified in ARTICLE 4 (a) of this Lease) a sum equal to the charges for maintenance of the joint use area (as specified in ARTICLE 17 of this Lease), the charges for taxes and insurance (as specified in ARTICLES 7 and 19 of this Lease) plus one twenty-fourth (1/24th) of the total of all percentage rentals required to be paid by Tenant (pursuant to ARTICLE 4 of this Lease) because of net sales during the two full calendar years immediately preceding the date Landlord initiated action pursuant to said subsections (or, if two full calendar years have not then elapsed, to the corresponding fraction of all percentage rentals required to be paid because of net sales during the period commencing with the Commencement Date of this Lease and concluding with the date on which Landlord initiated such action).

(d) It is further agreed that, in addition to payments required pursuant to subsection (b)(ii) and (b)(iii) above, Tenant shall compensate Landlord for the unamortized cost of leasehold improvements provided by, or wholly or partially paid for by Landlord whether in the form of a construction allowance or otherwise along with all expenses incurred by Landlord in repossession (including, among other expenses, any increase in insurance premiums caused by the vacancy of the Leased Premises), all expenses incurred by Landlord in reletting (including, among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees), all concessions granted to a new tenant upon reletting (including, among other concessions, renewal options), all losses incurred by Landlord as a direct or indirect result of Tenant's default (including, among other losses, any adverse reaction by Landlord's mortgagee or by other tenants or potential tenants of the Shopping Center) and a reasonable allowance for Landlord's administrative efforts, salaries and overhead attributable directly or indirectly to Tenant's default and Landlord's pursuing the rights and remedies provided herein and under applicable law.

(e) Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative and not exclusive of each other.

(f) No re-entry or taking possession of the Leased Premises by Landlord pursuant to paragraph (b) or (c) of this ARTICLE 23 shall be construed as an election to terminate this Lease, nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

(g) All rights and remedies of Landlord herein created, or provided by law, are cumulative and pursuit or exercise of one or more rights or remedies shall not preclude pursuit of any other rights or remedies prescribed above or elsewhere in this Lease or provided by law. Forbearance by Landlord to enforce one or more of the rights or remedies herein provided or by law upon an event of default shall not be deemed or construed to constitute a waiver of such default.

ARTICLE 24 SURRENDER OF PREMISES

Tenant shall, upon the expiration of the term hereof, or any earlier termination of this Lease for any cause, surrender to Landlord the Leased Premises, including, without limitation, all building apparatus and equipment then upon the Leased Premises; and all alterations, improvements and other additions which may be made or installed by either party to, in, upon or about the Leased Premises, other than movable trade fixtures, signs and other personal property which, if Tenant is not then in default, remain the property of Tenant as provided in ARTICLE 13 hereof, shall be surrendered to Landlord by Tenant without any damage, injury or disturbance thereto, or payment therefor.

ARTICLE 25 TENANT'S CONDUCT OF BUSINESS

Tenant covenants and agrees that, continuously and uninterruptedly from and after its initial opening for business, it will operate and conduct within the Leased Premises the business it is permitted to operate and conduct under the provisions of this Lease, except while the Leased Premises are untenable by reason of fire or other casualty. Tenant agrees to conduct its business at all times in a first-class manner consistent with reputable business standards and practices, and that it will at all times keep and maintain within and upon the Leased Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers and that it will keep the Leased Premises in a neat, clean and orderly condition. Tenant also agrees to conduct Tenant's business under the trade name agreed to by Landlord in ARTICLE 1. Tenant further agrees to keep open the Leased Premises and operate the business conducted

thereon at such hours and on such days and evenings of the week as may be determined from time to time by Landlord, provided however in no event shall Tenant be obligated to open for business during hours other than those set forth below on the following days:

<u>Monday through Thursday:</u>	<u>12:00 p.m. - 5:00 p.m.</u>
<u>Friday:</u>	<u>12:00 p.m. - 9:00 p.m.</u>
<u>Saturday:</u>	<u>10:00 a.m. - 6:00 p.m.</u>
<u>Sunday:</u>	<u>12:00 p.m. - 6:00 p.m.</u>

ARTICLE 26

RULES AND REGULATIONS

Landlord agrees that in carrying out the rules and regulations applicable to all of Landlord's merchant tenants in the Shopping Center, Tenant shall not be discriminated against, and Tenant covenants and agrees that Tenant will comply with reasonable rules and regulations set by Landlord from time to time for the operation of the Shopping Center, including the following:

(a) Tenant shall not affix or maintain upon the glass panes and supports of the show windows (and within thirty-six (36) inches of any window), doors and the exterior walls of the Leased Premises, any signs, banners, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items, and Landlord shall have the right, without giving prior notice to Tenant and without any liability for damage to the Leased Premises, to remove any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items, except such as shall have first received written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof of the Leased Premises.

(b) No awning or other projections shall be attached to the outside walls of the Leased Premises or the building of which they form a part without, in each instance, the prior written consent of Landlord.

(c) All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purpose by Landlord.

Tenant shall advise and use its best efforts to cause its vendors to deliver all merchandise before noon on Mondays through Fridays and not at any other times. All deliveries are to be made to designated service or receiving areas and Tenant shall request delivery trucks to approach their service or receiving areas by designated service routes and drives.

No parking or storing of tractor trailers will be permitted in the Shopping Center without Landlord's permission. Tractor trailers which must be unhooked or parked must use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers will be permitted in the Shopping Center.

Except for small parcel packages, no deliveries will be permitted through the mall unless the Leased Premises do not have a rear service door. In such event, prior arrangements must be made with the Resident Mall Manager for delivery at such Leased Premises. Merchandise being received shall immediately be moved into the Leased Premises and not be left in the service or receiving areas.

(d) All garbage and refuse shall be kept in the kind of container specified by Landlord, and shall be disposed of in the manner and at the times and places specified by Landlord. Tenant is responsible for storage and removal of its trash, refuse and garbage. Tenant shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags; cooking fats, cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naphtha, kerosene, lubricating oils); paint products (thinner, brushes); or any other items which the same are not designed to receive. All tenant store floor area, including vestibules, entrances and returns, doors, fixtures, windows and plate glass, shall be maintained in a safe, neat and clean condition.

(e) No radio or television aerial shall be erected on the roof or exterior walls of the Leased Premises without the prior written consent of Landlord. Any aerial so installed shall be subject to removal without notice at any time and any damage to the walls or roof caused by such removal shall be the responsibility of Tenant.

(f) Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Leased Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers or other sound devices, phonographs, radios or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Leased Premises, unless Landlord has previously given its written consent.

(g) No auction, fire, bankruptcy, going out of business or liquidation sales shall be conducted on or about the Leased Premises without the prior written consent of Landlord.

Tenant shall not permit or suffer merchandise of any kind at any time to be placed, exhibited or displayed outside its Leased Premises, nor shall Tenant use the exterior sidewalks or exterior walkways of the Leased Premises to display, store or place any merchandise. No sale of merchandise by tent sale, truckload sale, or the like shall be permitted on the parking lot or other joint use areas.

(h) Tenant shall keep Tenant's display windows illuminated and the signs and exterior lights lighted each and every day of the term hereof during the hours designated by Landlord. Tenant shall promptly repair any malfunctions in sign lighting; or at Landlord's request, Tenant shall turn sign lighting off until such malfunction is corrected.

(i) The outside areas immediately adjoining the Leased Premises shall be kept clear at all times by Tenant and Tenant shall not place nor permit any obstructions, garbage, refuse, merchandise or displays in such area.

(j) Nothing is to be attached or placed on the roof or exterior walls of the Leased Premises, and Tenant's access to the roof is to be limited to inspection for damages only. Absolutely no roof penetrations shall be made by Tenant.

(k) Landlord may from time to time designate specific areas in which vehicles owned or operated by Tenant or Tenant's employees must be parked and may prohibit the parking of any such vehicles in any other part of the joint use areas. Landlord will formally notify Tenant, at Tenant's Shopping Center address, of such parking designation. Upon receipt and acknowledgement of said notice, Tenant shall notify each of its employees of the provisions of this paragraph prior to commencing employment connected with the Leased Premises. Tenant shall furnish Landlord a list of license numbers of the motor vehicles operated by Tenant and Tenant's employees within five (5) days after request by Landlord, and Tenant shall thereafter notify Landlord of any and all changes to such list within five (5) days after each change occurs. Landlord may cause to be towed away, at Tenant's expense, any violating vehicles, and Tenant waives any liability of Landlord to Tenant resulting therefrom; or Landlord may, for any such violating vehicles, charge Tenant, as additional rental, a daily rate equal to Ten Dollars (\$10.00) for each violating vehicle per day or part thereof. All amounts due under the provisions of this paragraph shall be paid by Tenant upon demand.

(l) Tenant shall use, at Tenant's expense, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require, providing the cost thereof is competitive to any similar service available to Tenant.

(m) Tenant, its employees and/or agents, shall not solicit business in the parking or other joint use areas, nor shall Tenant, its employees and/or its agents, distribute any handbills or other advertising matter in or on automobiles parked in the parking or other joint use areas.

Other than as permitted under the provisions of the EXHIBITS, Tenant shall not permit or suffer any advertising medium to be placed on enclosed mall walls, on Tenant's mall or exterior windows, on standards in the enclosed mall, on the sidewalks or on the parking lot areas, or outside walls or roof, or light poles. No permission, expressed or implied, is granted to exhibit or display any banner, pennant, sign, and trade or seasonal decoration of any size, style or material within the Shopping Center, outside the Leased Premises.

(n) In the event Landlord installs a central music system in the Shopping Center, and Tenant desires to purchase an outside music system, then in that event, Tenant shall purchase such system from Landlord, provided Landlord's charge therefor is competitive to any similar service available to Tenant.

(o) Tenant shall not carry on any trade or occupation or operate any instrument, apparatus or equipment which emits an odor or causes a noise discernible outside of the Leased Premises and which may be deemed offensive in nature.

(p) Tenant shall not place or maintain any temporary fixtures for the display of merchandise, other than those approved by Landlord in accordance with EXHIBIT C hereof, within six (6) feet of any entrance to the Leased Premises, and Landlord shall have the right, without giving prior notice to Tenant and without any liability for damage to the Leased Premises or Tenant's merchandise, to remove any of the same from the Leased Premises, except such as shall have first received the written approval of Landlord as to size, color, location, nature and display qualities.

(q) Tenant shall not permit or suffer any portion of the Leased Premises to be used for lodging purposes.

(r) Tenant shall not, in or on any part of the (inside or outside) joint use areas:

Vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;

Exhibit any sign, placard, banner, notice or other written material;

Distribute any circular, booklet, handbill, placard or other material;

Solicit membership in any organization, group or association or contribution for any purpose;

Create a nuisance;

Use any joint use area (including the enclosed mall) for any purpose when none of the other retail establishments within the Shopping Center is open for business or employment;

Throw, discard, or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind; or

Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.

