

# STANDARD LEASE AGREEMENT

SCOTCH 'N SIRLOIN, INC.

TENANT

AS PER ATTACHED PLOT PLAN

STORE LOCATION

SHOPPINGTOWN MALL

SHOPPING CENTER

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# STANDARD LEASE AGREEMENT

AGREEMENT OF LEASE, made at Rochester, New York  
as of this 5th day of June, 19 95 by and between

SYRACUSE MALLS ASSOCIATES  
1265 SCOTTSVILLE ROAD  
ROCHESTER, NEW YORK 14624

hereinafter called the Landlord, and

SCOTCH 'N SIRLOIN, INC.  
ONE MILES AVENUE EXTENSION  
FAYETTEVILLE, NEW YORK 13066

hereinafter called the Tenant.

## WITNESSETH:

## PREMISES

1. (a) For and in consideration of the rental herein reserved and of the covenants, conditions, agreements and stipulations of the Tenant hereinafter expressed, the Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the following store premises, situated in the

Shoppingtown Mall

, to wit:

Store location as shown on plot plan attached, having approximate outside dimensions:

irregular in shape

and measuring in total approximately 6,675 square feet, which total area shall be increased by the square footage area of any mezzanine area used for sales purposes constructed at the inception or at any time during the term of this lease, located upon property situated in the

Town

of DeWitt

County of Onondaga State of New York

as said Shoppingtown Mall

is more fully described in Schedule "A" attached, consisting of a store, the location of which is shown on the plot plan attached hereto and made a part hereof. The word "Premises," "Demised Premises," or "Store Premises" or other similar designation wherever used in this lease and riders, modifications