(s) Tenant agrees to comply with regulations requiring a clear exiting path through Tenant's stockroom to Tenant's rear exit door if the Leased Premises contain a rear door.

Landlord shall, for the enforcement of the covenants, conditions and agreements now or hereafter made a part of this ARTICLE 26, to be referred to as "Rules and Regulations," have all remedies in this Lease provided for breach of the provisions hereof.

**ARTICLE 27
EMINENT DOMAIN**

(a) In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and both Landlord and Tenant shall thereupon be released from any liability thereafter accruing hereunder. In the event more than twenty-five percent (25%) of the square footage of floor area (including mezzanine, if any) of the Leased Premises is taken under the power of eminent domain by any public or quasi-public authority, or if by reason of any appropriation or taking, regardless of the amount so taken, the remainder of the Leased Premises is not usable for the purposes of which the Leased Premises were leased, then either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate a portion of the Leased Premises so taken upon giving notice to the other in writing of such election within sixty (60) days after the date of such taking. In the event of such termination, both Landlord and Tenant shall thereupon be released from any liability thereafter accruing hereunder. In the event a portion of the Shopping Center shall be taken, condemned or transferred as aforesaid and as a result thereof Landlord, in its sole discretion, elects to discontinue the operation of Landlord's remaining parcel, Landlord may cancel this Lease by giving Tenant notice of its election and this Lease shall terminate and shall become null and void ninety (90) days after said notice and the provisions with respect to the awards shall be as set forth in paragraph (b) of this ARTICLE 27.

(b) Whether or not this Lease is terminated, Landlord shall be entitled to the entire award or compensation in such proceedings, but nothing herein shall be deemed to affect Tenant's right to apply for and receive a separate award for compensation or damages for its fixtures and personal property. If this Lease is terminated as hereinabove provided, all items of rent, additional rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord agrees to refund to Tenant any rent, additional rent or other charges paid in advance.

(c) Except as otherwise provided in the final sentence in paragraph (a) of this ARTICLE 27, if both Landlord and Tenant elect not to so terminate this Lease, Tenant shall remain in that portion of the Leased Premises which shall not have been appropriated or taken as herein provided, and Landlord agrees, at Landlord's cost and expense, to, as soon as reasonably possible, restore the remaining portion of the Leased Premises to a complete unit of like quality and character as existed prior to such appropriation or taking; and thereafter the Minimum Annual Rental provided for in ARTICLE 4 hereof shall be adjusted on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining. For the purpose of this ARTICLE 27, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

**ARTICLE 28
ATTORNEY'S FEES**

In the event that at any time during the term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of attorney's fees and disbursements incurred therein by the successful party.

**ARTICLE 29
SALE OF PREMISES BY LANDLORD**

In the event of any sale or exchange of the Leased Premises by Landlord and assignment by Landlord of this Lease, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Leased Premises or this Lease occurring after the consummation of such sale or exchange and assignment.

**ARTICLE 30
NOTICES**

All notices and demands given under this Lease shall be in writing and shall be personally delivered, or sent by registered mail or certified mail, return receipt requested, or sent by a nationally recognized overnight courier service, (i.e. Federal Express or Airborne) return receipt requested or the equivalent, and addressed, if to Landlord, at the address set forth on page 1 hereof as the Landlord's address, and if to Tenant, addressed to Tenant at the legal address for notice in ARTICLE 1, or such other address as was last specified respectively through written notice by Landlord or Tenant. Delivery shall be deemed effective (i) when the same is personally delivered, if delivered in person, (ii) the third (3rd) day after same is deposited in an official United States Post Office, certified or registered mail, return receipt requested, postage prepaid and properly addressed, if sent through the United States mail service or (iii) the first (1st) day after same is given to a courier service for next day delivery, fees prepaid and properly addressed, if given to a nationally recognized overnight courier service.

**ARTICLE 31
AMENDMENTS**

No amendment, modification of or supplement to this Lease shall be effective unless in writing and executed by both Landlord and Tenant. Landlord shall be under no obligation to amend this Lease; however, if at Tenant's request, a written amendment is entered into by Landlord and Tenant, Tenant shall pay to Landlord promptly upon demand, a fee of Twelve Hundred and No/100 Dollars (\$1,200.00) plus any costs (including without limitation, legal fees) incurred by Landlord in connection with such amendment.

**ARTICLE 32
SUCCESSORS AND ASSIGNS**

All covenants, promises, conditions, representations and agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors and assigns; it being understood and agreed, however, that the provisions of ARTICLE 21 are in nowise impaired by this ARTICLE 32.

**ARTICLE 33
REPRESENTATIONS**

It is understood and agreed by Tenant that Landlord and Landlord's agents have made no representations or promises with respect to the Leased Premises or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability, or cause for termination, shall be asserted by Tenant against Landlord for, and Landlord shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease.

**ARTICLE 34
WAIVER**

The failure of Landlord to insist upon strict performance by Tenant of any of the covenants, conditions, and agreements of this Lease shall not be deemed a waiver of any of Landlord's rights or remedies and shall not be deemed a waiver of any subsequent breach or default by Tenant in any of the covenants, conditions and agreements of this Lease. No surrender of the Leased Premises shall be affected by Landlord's acceptance of rental or by any other means whatsoever unless the same be evidenced by Landlord's written acceptance of such as a surrender.

ARTICLE 35
HOLDING OVER

If Tenant or any party claiming under Tenant remains in possession of the Leased Premises, or any part thereof, after any termination or expiration of this Lease, no tenancy or interest in the Leased Premises shall result therefrom, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Tenant shall pay upon demand to Landlord, during any period which Tenant shall hold the Leased Premises after the term has expired, as liquidated damages, a sum equal to all percentage rental and additional rental provided for in this Lease plus an amount computed at the rate of double the Minimum Annual Rental for such period.

ARTICLE 36
INTERPRETATION

The parties hereto agree that it is their intention hereby to create only the relationship of Landlord and Tenant, and no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties hereto.

ARTICLE 37
MARKETING SERVICE

(a) Landlord will establish a Marketing Service to furnish and maintain professional advertising and sales promotions which is intended to benefit the merchants in the Shopping Center. In conjunction with said Service, Landlord agrees to provide personnel, including sufficient secretarial services, to pay salaries and benefits for such personnel, and to pay for office rental, utilities, supplies, telephone and all equipment expense necessary for efficient operation. A committee composed of a representative of each department store, an equal number of representatives of the mall tenants, and a representative of Landlord will be formed by Landlord to review the advertising and promotional activities sponsored by the Service.

~~Tenant agrees to pay for the Marketing Service an amount equal to \$2.00 per square foot of the floor area of Leased Premises per year, or a minimum annual fee of _____ AND NO/100 DOLLARS (\$ _____), whichever is greater, payable in equal monthly installments on the same day rental is due under ARTICLE 3 hereof (hereinafter called the "Marketing Service Fee"). All monies received under this ARTICLE 37(a) shall be used solely for the purpose of advertising and promotional services of the Shopping Center. The Marketing Service Fee owed by Tenant hereunder will be increased effective as of January 1 of each calendar year during the term of this Lease by a percentage equal to the percentage increase, if any, in (i) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index U.S. Cities Average (1982-84 = 100) (the "Index") applicable for the month of December of the immediately preceding calendar year, over and above (ii) the corresponding Index figure for the first full month of the term of this Lease; provided that if such Index should be discontinued, such calculation shall be made by use of another reputable Index selected by Landlord and provided further, that if the base period for the Index (currently 1982-84 = 100) is hereafter changed, the new base period shall be used in making the foregoing calculation.~~

~~(b) Landlord shall plan as a part of the yearly advertising and sales promotion calendar, a variety of joint advertising efforts which Landlord deems to be in the best sales traffic generation interest of the Shopping Center. Tenant agrees to join in a minimum of eight (8) said joint advertising efforts per calendar year (prorated for partial calendar years) with a minimum of one quarter (1/4) page print ad or the equivalent expenditure in broadcast or other effort planned by Landlord.~~

~~Landlord's representative shall supply to Tenant's designee a schedule of the coming year's joint advertising efforts no later than ninety (90) days prior to the close of the previous calendar year. Tenant agrees to supply to Landlord a list of at least eight (8) said joint advertising efforts in which Tenant will advertise within thirty~~

~~(30) days of its receipt of the above mentioned notice from Landlord. Tenant may adjust its commitment at any time so long as it joins in a minimum of eight (8) joint advertising efforts during the calendar year.~~

~~If Tenant fails to fulfill its advertising obligation set forth above for any calendar year, then Tenant shall, within sixty (60) days after the end of such calendar year, pay to Landlord the difference between the amount properly spent by Tenant in fulfillment of its advertising obligation, and one percent (1%) of Tenant's gross sales for such calendar year. Funds paid to the Landlord pursuant to the preceding sentence shall be spent for the promotion of the Shopping Center in such a manner as Landlord may determine.~~

~~Tenant may, at its option, pay the equivalent of eight (8) one quarter (1/4) page ads or the equivalent amount in broadcast or other media selected by the Shopping Center, into an advertising pool which Landlord agrees to use to advertise Tenant's store or in a method deemed appropriate by Landlord. Said monies will be adjusted yearly by the increase or decrease in the cost of aforementioned one quarter (1/4) page ad or equivalent broadcast or other effort planned by Landlord.~~

ARTICLE 38 COVENANT OF TITLE

Landlord covenants that it has full right, power and authority to make this Lease and that Tenant or any permitted assignee or sublessee of Tenant, upon the payment of the rentals and performance of the covenants upon Tenant's part to be performed hereunder, shall and may peaceably and quietly have, hold and enjoy the Leased Premises and improvements thereon during the term or any renewal or extension hereof.

ARTICLE 39 WAIVER OF REDEMPTION

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Leased Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

ARTICLE 40 TENANT'S PROPERTY

Landlord, its agents or employees, shall not be liable and Tenant waives all claims for any damage to persons or property sustained by Tenant or any person claiming through Tenant located on the Leased Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise whether caused by other tenants or persons in the Shopping Center or in the Leased Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims arising out of damage to the same or damage to Tenant's business, including subrogation claims by Tenant's insurance carrier.

ARTICLE 41 LEASE STATUS

At any time and from time to time, upon request of Landlord, Tenant will execute, acknowledge and deliver to Landlord an instrument prepared by Landlord stating, if the same be true, that this Lease is a true and exact copy of the Lease between the parties hereto, that there are no amendments hereon (or stating what amendments there may be), that the same is then in full force and effect and that, to the best of Tenant's knowledge, there are then no offsets, defenses or counterclaims with respect to the payment of rental reserved hereunder or in the performance of the other terms, covenants and conditions hereof on the part of Tenant to be performed, and that as of such date no default has been declared hereunder by either party hereto and that

Tenant at the time has no knowledge of any facts or circumstances which it might reasonably believe would give rise to a default by either party.

**ARTICLE 42
RECORDING**

Tenant shall not record this Lease. However, upon the request of either party hereto the other party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of recordation. Said memorandum or short form of this Lease shall describe the parties, the Leased Premises and the term of this Lease and shall incorporate this Lease by reference.

**ARTICLE 43
FORCE MAJEURE**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this ARTICLE 43 shall not operate to excuse Tenant from the prompt payment of Minimum Annual Rental, percentage rental, additional rental or any other payments required by the terms of this Lease.

**ARTICLE 44
BROKER'S COMMISSION**

Tenant warrants that it has dealt with no broker or agent in connection with this Lease, and agrees to indemnify and save Landlord harmless from all claims, actions, damages, costs and expenses and liability whatsoever, including reasonable attorneys' fees, that may arise from any claim by or through Tenant for commission or finder's fees in connection with this Lease.

**ARTICLE 45
LIMITATIONS ON LANDLORD'S LIABILITY**

Notwithstanding anything to the contrary contained in this Lease, in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed, honored or performed by Landlord, Tenant shall look solely to the estate and property of Landlord in the land and building owned by Landlord comprising the Shopping Center for the collection of any judgment (or any other judicial procedures requiring the payment of money by Landlord) and no other property or assets of Landlord shall be subject to levy, execution, or other procedures for satisfaction of Tenant's remedies.

**ARTICLE 46
SECURITY AGREEMENT**

(a) For valuable consideration and as security for the payment of rent and other charges becoming due hereunder, Tenant hereby grants to Landlord a security interest in the following described collateral: (i) All inventory in the Leased Premises during the term of this Lease; (ii) all equipment and other personalty placed in the Leased Premises during the lease term of this Lease; and (iii) all of the proceeds of said inventory, equipment and personalty.

(b) Upon the happening of any of the following events or conditions, namely: (i) default in the payment of rental or performance of any of the obligations or of any covenant or liability contained or referred to herein; (ii) making of any levy, seizure or attachment of the collateral; or (iii) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, Tenant or any

guarantor of Tenant: thereupon, or any time thereafter (such default not having previously been cured) Landlord shall then have all the remedies of a secured party under the laws of the state in which the Leased Premises are located, including, without limitation thereto, the right to take possession of the collateral, and for that purpose Landlord may enter upon the Leased Premises and remove the same therefrom. Landlord will give Tenant at least ten (10) days prior written notice of any public sale thereof or of the date after which any private sale or any other intended disposition is to be made, and at any such sale the Landlord may purchase the collateral.

(c) This security agreement and the security interest and collateral created hereby shall be terminated when all of the rental and other charges becoming due during the term of this Lease or extension thereof have been paid in full.

(d) Upon request by Landlord, Tenant agrees to execute and deliver to Landlord a financing statement in a form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code (or corresponding state statute or statutes) enforced in the state in which the Shopping Center is located, as well as any other state the laws of which Landlord may at any time consider to be applicable.

ARTICLE 47 SEVERABILITY

Every covenant and obligation contained in this Lease, including, without limitation, the obligation to pay rent, is and shall be construed as a separate and independent covenant and obligation. If any term or provision of this Lease or its application to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. If Tenant is a lessee under another lease agreement with Landlord or an affiliate of Landlord, a default under this Lease shall constitute a default under such other lease and vice versa.

ARTICLE 48 VENUE; APPLICABLE LAW

The parties hereto agree that the laws of the State of ~~New Mexico~~ Texas shall govern the interpretation, validity, performance and enforcement of this Lease. Venue for any action under this Lease shall be in the Courts of ~~Dona Ana~~ Dallas County, New Mexico ~~Texas~~.

ARTICLE 49 CONSTRUCTION OF LEASE

Tenant declares that Tenant has read and understands all parts of this Lease, including all printed parts hereof.

~~_____~~
~~_____~~
~~_____~~

ARTICLE 50 CAPTIONS

Captions throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. The use of the terms "hereof", "hereunder" and "herein" shall refer to this Lease as a whole, inclusive of the exhibits, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders. The singular form shall include the plural when the context so requires. As used herein the terms "Landlord" and "Tenant" shall mean and include "Landlord" and "Tenant" and "its/their agents and employees," unless the context otherwise requires.

**ARTICLE 51
OBJECTION TO STATEMENTS**

Tenant's failure to object to any statement, invoice or billing rendered by Landlord within a period of thirty (30) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto and shall render such statement, invoice or billing an account stated between Landlord and Tenant.

**ARTICLE 52
NO OPTION**

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises or any other space within the Shopping Center, and shall vest no right in Tenant. This Lease shall become effective as a lease only upon execution and delivery thereof by the parties hereto. Tenant acknowledges that it does not have any exclusive rights in the Shopping Center with respect to the sale or lease of its merchandise or services.

**ARTICLE 53
CORPORATE TENANT**

~~If Tenant is or will be a corporation, the persons executing this Lease on behalf of Tenant hereby covenant, represent and warrant that Tenant is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the state where the Shopping Center is located (a copy of evidence thereof to be supplied to Landlord upon request); and that the person executing this Lease on behalf of Tenant is an officer of such Tenant, and is duly authorized to sign and execute this Lease.~~

**ARTICLE 54
FINANCIAL STATEMENTS**

~~(a) Tenant acknowledges that it has provided or will provide Landlord with its financial statement(s) as a primary inducement to Landlord's agreement to lease the Leased Premises to Tenant, and that Landlord has relied or will rely on the accuracy of said financial statement(s) in entering into this Lease. Tenant represents and warrants that the information contained in said financial statement(s) is true, complete and correct in all material aspects, and agrees that the foregoing representations shall be a precondition to this Lease.~~

~~(b) At the request of Landlord, Tenant shall, not later than ninety (90) days following the close of each fiscal year of Tenant, and from time to time upon request of Landlord during the term of the Lease, furnish to Landlord a balance sheet of Tenant as of the end of such fiscal year and a statement of income and expense for the year then ended, together with an opinion of an independent certified public accountant satisfactory to Landlord or, at the election of Landlord, a certificate of the chief financial officer, owner or partner of Tenant to the effect that the financial statements have been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant as of and for the period covered.~~

**ARTICLE 55
ENVIRONMENTAL COMPLIANCE**

(a) Landlord makes no warranties regarding the environmental condition of the Leased Premises and Shopping Center. Tenant acknowledges it has been afforded an opportunity prior to the execution of this Lease to conduct the investigations and inspections it deems necessary to determine that the environmental condition of the Leased Premises and Shopping Center are acceptable. The term "Hazardous Materials" as used herein shall mean (a)

any substance the presence of which requires special handling, investigation, notification or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; (b) any substance which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. section 2601 et. seq.), the Federal Insecticide Fungicide and Rodenticide Control Act (7 U.S.C. section 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 et. seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. section 11001 et seq.), the Clean Water Act (33 U.S.C. section 1251 et. seq.), the Safe Drinking Water Act (42 U.S.C. section 300f et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616, Nov. 9, 1984), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), and the Federal Clean Air Act (42 U.S.C. section 7401 et. seq.); (c) any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission board, agency or instrumentality of the United States, the state in which the Leased Premises is located or any political subdivision thereof; any substance the presence of which on the Shopping Center causes or threatens to cause an erosion, contamination, drainage or nuisance problem at the Shopping Center or to adjacent properties (including on nearby public roads and rights-of-way) or poses or threatens to pose a hazard to the health or safety of persons on or about the Shopping Center; any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons; and (d) any substance which contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation. Tenant shall not use, and shall not permit any subtenant, licensee, concessionaire, employee, agent or invitee to use, any portion of the Leased Premises or the Shopping Center, for the placement, storage, manufacture, disposal or handling of any Hazardous Materials. Landlord shall have the right to conduct from time to time such inspections of the Leased Premises as Landlord deems appropriate in its sole discretion to determine the existence of any Hazardous Materials therein. In the event Tenant places or discovers any Hazardous Materials in the Leased Premises, Tenant shall immediately notify Landlord thereof. Tenant shall not attempt any removal, abatement or remediation of any Hazardous Materials in the Leased Premises, or any remodeling or construction in the Leased Premises which might disturb or release any Hazardous Materials, without first obtaining the prior written consent of Landlord. Landlord shall have the right to inspect, review and approve any removal, abatement or remediation of any Hazardous Materials, including, without limitation, the right to approve the scope, timing and techniques of any such work and the appointment of all contractors, engineers, inspectors and consultants in connection with any such work. After written notice to Landlord, Tenant shall proceed with reasonable diligence to effect the removal abatement or remediation of any Hazardous Materials in the Leased Premises, or to proceed with remodeling or reconstruction which might be disturbed or released as a result of any remodeling or construction in the Leased Premises, in accordance with Landlord's requirements therefor. Tenant shall be responsible for the cost of any removal, abatement or remediation work of any Hazardous Materials placed, stored, manufactured, disposed of or handled by Tenant or Tenant's subtenants, licensees or concessionaires, or any of their respective employees, agents, invitees, in the Leased Premises or any other portion of the Shopping Center and for the cost of any removal, abatement, or remediation of any Hazardous Materials which might be disturbed or released as a result of any remodeling or construction in the Leased Premises by Tenant, or Tenant's subtenants, licensees or concessionaires, or any of their respective employees or agents. Such costs shall include, without limitation, the cost of any consultant retained by Landlord in connection with such work. Tenant shall indemnify Landlord, owner and/or operator of the Shopping Center, their agents, officers and employees, and hold them harmless, from and against any loss, cost, liability or expense (including reasonable attorneys' fees and expenses and court costs) arising out of the placement, storage, manufacture, disposal, handling, removal, abatement or remediation of any Hazardous Materials by Tenant, or any removal, abatement or remediation of any Hazardous Materials required hereunder to be performed or paid for by Tenant, with respect to any portion of the Shopping Center, or arising out of any breach by Tenant of its obligations hereunder.

(b) Without limiting its obligations set forth herein, Tenant covenants and agrees to comply with all laws, rules, regulations and guidelines now or hereafter made applicable to the Leased Premises respecting the disposal of

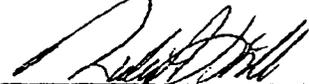
waste, trash, garbage and other matter (liquid or solid), generated by Tenant, including, but not limited to, laws, rules, regulations and guidelines respecting recycling and other forms of reclamation (all of which are herein collectively referred to as "Waste Management Requirements"). Tenant covenants and agrees to comply with all rules and regulations established by Landlord to enable from time to time to comply with Waste Management Requirements applicable to Landlord (i) as owner of the Leased Premises, and (ii) in performing Landlord's obligations under this Lease, if any. Tenant covenants and agrees to indemnify, defend, protect and hold Landlord, owner and/or operator of the Shopping Center, their agents, officers and employees harmless from and against all liability (including costs, expenses and attorneys' fees) that Landlord may sustain by reason of Tenant's breach of its obligations under this paragraph.

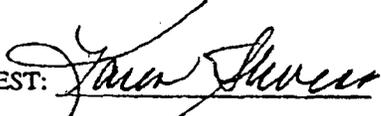
(c) Tenant's obligations hereunder shall survive the expiration of the lease term or earlier termination of this Lease.

**ARTICLE 56
ENTIRE AGREEMENT**

IT IS UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT THIS LEASE SHALL CONSTITUTE THE ONLY AGREEMENT BETWEEN THEM RELATIVE TO THE LEASED PREMISES AND THAT NO ORAL STATEMENTS OR PRIOR WRITTEN MATTER EXTRINSIC TO THIS INSTRUMENT SHALL HAVE ANY FORCE OR EFFECT. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD NOR ANY AGENT OR REPRESENTATIVE OF LANDLORD, INCLUDING ANY LEASING AGENT ACTION ON BEHALF OF LANDLORD, HAS MADE, AND TENANT HAS NOT RELIED UPON, ANY REPRESENTATIONS OR ASSURANCES AS TO TENANT'S PROJECTED OR LIKELY SALES VOLUME, CUSTOMER TRAFFIC, PROFITABILITY, OR THE NUMBER OR TYPES OF TENANTS WHICH WILL OR WILL NOT BE LOCATED IN THE SHOPPING CENTER OR THE TYPE OF MERCHANDISE OR SERVICES THAT OTHER TENANTS IN THE SHOPPING CENTER WILL OR WILL NOT OFFER TO THE PUBLIC. TENANT ALSO ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT ANY PROJECTIONS, MATERIALS OR DISCUSSIONS HAVE RELATED TO TENANT'S PROJECTED OR LIKELY SALES VOLUME, CUSTOMER TRAFFIC OR PROFITABILITY, TENANT UNDERSTANDS THAT ANY AND ALL SUCH PROJECTIONS, MATERIALS AND DISCUSSIONS ARE BASED SOLELY UPON LANDLORD'S OPINION, LANDLORD'S EXPERIENCES AT OTHER PROPERTIES OR UPON STANDARDIZED MARKETING STUDIES, AND THAT SUCH PROJECTIONS, MATERIALS AND DISCUSSIONS SHALL NOT BE CONSTRUED AS A PROMISE OR GUARANTY THAT TENANT WILL REALIZE THE SAME OR SIMILAR RESULTS.

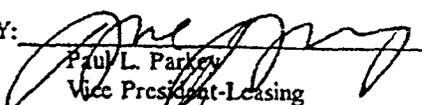
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NATURAL HISTORY

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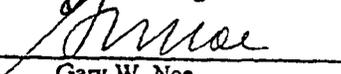
ATTEST: 

TENANT

MARATHON U.S. REALTIES, INC.
a Delaware corporation

BY: 

Paul L. Parkey
Vice President-Leasing

ATTEST: 

Gary W. Noe
Secretary

LANDLORD

STATE OF TEXAS §

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared PAUL L. PARKEY, Vice President Leasing of MARATHON U.S. REALTIES, INC., a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of MARATHON U.S. REALTIES, INC., and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of October, 1994

Arbith Hollowell

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Printed Name: Arbith Hollowell

My commission expires:

10.17.96



STATE OF New Mexico §

COUNTY OF Donalana §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Aubrey A. Smith Mayor of CITY OF LAS CRUCES, a Municipal Corp., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of CITY OF LAS CRUCES, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of Nov, 1994

Carolyn J Duran

NOTARY PUBLIC IN AND FOR THE STATE OF NM

Printed Name: Carolyn J Duran

My commission expires:

2.3-97



ADDENDA

This Addenda dated as of the _____ day of _____, 19____, is attached to and made part of this Lease by and between Marathon U.S. Realities, Inc., Landlord and CITY OF LAS CRUCES, Tenant.

ARTICLE 57 - CONDITION OF LEASED PREMISES AND TENANT REMODELING

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that it has examined the Leased Premises and knows the condition thereof and accepts the Leased Premises in the "as is" condition in which the Leased Premises exists on the day the Leased Premises are turned over to Tenant without any representations or warranties of any kind or nature whatsoever by Landlord as to their condition. Tenant assumes the sole responsibility for the condition, operation, maintenance and management of the Leased Premises, and all improvements now or hereafter situated thereon, and Landlord shall not be required to furnish any facilities or services or make any repairs or structural changes, additions or alterations thereto. Tenant also agrees at its sole cost and expense to remodel the Leased Premises. Such remodeling shall be in accordance with the criteria set forth in Exhibit "C" hereof, along with any other requirements of Landlord and in accordance with Tenant's Plans which are first approved by Landlord and which Tenant shall submit to Landlord for its approval in accordance with the provisions set forth in Exhibit "C." This remodeling shall be a major remodel and shall include, but not be limited to, removal of the demising wall between Space 1608 and 1616, renovation of Tenant's storefront (which at Landlord's option shall be a pop-out storefront), painting of the interior of the Leased Premises, and recarpeting of the Leased Premises. Tenant shall complete the remodeling of the Leased Premises no later than April 1, 1995, ~~October 1, 1994~~.

ARTICLE 58 - ~~EARLY TERMINATION (MUTUAL)~~

~~Landlord and Tenant shall each have the right to terminate this lease on the May 31st next following the expiration of the second (2nd) full calendar year after the rental commencement date, if, and only if, Tenant does not achieve net sales of ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00) or more for at least one (1) year of the first two (2) full calendar years after the rental commencement date, provided that the party so terminating gives the other written notice of such election to terminate no later than the April 1st next following the expiration of the second (2nd) full calendar year after the rental commencement date. Tenant's right to terminate pursuant to this provision shall be contingent on Tenant opening the leased premises for business on a timely basis in accordance with the provisions of this lease and continually operating the leased premises in a manner so as to maximize its net sales.~~

ARTICLE 58 - CITY FUNDING.

Landlord recognizes that Tenant's ability to lease the Leased Premises for the entire lease term is contingent upon Tenant receiving annual appropriations from the Las Cruces City Council. Notwithstanding anything herein to the contrary, Tenant shall be entitled to terminate this Lease on August 1st of any year (prior to the expiration of the lease term) in which the City of Las Cruces fails to approve funding for this Lease, provided that Tenant gives Landlord written notice of such failure to fund and termination on or before the June 1st immediately preceding the August 1st in question.

Tenant's initials

Landlord's initials

ADDENDA

This Addenda dated as of the _____ day of _____, 19____, is attached to and made part of this Lease by and between Marathon U.S. Realities, Inc., Landlord and CITY OF LAS CRUCES, Tenant.

ARTICLE 59 - OUTSIDE SEATING

At the end of the second full calendar year after the rental commencement date, and incidental to Tenant's primary business, Tenant shall have the right to serve fruit drinks, natural beverages to include herbal teas (but not coffee), milk, and natural snacks such as animal cookies, packaged trail mix, and nut breads. In connection with the sale of such items, Tenant shall have the right to place no more than ten (10) tables immediately adjacent to the Leased Premises in the interior joint use area, the exact location of which shall be determined by Landlord, for use as a "refreshment area", provided however that (1) Tenant's use of the "refreshment area" shall not interfere with the ingress and egress of Landlord, other tenants, customers and their invitees (2) the "refreshment area" shall be subject to such rules and regulations as Landlord may from time to time impose including, but not limited to, rules and regulations relating to the exact size and location of such "refreshment area" and the items contained therein and (3) the "refreshment area" shall be considered a part of the Leased Premises for all purposes including, but not limited to, the requirements of ARTICLE 19(b) and Article 20 and Tenant shall be responsible at its sole cost and expense for the repair, maintenance, upkeep and cleaning of the "refreshment area". Notwithstanding anything herein to the contrary, in the event Landlord needs to "reclaim" the "refreshment area" Landlord may at any time, upon at least ~~thirty (30)~~ ninety (90) days advance written notice to Tenant, ~~terminate Tenant's right to sell the items set forth in this Article 59 and terminate Tenant's right to have a "refreshment area" in which case Tenant's right to the "refreshment area" shall cease,~~ the provisions of this Article 59 (but no other provisions of this Lease) shall terminate and be null and void and Tenant shall have no further rights under this Article 59.

ARTICLE 60 - GARDEN AREA

Tenant shall have the right to provide an outdoor botanical garden outside the shopping center mall adjacent to the Leased Premises, provided however that (1) such botanical garden shall not interfere with the ingress and egress of Landlord, other tenants, customers and their invitees (2) the outside botanical garden shall be subject to such rules and regulations as Landlord may from time to time impose including, but not limited to, rules and regulations relating to the exact size and location of such outside botanical garden area and the items contained therein and (3) the outside botanical garden area shall be considered a part of the Leased Premises for all purposes including, but not limited to, the requirements of Article 19(b) and Article 20 and Tenant shall be responsible at its sole cost and expense for the repair, maintenance, upkeep and cleaning of the botanical garden area. Notwithstanding anything herein to the contrary, in the event Landlord needs to "reclaim" the outdoor botanical garden area Landlord may at any time, upon at least ~~thirty (30)~~ ninety (90) days advance written notice to Tenant, terminate Tenant's right to have an outside botanical garden area in which case Tenant's right to the outdoor botanical garden shall cease, the provisions of this Article 60 (but no other provisions of this Lease) shall terminate and be null and void and Tenant shall have no further rights under this Article 60.

Tenant's initials

Landlord's initials

EXHIBIT "C"

Schedule for Tenant Improvements

Description of Landlord Work and of Tenant Work

I. SCHEDULE FOR TENANT IMPROVEMENTS - Lease Outline Drawings, Delivery Date, Schedule and Acceptance by Landlord of Tenant Work

A. Landlord has delivered to Tenant by separate enclosure, illustrative outline drawings of the Leased Premises (hereinafter called the "lease outline drawings") which contain the basic architectural, electrical and mechanical information necessary for the preparation of Tenant's plans and specifications for Tenant's Work. By its execution of this Lease, Tenant acknowledges receipt of the outline drawings and by this reference the same are incorporated herein. The date of this Lease (or the date of actual delivery, whichever shall be later), shall be deemed to be the date of delivery (hereinafter called the "delivery date") of the outline drawings for the purpose of establishing construction schedules:

1. Within fifteen (15) calendar days after the delivery date:

Tenant agrees to notify Landlord of the identity and mailing address of the licensed architect engaged by Tenant for the preparation of plans for Tenant's Work and Landlord agrees to accept such licensed architect as Tenant's authorized agent (unless notified to the contrary, in writing, by Tenant.)

2. Within forty-five (45) calendar days after delivery date:

Tenant, at Tenant's expense, shall cause Tenant's architect to prepare and deliver to Landlord for Landlord's approval four (4) sets of plans and specifications for Tenant's Work plus one (1) set of sepias, using the outline drawings as the basis for same. Landlord shall notify Tenant of the matters, if any, in which said plans fail to conform to Landlord's construction requirements or otherwise fail to meet with Landlord's approval. Tenant shall promptly upon receipt of any such notice from Landlord, cause said plans to be revised in such manner as is requisite to obtaining Landlord's approval and shall submit revised plans for Landlord's approval.

When Landlord has approved Tenant's plans or revised plans, as the case may be, Landlord shall initial and return one (1) set of approved plans to Tenant, which set shall also show the date of Landlord's approval, and the same shall be made a part hereof by express reference thereto as "EXHIBIT C-2". Tenant agrees not to commence work upon any of the aforesaid Tenant's Work until Landlord has approved EXHIBIT C-2.

B. Tenant agrees to notify Landlord of name and address of Tenant contractor, and to commence construction work within twenty (20) days, to proceed with it diligently, and complete it in strict accordance with EXHIBIT C-2 hereof (including the installation of all store and trade fixtures, equipment, stock and inventory), and to open for business (subject to the provisions of ARTICLE 3 hereof) within sixty (60) days (subject to force majeure) after the later of the following dates:

1. The date of Landlord's approval of EXHIBIT C-2 hereof, provided Tenant has complied with all of the requirements of the preceding Section A with respect to the time limitations for submitting plans and specifications for Tenant's Work, or
2. The date upon which the Leased Premises are sufficiently completed to permit the commencement of Tenant's Work as established by notice from Landlord to Tenant.

Landlord agrees to notify Tenant fifteen (15) days in advance of the time when Tenant can commence Tenant's Work.

- C. Landlord agrees to issue to Tenant written acceptance of Tenant Work and materials provided in connection with Tenant Work on the Leased Premises not later than thirty (30) days after full completion of Tenant Work provided that Tenant has furnished Landlord with all of the following:
1. Tenant's affidavit that Tenant Work on the Leased Premises has been completed and was performed in strict accordance with Tenant Plans approved by Landlord pursuant to ARTICLE 2 and any negligent or false statement as to a material fact therein shall constitute a material breach of this Lease.
 2. An affidavit from the prime contractor or contractors performing Tenant Work that all work has been fully completed in accordance with the approved Tenant Plan and that all subcontractors, laborers and material suppliers have been discharged and paid in full.
 3. A waiver of Lien identifying the store name and the nature of the work performed with respect to the Leased Premises executed by said prime contractor or contractors and, if requested by Landlord, waivers of lien executed by every subcontractor supplying labor or materials for the Leased Premises.
 4. Tenant's written acceptance of the Leased Premises stating, in part, that Tenant reserves no rights for claims, offsets or backcharges.
 5. A copy of the Tenant's Certificate of Insurance on file with the Shopping Center Manager.
 6. Tenant's affidavit that all corrections have been made to the Leased Premises as required by the Landlord's Underwriter.
 7. Tenant's completion of all items listed on Landlord's punch list.

II. LANDLORD WORK - The following work is to be performed exclusively by Landlord at Landlord's sole expense:

A. Parking Areas, Roads and Sidewalks

Landlord will provide paved, drained and lighted parking areas, together with access road, sidewalks, directional signs and markers.

B. Utilities

Landlord shall provide the following utilities:

1. Sanitary Sewer - Landlord will install a sanitary sewer to the Tenant premises within an area and sized as indicated on the lease outline drawing.
2. Domestic Water - Landlord will install domestic water to the Tenant premises within an area and sized as indicated on the lease outline drawing.
3. Electrical Service - Landlord will install electrical conduit (without wiring) to the Tenant premises within an area indicated on the lease outline drawing. Electrical service shall be 277/480 volt, three phase, four-wire, for Tenant's lighting requirements. Conduit shall be sized

to accommodate a service of 10 watts per square foot of floor area of the Leased Premises. Any increase in the conduit size or other hardware to accommodate electrical service in excess of the amounts stated herein shall be at Tenant's sole expense.

4. Telephone - All telephone service to and within the Leased Premises shall be the sole responsibility of Tenant.
5. Gas - No gas service will be available or permitted except with the written approval of Landlord. If such approval is granted, Landlord agrees to cause gas mains to be installed leading to Tenant's meter located at a point determined by Landlord. Connections from this point to the boundary line of the Tenant premises shall be provided by Tenant at Tenant's sole expense. Any further extension within the Leased Premises shall be constructed by Tenant at its cost. All connections and construction relating to supply of gas shall be subject to approval by all governing bodies.
6. Sprinkler System - An automatic wet sprinkler supply main shall be brought to the Leased Premises within an area indicated on the lease outline drawing. At least one Tee connection shall be provided by Landlord. If required by the local governing authority, Landlord will provide sprinkler systems based on one (1) sprinkler head per one hundred (100) square feet. Tenant will reimburse Landlord at the rate of One Hundred Forty and no/100 Dollars (\$140.00) per sprinkler head. Any further modifications to the Landlord's sprinkler system will be the sole responsibility and at the sole expense of the Tenant.
7. Cooled Air Systems - ~~Tenant shall~~ Landlord will provide all systems, facilities and equipment necessary for the cooled air to the Leased Premises within an area indicated on the lease outline drawing. Further distribution and control of the cooled air delivered to and within the Leased Premises, shall be the sole responsibility of Tenant.

C. Public Spaces

1. Malls and Courts - The Malls and Courts shall be hard surfaced, lighted, heated and cooled.
2. Service Corridors - Landlord shall complete all construction and finishes to service corridors.
3. Service doors to Outside Service Areas - Where possible, a frame and door three feet (3'0") in width without lockset shall be provided between the Tenant premises and outside service courts, unless Tenant premises can be served from a Landlord-provided service corridor in which case Tenant will furnish and install a recessed door, frame and lockset.
4. Public Toilet Facilities - Public toilet facilities shall be located outside of the Tenant premises at such locations as the Landlord shall determine.

D. Buildings

1. Frame, etc. - The structural frame, columns, beams and roof deck shall be constructed of steel.
2. Roof - The roof shall be built-up asphalt and gravel or other membrane roofing over insulation to provide a minimum "U" factor of .15.
3. Exterior Walls - Exterior walls shall be of noncombustible construction with an exterior finish of suitable nature and of appropriate materials having a finished appearance and decorative quality designed by Landlord's Architect.

4. Partitions - Partitions of exposed studs or exposed masonry shall, at Landlord's option, be provided between the Tenant premises and other Tenant areas. These partitions shall extend from finished floor to the underside of the roof.
5. Space Heights - Landlord shall maintain a clear height of eleven feet (11'-0") above Tenant's finished floor slab unless otherwise indicated on the lease outline drawing.
6. Neutral Strips - Where desirable in Landlord's opinion, a vertical neutral strip shall separate the Leased Premises from any adjoining Tenant premises; the center line of said strip may coincide with the vertical lines separating the Leased Premises.

III. TENANT WORK - The following work required to complete and place the Leased Premises in finished condition ready to open for business is to be performed by the Tenant at the Tenant's own expense. Tenant Work includes, but is not limited to, the following:

A. Floor Slab

Install minimum four inch (4") reinforced concrete floor slab on a granular cushion not to exceed four inches (4"). Concrete to be minimum 3000 PSI concrete with minimum 6x6x10x10 wire mesh reinforcement. Tenant shall recompact all excavated underslab material disturbed due to installation of Tenant's underslab items. Compaction is to be ninety five percent (95%) of maximum density as per ASTM D 698-78 standard method of test. Tenant shall be required to install a vapor barrier beneath the slab. No depressions are permitted from the established floor level unless approved in writing by the Landlord.

B. Mall Frontage or Storefront

1. The Mall frontage of the Leased Premises shall be no less than fifty percent (50%) "open front". Security for "open fronts" shall be of anodized dark bronze aluminum roll up grilles, sliding or folding anodized dark bronze aluminum glass doors, or other types if approved by Landlord. No Mall frontage shall be constructed without the written approval of Landlord. All sliding doors must be pocketed or stacked behind an opaque panel. Multiple track doors are not permitted.

"Closed Front" portions of the Leased Premises (remaining fifty percent (50%)) shall not exceed thirty linear feet (30') in any one (1) continuous block.

All swinging entrance doors must be recessed in such a manner that the door, when open, will not project beyond the lease line.

All door operating and locking devices, burglar alarm devices and key switches shall be concealed, or as approved by Landlord.

2. Doors, show windows, and openings are not to exceed ten feet (10'-0") in height unless designed criteria dictate a larger opening. Larger openings must be specifically approved by Landlord.

A minimum two feet (2'-0") high draft curtain shall be installed by Tenant to the end wall at the Tenant storefront. The distance from doorhead to ceiling shall not be less than two feet (2'-0").

3. All materials employed in the construction of Enclosed Mall frontage shall be approved by Landlord and as defined by applicable building codes. All storefronts shall have a quarry tile

base, or similar material approved by Landlord with a minimum height of four inches (4") above finish Mall floor level.

4. Enclosed Mall Frontage Colors - It is the desire of the Landlord to give Tenant the greatest practicable freedom in the choice of Enclosed Mall frontage colors; but
 - a. Colors must harmonize with the color scheme of the Shopping Center.
 - b. Colors must harmonize with the color scheme of the surrounding stores. To assist Tenant, a general color range will be developed, with a sufficiently large selection to permit a reasonable latitude of individual expression.

C. Signs

In order to assure an orderly and aesthetically coordinated signing, plans for all Tenant's signs must conform to Exhibit "D" hereto attached and before installation must be approved by Landlord. No permission is granted, expressed or implied to permit Tenant to erect an exterior sign of any type.

D. Ceiling

1. Tenant shall provide all finished ceilings and coves within the Leased Premises, the height of which shall not exceed eleven feet (11'-0") above the finished floor, unless specifically approved by Landlord.
2. Tenant ceilings shall be noncombustible Class A acoustic tile, gypsum board and or plaster, suspended by adequate noncombustible suspension systems to conform to final requirements of governing authorities.
3. The space above the ceiling line, which is not occupied or allotted to Landlord Work (structural members, duct work, piping, etc.) may be used for the installation of suspended ceiling, recessed lighting fixtures and duct work, and shall not contain any combustible material.

Tenant shall provide twenty four inch by twenty four inch (24" x 24") access panels in the ceiling within the Leased Premises at dampers and elsewhere as required by Landlord to provide access to equipment.

Expansion joints are installed as a necessary function of this structure. These joints do not occur in all Tenant spaces, and those spaces in which they occur shall be clearly identified. The ceiling expansion joint shall be a complete installation by Tenant.

E. Walls

1. Tenant shall provide all interior walls and curtain walls within the Leased Premises, including all interior lath and plastering and gypsum board thereon, and including lath and plastering, or dry wall on Landlord's exposed masonry or stud party wall partitions. Dividing wall between Tenant premises shall meet Code requirements and be continuous from floor to the underside of the roof deck. Tenant will fireproof according to code, all steel columns within the Leased Premises including sides of columns within Tenant's demising walls. Tenant shall provide bracing and/or studs as necessary to support wall mounted fixtures. Cracks, joints and openings in walls are to be filled with appropriate fire resistive materials. Top of demising walls joining roof deck, beams or joists must be sealed airtight. Tenant shall insulate and seal to deck, bulk head above Tenant lease line as shown on lease outline drawing.

2. Tenant shall provide insulation blankets of non-combustible glass fiber or spun mineral fiber, with flame spread rating not exceeding 25, open-faced, foil-covered on vapor barrier side in widths sized to fit snugly between Landlord provided structural members as shown on the lease outline drawings for all exterior walls. The wall construction shall provide a minimum "U" value of .30. If Landlord utilizes tilt-up or masonry construction, Tenant will be required to install insulation and fireproofing to meet the values herein or requirements of the Code for Energy Conservation in New Building Construction, whichever is higher.
3. Tenant will not be permitted to install openings in exterior or interior demising walls for any purpose without the prior written approval of Landlord. Such approved openings will be Tenant's responsibility and installed at its expense by the Landlord's general contractor or by Tenant's contractor with Landlord's approval.
4. Expansion joints are installed as a necessary function of this structure. These joints do not occur in all Tenant spaces, and those spaces in which they occur shall be clearly identified. The wall expansion joint shall be a complete installation by Tenant.

F. Interior Painting

All interior painting and decoration shall be provided by Tenant.

G. Floor Coverings

All floor coverings and floor finishes including recesses for special floor finishes are Tenant's responsibility. It is Tenant's responsibility to joint neatly and flush to the mall finish provided by Landlord. Jointage of materials on floor at Tenant's storefront control limits joint shall be joined by caulking if applicable.

Tenant may elect to set back storefront element within the Leased Premises. If such set-back storefront configuration is established, Tenant shall furnish and install flooring material identical in quality, color and pattern to the adjacent mall flooring and caulk at Tenant's storefront control limits joint. Tenant is encouraged, but not required, to contact Landlord's Project Manager to arrange for purchase of floor materials at storefront.

Expansion joints are installed as a necessary function of this structure. These joints do not occur in all Tenant spaces, and those spaces in which they occur shall be clearly identified. The floor expansion joint shall be a complete installation by Landlord, and it shall be Tenant's responsibility to install finish floor covering material to this joint in a workmanship manner. Landlord will not accept responsibility for finished floor material installed over the expansion joint.

H. Show Window Backgrounds

All show window backgrounds, show windows, show window floors and ceilings, and show window lighting installations are Tenant's responsibility.

I. Furniture, Fixtures and Signs

Tenant shall install all furnishings, trade fixtures, signs, and related parts, including installation. Location and design of all signs are subject to prior written consent of Landlord.

J. Plumbing

All plumbing fixtures are to be installed by Tenant except utility service to the area, including a properly sized water meter, if the same is required by Landlord in which latter event Tenant shall make any required utility deposits.

K. Water Heater

Domestic electric water heater should be installed by Tenant, where required, including final connections.

L. Toilet Room

A toilet room is required.

Tenant is responsible for furnishing and installation of wiring, lighting, fixtures, mechanical toilet exhaust systems, vents, towel cabinets, soap dishes, hand driers, deodorizers, mirrors and other similar items in toilet room within the Leased Premises.

M. Cooled Air Systems

1. ~~Except for cooled air service being provided by Landlord,~~ Tenant shall provide all systems, facilities and equipment necessary for the distribution and control of the cooled air delivered to and within the Leased Premises.
2. In the event that Tenant's supply air requirements deviate from the air quantity scheduled for its space on Landlord's mechanical drawings, which is based on a lighting and miscellaneous load of 5.5 watts per square foot, Tenant shall be responsible for and assume additional costs, based on One Thousand Seven Hundred Seventy and no/100 dollars (\$1,770.00) per ton, which may be required to permit Landlord to accommodate Tenant's requirements.
3. Tenant shall arrange and pay for a certified test and air balance for its space, within two (2) months after completion of the construction. A certified air balance report shall be submitted to the Landlord for final review and approval. In the event that Landlord requires adjustments to Tenant's air distribution, Tenant shall pay all costs related thereto.
4. Supply air for a complete exhaust system from kitchen, dining room, cafeteria areas, pet shops, beauty salons and other tenants who may emit odors in Landlord's opinion, must be by Tenant-furnished and installed air fans. ~~If more than ten percent (10%) of the air furnished from Landlord's air supply systems is used as supply air for Tenant installed exhaust system, the cooled air charge will be adjusted, or the~~ Tenant shall design, furnish and install a complete supplementary make-up air system. complete with all required heating and cooling, as required to meet Tenant's specific needs.

Maximum Exhaust Air - shall be based on codes and special requirements. Food or other odors from kitchen, dining rooms and cafeteria must be exhausted to atmosphere through tenant-furnished and installed exhaust system equipped with a high velocity vertical air discharge exhaust fan equal to Penn Ventilator Co. Fume X. The manufactured fan unit shall be modified by the addition of a fabricated venturi type duct adaptor to assure a discharge velocity of 2000 F.P.M. The exhaust fan shall be provided with a drainage area at the bottom of the unit complete with a residue trough equipped to be cleaned periodically by Tenant. The location of the exhaust fan shall be such as to avoid contaminating air intakes to other tenants a specifically approved in writing by Landlord, and in general, shall not be installed closer than fifteen feet (15'-0") to any outside air intake. Tenant's plans and specifications shall clearly

define the exhaust equipment to be furnished and installed by Tenant at Tenant's expense. Landlord shall approve final equipment selection, in writing, before equipment is erected.

5. Tenants who provide their own roof-top mounted cooled air units or other equipment shall have the responsibility of screening this equipment from view from parking areas or adjacent roads. Tenant shall provide location and height of all roof mounted equipment on the plans submitted to Landlord for approval. Landlord shall determine extent of screen necessary and submit a price to Tenant for approval, which approval shall not be unreasonably withheld. All screens will be installed by Landlord at Tenant's expense after approval has been given.

N. Gas

If gas service is made available, Tenant shall provide a gas service cut-off, and shall install its own gas meter and shall install all gas connections and piping to and within the Leased Premises.

O. Mechanical Equipment

All mechanical equipment including dumb waiters, elevators, escalators, freight elevators, conveyors and their shafts and doors located within the Leased Premises, including electrical work for these items, are Tenant's responsibility.

P. Electrical

1. Tenant shall install fused main disconnect, all interior distribution panels, lighting panels, (except those relating to Landlord's cooled air system), transformers, outlet boxes, switches, outlets and wires to and within the Leased Premises (except conduit to lease space provided by Landlord) and all other electrical equipment relating to Tenant's space as may be necessary, whether located within demised premises or at a remote location. Tenant shall provide electrical conduit boxes in the concrete floor slab, walls, and ceiling, including all other electrical equipment, as required to permit Landlord to construct its work as outlined in Landlord Work. All electrical work shall be installed in accordance with correct National Electric Code and other approving authorities.
2. All electrical fixtures, including lighting fixtures and equipment, and installation thereof is Tenant's responsibility.
3. All ceiling lighting fixtures which are fluorescent shall be recessed and shall have lenses. There shall be no exposed tube or surface mounted fluorescent lighting fixtures installed in any public space or sales area. Surface mounted fluorescent fixtures shall be permitted in non-sales areas.
4. All systems and conduit where required for intercommunication, music, antenna, material handling or conveyor, burglar alarm, vault wiring, fire protection alarm, time clock and necessary telephone equipment and telephone wires in the Leased Premises are to be installed by Tenant.
5. Tenant must install feeder cable from Landlord's facilities to the Leased Premises including all connections.
6. Electrical drawing submittals to Landlord must include a tabulation of the electrical load including quantities and size of lamps, appliances, signs, and water heater.

7. The total load within the Tenant's space shall be balanced to within ten percent (10%) on each of the three phases provided.
8. Tenant shall furnish and install time clocks for control of Tenant signs and show window lighting.

Q. Sprinkler System

Tenant shall contract for a wet type fire protection sprinkler system compatible with Landlord's system and it shall be installed throughout the Leased Premises by Tenant in accordance with, but not limited to, the following requirements:

1. All work shall be in accordance with the requirements of, and be approved by Landlord's underwriter and the appropriate governing authorities. If required by the governing authorities, Landlord will provide sprinkler systems based on one (1) sprinkler head per one hundred (100) square feet. Tenant will reimburse Landlord at the rate of One Hundred Forty and no/100 dollars (\$140.00) per sprinkler head. Any further modifications to the Landlord's sprinkler system will be the sole responsibility and at the sole expense of the Tenant.
2. Before proceeding with any installation work, Tenant shall forward a set of reproducible engineered sprinkler plans to Landlord which bear the written approval of appropriate governing authorities. Upon completion, and before Tenant takes possession of the Leased Premises, Tenant shall submit written proof from the Landlord's underwriter that the system was inspected and approved.
3. Tenant's installation shall provide for a minimum temperature of 40 degrees F (40° F) in all areas in which the sprinkler lines are installed.
4. Landlord shall furnish a flanged connection Tee on the building's sprinkler distribution main, capped with a test blank. Tenant Work begins at this point. The test blank shall not be removed until the Tenant's system has been pressure tested by approved method and certified in the field by the inspecting authority.
5. Any damage caused by Tenant to Landlord's sprinkler system may be repaired by Landlord at Tenant's expense.
6. An electrically activated alarm device, if required, shall be installed by Tenant.
7. Tenant shall provide all facilities for properly draining the system, and any necessary test valves or equipment required, if deemed necessary by inspecting authority.
8. Landlord's sprinkler main will become active on a schedule established by Landlord. Should Tenant require the Landlord's sprinkler mains be drained, it shall be done by Landlord's contractor at Tenant's expense.
9. Tenant's sprinkler system shall be based on the following coverages, subject to approval of design by Landlord's underwriter and any governing authorities.
 - a. Maximum coverage per head: 120 sq. ft.
 - b. Minimum coverage per head: 90 sq. ft.

If Tenant's design requires less area than ninety (90) square feet per sprinkler head, and said design compels Landlord to increase service to Tenant, Tenant shall pay all costs, expenses, and charges incurred by Landlord by reason of such increase of service.

10. Landlord's fire underwriter shall from time to time during the term of this Lease have the right to inspect the fire protection system and the component parts thereof. Such system shall at all times comply with the requirements of such underwriter and shall meet the conditions established for approval.

11. Restaurant Tenants

Automatic Extinguishing Equipment - Tenant shall furnish and install automatic extinguishing equipment in accordance with the National Fire Protection Association Standard 96, latest edition, Section 10, in all food preparation areas.

Basic guidelines for the installation are contained herein and listed below.

The extinguishing system should be Underwriter's Laboratories, Inc., approved, pre-engineered system with at least the following features:

- a. Protection of the hood and duct must be provided.
- b. The system should include surface protection for a deep fat fryer, griddle, broiler and range.
- c. Automatic devices should be provided for shutting down fuel or power supply to the appliances getting the surface protection. It should be noted that these devices must be of the manual reset type and not automatic reset. In addition, gas fired cooking equipment must have a permanent notice posted at the reset device cautioning the operator to shut off the gas at all appliances before resetting the device.
- d. A readily accessible means to manually actuate the fire extinguisher equipment shall be provided in a path of exit and shall be clearly identified. This means shall be mechanical and shall not rely on electric power for actuation.
- e. National Fire Protection Association Standard 96 calls for the installation of these systems to be made only by persons properly trained and qualified by the manufacturer of the system being installed. Tenant shall also have an inspection agreement for regular routine inspection with an approved firm whose personnel are properly trained and qualified (by the manufacturer) to perform these inspections. A copy of this agreement shall be filed with Landlord. The agreement shall remain in effect the full term of this Lease.
- f. If dry chemical systems are used, the exhaust fan must run during the actuation of the extinguishing system in order to draw the dry chemical extinguishant up through the duct work.
- g. Before the system is fabricated and installed, the system vendor should submit plans and other pertinent information on the proposed system to Landlord for review and approval.

- h. All exhaust system duct work and exhaust fans used for exhausting cooking odors and grease contaminated air shall be cleaned on a regular schedule by an established contractor engaged in that type of service. This cleaning will occur at intervals often enough to insure against grease accumulation in exhaust system, thus eliminating the possibility of fires in the system. A copy of this agreement shall be filed with Landlord. Tenant shall cause this agreement to remain in effect the full term of this Lease.

R. Fire Extinguisher Requirements

Tenant shall furnish and install fire extinguishers throughout the Leased Premises as required by governing authorities.

S. Doors and Existing Requirements

1. Tenant will furnish recessed rear exit door, hardware and framing from the Leased Premises to Landlord provided service corridor.
2. Tenant will be responsible for adherence to existing codes.
3. Tenant will maintain a clear existing path through the stockroom to Tenant's rear door for those Tenant premises that contain a rear door.

IV. GENERAL PROVISIONS

All work performed by Tenant shall be governed in all respects by, and be subject to, the following:

- A. Landlord shall have the right to require Tenant to furnish payment and performance bonds or other security in a form satisfactory to Landlord for the prompt and faithful performance of Tenant Work, assuring completion of Tenant Work with a provision that Landlord will be held harmless from payment of any claim either by way of damages or liens on account of bills for labor or material in connection with Tenant Work. Tenant agrees to deliver to Landlord, upon completion of construction, a complete "Release of Liens" from all Tenant contractors or material suppliers who have contracted with or furnished Tenant work or materials, on forms provided by Landlord.
- B. It is understood and agreed between Landlord and Tenant that costs incurred by Landlord if any, as a result of Tenant's failure or delay in providing the information as required in this Exhibit C and in the Lease to which this Exhibit C is attached, shall be the sole responsibility of Tenant and it will pay such costs, if any, promptly upon Landlord's demand.
- C. Tenant's work shall be coordinated with that of Landlord and other Tenants in the Shopping Center to such extent that Tenant's work will not interfere with or delay completion of other construction work in the Shopping Center. Tenant will at all times enforce strict discipline and good order among its contractors and employees hired to perform Tenant's work and Tenant will not employ, on the work, any unfit person or anyone not skilled in the work assigned to him or any workman that will cause labor disputes or stoppages among other contractors performing work in the Shopping Center.
- D. Plans and specifications must have written approval of Landlord, as well as all governing bodies having jurisdiction. These documents plus supporting calculation data must be submitted for written approval of Landlord before any contracts are let. Tenant will furnish complete plans to Landlord for approval prior to construction.

Method of submittal of Tenant's plans and specifications will be detailed with transmittal of Lease Drawing.

- E. Tenant shall prepare all plans and perform all work to comply with all governing statutes, ordinances, regulations, codes and insurance rating boards; take out all necessary permits and obtain certificates of occupancy for the work performed, all subject to Landlord's approval. Landlord's approval of Tenant's plans does not relieve Tenant of its obligation to complete the development in accordance with the terms of the Lease Agreement, nor does it relieve Tenant of the necessity of complying with the laws, rules, regulations and requirements of local governing authorities. Certificates of Occupancy, or copy thereof, shall be filed with Landlord before Tenant opens for business.

Landlord reserves the right to require changes in Tenant Work at Tenant's expense when necessary by reason of code requirements.

- F. Tenant shall comply with all existing or future city, state or federal regulations or legislation regarding the control of pollution as it applies to the Tenant's operation.

- G. Landlord, Tenant or utility company shall have the right, subject to Landlord's approval to run utility lines, pipes, roof drainage pipes, conduit, wire or duct work, where necessary, through attic space, or other parts of the Leased Premises, and to maintain this installation in a manner which does not interfere unnecessarily with Tenant's use thereof. It shall be Tenant's responsibility to provide access panels in its finish work where required by Landlord.

- H. Tenant and its contractors must comply and conform to all of the requirements of the OSHA Act, and no exceptions will be recognized.

I. Construction Activities

1. During the Leased Premises interior construction, Tenant shall use rear opening to the Leased Premises for moving in/out of materials, for those Tenant premises which contain a rear door.
2. Use of the Enclosed Mall shall be kept to a minimum, and shall be for those Tenant premises not served by a rear door. Tenant shall be responsible for any damage caused by Tenant or its contractors to any Enclosed Mall finishes.
3. If the Leased Premises are not complete and ready to open pursuant to the provisions of Exhibit C of the Lease, Tenant, at its expense, shall install a temporary store front shielding the interior of the Leased Premises from the Enclosed Mall, the design and construction of which temporary store front shall be previously approved by Landlord. If Tenant fails to timely install said temporary store front, Landlord shall have the right to do so at Tenant's expense.
4. All roof cuts and openings shall be performed by Landlord's roofer at Tenant's expense. Location, size and design of roof vents, hoods and caps shall be approved by Landlord. Landlord reserves the right to approval of any equipment to be placed on the roof. Tenant shall install equipment at locations where structural reinforcement are provided. All roof openings or changes in structural design caused by Tenant's equipment shall be made by Landlord and paid for by Tenant.

All drilling, welding, or other attachment to the structural system must be approved by Landlord in writing before work is begun.

J. Temporary Services

1. Temporary electrical services, when available, will be provided by Landlord during construction or remodeling from designated areas. Tenant shall not connect temporary lines to the power source for service to the Leased Premises without the written consent of Landlord, which consent shall be requested in writing. The cost to Tenant for this service shall be \$250.00 per month or \$.17 per square foot of floor area within the Leased Premises, whichever is greater or at Landlord's option, the actual cost of electrical service as reasonably estimated or determined by Landlord. Payment for this cost is to be remitted to Landlord by Tenant in advance, on or before the first day of each month after service is initiated and shall continue until permanent electric service has commenced or one time central billing.
2. Landlord will, during the periods of initial construction and Tenant fixturing and merchandise stocking, make available a trash removal service from designated areas. Tenant shall be responsible for breaking down all boxes and placing trash in appropriate containers in such areas. Tenant's cost for this service shall be remitted to Landlord in advance, on or before the first day of each month after service is initiated and shall be the actual cost of such trash removal as estimated or determined by Landlord, or at Landlord's option, the following amounts:

<u>Area of Leased Premises</u>	<u>Monthly Charge in \$</u>
30,001 sq. ft. or more	\$250.00
20,001 sq. ft. to 30,000 sq. ft.	\$235.00
15,001 sq. ft. to 20,000 sq. ft.	\$220.00
10,001 sq. ft. to 15,000 sq. ft.	\$210.00
5,001 sq. ft. to 10,000 sq. ft.	\$200.00
2,001 sq. ft. to 5,000 sq. ft.	\$185.00
2,000 sq. ft. or less	\$175.00

Tenant is cautioned against allowing trash to accumulate within its area or in the corridor, mall or arcade adjacent to Tenant's space. Should Landlord be forced to remove Tenant's or Tenant contractor's trash because of failure to remove trash, the charge will be two (2) times Landlord's actual cost, but in no event less than Two Hundred and no/100 dollars (\$200.00).

K. Insurance

Prior to the commencement of Tenant Work and continuously until completion and acceptance by the owner, Tenant shall effect and maintain Builder's Risk Insurance or an Installation Floater covering Landlord, Tenant and Tenant's Contractors, as their interest may appear, against loss or damage by fire, "Extended Coverage Endorsement", "Vandalism and Malicious Mischief", and "All Risk" upon all Tenant Work in place and all materials in transit and stored at the site of Tenant's Work and elsewhere for the full insurable value thereof at all times. All other materials, equipment, supplies and temporary structures of all kinds incidental to Tenant Work shall remain at the risk of the Tenant and be insured. In addition, Tenant agrees to indemnify and hold Landlord harmless against any and all claims for injury to persons or damage to property by reason of the use of the Leased Premises for the performance of Tenant Work, and claims, fines and penalties arising out of the failure of Tenant or its agents, contractors and employees to comply with any law, ordinance, code requirement, regulations or other requirement applicable to Tenant Work and to effect and deliver to Tenant and Landlord prior to commencement of said work and maintain continuously until completion of said work certificates with a thirty (30) day notice of cancellation or non-renewal evidencing the existence of the following insurance coverages:

1. Workmen's Compensation Insurance in accordance with the laws of the State in which the property is located, including Employer's Liability Insurance to the limit of One Hundred Thousand and no/100 dollars (\$100,000.00).
 2. Comprehensive General Liability Insurance, including Contractual Liability recognizing the liability imposed by this Lease and including product and/or completed operations liability against bodily injury, including death and personal injury for One Million and no/100 dollars (1,000,000.00). Bodily injury for any one (1) occurrence and against property damage insurance for Five Hundred Thousand and no/100 dollars (\$500,000.00) or a combined single limit policy of One Million and no/100 dollars (\$1,000,000.00). The policy shall not exclude the explosion, collapse, or underground property damage liability hazard.
 3. Automobile Liability Insurance covering owned and non-owned automobiles for bodily injury including death for a limit of One Million and no/100 dollars (\$1,000,000.00) for any one (1) occurrence and property damage for a limit of Five Hundred Thousand and no/100 dollars (\$500,000.00) for any one (1) occurrence or a combined single limit policy of One Million and no/100 dollars (\$1,000,000.00).
- L. Should Tenant request that the Landlord perform some of "Tenant Work" as outlined in Exhibit C, and Landlord agrees to perform such work, within the Leased Premises prior to, during or after Tenant commences construction, Tenant agrees to execute a Work Order directing Landlord to perform said work at an agreed price plus twenty percent (20%) administrative charge, provided a provision for Landlord to perform such work is not included in other exhibits of this Lease. Tenant may be billed for the work completed in whole or in part as construction progresses and agrees to pay Landlord within thirty (30) days after request for payment.
- M. Tenant shall design space in accordance with applicable energy codes.

.....
TENANT'S INITIALS

.....
LANDLORD'S INITIALS

EXHIBIT "D"
Tenant Sign Criteria

A. Purpose, Administration, and Responsibility

The purpose of this Sign Exhibit is to establish a quality atmosphere while creating an environment which produces maximum traffic and promotes the greatest sales for all tenants in the Shopping Center.

Tenant's storefront signing must be unique, original, in proportion, in excellent taste, and will be approved only after this criteria has been demonstrated to the Landlord.

Detail drawings, in triplicate and one (1) set of sepias, as well as samples of materials and colors to be used for each sign, must be prepared and submitted by Tenant in conjunction with the storefront design information. Sign drawings must be approved in writing by the Landlord before the sign may be installed. No tenant will be allowed to open without an approved sign.

Tenant's sign drawings and submittal must include the following:

1. Elevation view of storefront showing sign (drawn to accurate scale) with dimensions of height of letters and length of sign.
2. Color sample of sign.
3. Color sample of sign letters (unless they are to be WHITE).
4. Cross section view through sign letter and sign panel showing location of sign relative to the storefront line and showing the dimensioned projection of the face of the letter from the face of the sign panel. The drawings shall also show other elements such as soffits, canopies, and the relationship of the sign to the other elements of the storefront, especially the vertical fascia.

The Landlord shall not be responsible for the cost of refabrication of signs fabricated, ordered or constructed, that do not conform to the sign criteria.

All signs, permits and related or resulting construction shall be Tenant's responsibility, and all signs shall be installed with the approval of the Project Supervisor. No sign maker's identification tabs or stickers shall be permitted. Sign contractor shall repair any damage to any work caused by its work. All signs must conform to Local Building and Electrical Codes.

B. Criteria - Interior Signs

Tenant will not erect signs except in conformity with the following policy:

Wording shall be limited to the name of the store; however, each party's customary signature or logo, hallmark, insignia, or other trade identification will be respected.

All signs must be compatible to colors and materials of Tenant's storefront and submitted to the Landlord for approval.

All signs must be internally illuminated, and connected to Tenant's electric service.

Light boxes will not be permitted.

Signs with individually illuminated letters should have lamps or tubes entirely concealed within the depth of the letter with translucent plastic face with no visible openings. Maximum brightness allowed for interior (Enclosed Mall) signs will be one hundred foot (100') lamberts taken at the letter face and must comply with all building and electrical codes.

Reverse channel letter signs are not permitted.

The size of all Tenant's signs shall be limited. The scale and concept of the Enclosed Mall requires the use of signs which are not larger than necessary to be legible from within the Enclosed Mall. Thus, except for department store signs, Tenant's signs shall be located within the limits of its storefront and shall not project more than six inches (6") beyond the store front and shall conform to the following maximum height criteria:

- (1) Up to 30' storefront:..... 18" capitals, 12" body
all capital letters 15"
- (2) 30' to 60' storefront: 21" capitals, 15" body
all capital letters 18"
- (3) 60' and over storefront: 24" capitals, 18" body
all capital letters 21"

In addition to complying with the above criteria, signs in the Enclosed Mall shall be limited in length to seventy percent (70%) of Tenant's frontage on the Enclosed Mall, and shall in no case exceed a length of thirty feet (30'-0").

Signs and identifying marks shall be placed entirely within the boundaries of the Leased Premises with no part higher than twelve feet (12'-0") above the finished floor line, nor shall any projecting sign be located closer than eight feet (8'-0") to the finished floor line, but in no event shall such a sign extend above the wall or parapet upon which it is mounted.

The total sign area (rectangle enclosing each group of letters, symbols or logos) shall not exceed ten percent (10%) of the area of the storefront, and shall be located at least thirty inches (30") from each lease line.

Except as otherwise approved in writing by Landlord, only one (1) sign per tenant will be permitted within the Enclosed Mall area. Corner tenants must have two (2) such signs, one (1) on each mall front.

Signs may be installed at right angles to the mall storefront provided that they are wholly contained within the lease line of the Leased Premises and otherwise conform to the provisions of these regulations and criteria. Said signs may not exceed fifty inches (50") in width and eighteen inches (18") in height.

Paper signs and stickers are prohibited.

Illuminated signs: Individual dimensional word or metal back-lit ("halo" effect) letters must be a minimum of six inches (6") in height to a maximum height established elsewhere in these criteria. Each letter must be at least one inch (1") but no more than five inches (5") in thickness and must be projected from the sign surface with one inch (1") maximum spacers. The illumination behind such letters shall be neon.

Exposed neon tubes forming letters or logos: This type of signage is encouraged, especially in food court Tenant spaces. It is to be used in a decorative as well as an informative fashion, and shall be allowed only at the discretion of Landlord on an individual basis.



There shall be no exposed conduits, raceways, transformers, or other electrical connections.

Signs of the flashing, blinking, rotating, moving, or animated types or audible type signs are not permitted.

Sign company names or stamps shall be concealed (Code permitting).

Banners or flags are prohibited.

Tenant shall not install any roof top signs.

Pylon signs are not permitted, except at the locations shown on the site plan and they shall be subject to the approval of the parties hereto as to the design and size.

No signs will be permitted at the rear of any building, except in the case of stores with customer entrances opening directly onto the parking areas and only as approved by the Landlord in writing.

All non-customer service doors for receiving merchandise will have a standard block letter sign with the name of the tenant and mail address. These signs will be furnished by Landlord to Tenant at a cost of Twenty and no/100 dollars (\$20.00) per sign to be paid within thirty (30) days of opening of Tenant's store.

Public safety decals or artwork on glass in minimum sizes to comply with applicable Code, subject to the approval of Landlord may be used, as required by building codes or other governmental regulations.

TENANT'S INITIALS

LANDLORD'S INITIALS

SECOND AMENDMENT TO LEASE

(Mesilla Valley Mall: Las Cruces Museum of Natural History)

THIS SECOND AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the _____ day of _____, 2005, by and between NEW MEXICO MALL PARTNERS, L.P., a Delaware limited partnership ("Landlord"), and CITY OF LAS CRUCES, d/b/a Las Cruces Museum of Natural History ("Tenant").

RECITALS

A. Landlord, as successor-in-interest to Marathon U.S. Realities, Inc., and Tenant are parties to a written lease agreement dated as of December 1, 1994 for the lease of certain premises ("Premises") known as Space Number 1608, consisting of approximately 4,288 square feet, and more particularly described in said lease, located in Mesilla Valley Mall, Las Cruces, New Mexico (the "Shopping Center").

B. Said lease has not been assigned or modified, except as follows:

First Amendment to Lease dated December 19, 2002.

Said lease, together with the foregoing assignment and modification, is referred to as the "Lease".

C. Landlord and Tenant desire by this Amendment to extend the Term of the Lease and to otherwise amend the Lease as set forth below.

D. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Lease.

TERMS

NOW, THEREFORE, in consideration of the mutual agreements contained in this Amendment, Landlord and Tenant agree as follows:

1. Term. The Term of the lease shall be extended for a period of three (3) years commencing on January 1, 2006 and expiring on December 31, 2008. The extension period is referred to in this Amendment as the "Extension Term". All terms and conditions of the Lease will apply to the Extension Term, except as otherwise set forth in this Amendment.
2. Minimum Annual Rental. During the Extension Term, Tenant shall pay to Landlord an amount equal to Thirty Nine Thousand Four Hundred Six and 72/100 Dollars (\$39,406.72) per annum, payable in equal monthly installments of Three Thousand Two Hundred Eighty Three and 89/100 Dollars (\$3,283.89) and otherwise in accordance with the terms of the Lease.
3. Effect on Additional Rent and Charges. Nothing contained in this Amendment shall affect Tenant's liability for any and all additional rent and charges (including utility charges) payable by Tenant under the Lease.
4. Landlord's Addresses. Tenant acknowledges that Landlord's addresses for notice and for receipt of payments are as follows:

To Landlord:	New Mexico Mall Partners, L.P. 124 Johnson Ferry Road, NE Atlanta, GA 30328 Attn: Asset Manager/Mesilla Valley Mall
with a copy to:	Jones Lang LaSalle Americas, Inc. 3424 Peachtree Road, Suite 300 Atlanta, GA 30326 Attn: Counsel/Mesilla Valley Mall
For Payment of Rent:	New Mexico Mall Partners, L.P./Mesilla Valley Mall PO Box 404509 Atlanta, GA 30384-4509
5. Early Termination Right. At any time after December 31, 2006, Landlord or Tenant shall have the right to terminate the Lease upon giving 90 days written notice of such election to the other party. If either party so elects to terminate the Lease, the Term will end upon the effective date of termination specified in the notice of exercise of the option, and thereafter the parties will be released

from all further obligations under the Lease except for accrued obligations then unpaid or unperformed. Tenant acknowledges that any and all tenant improvements and other improvements in and to the Premises are a part of the Premises and shall not be removed upon the early termination of the Lease. Upon termination of the Lease, Tenant shall surrender the Premises to Landlord pursuant to the terms set forth in Article 24 of the Lease.

6. Ratification of Lease. The Lease as amended by this Amendment is ratified, confirmed and approved in all respects and remains in full force and effect.

7. Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter of this Amendment. There are no agreements between Landlord and Tenant relating to the Lease or the Premises other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth in this Amendment, either oral or written, as an inducement to enter into this Amendment.

8. Successors and Assigns. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties, subject to the applicable provisions of the Lease.

IN WITNESS WHEREOF, this Amendment is made as of the day and year first above written.

LANDLORD:

NEW MEXICO MALL PARTNERS, L.P.,
a Delaware limited partnership

By: GG&A New Mexico, LLC, a Delaware limited
liability company, its general partner

By: _____
Name: _____
Title: _____

TENANT:

CITY OF LAS CRUCES,
d/b/a Las Cruces Museum of Natural History

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**SIGN
HERE**

**SIGN
HERE**

Vicinity Map

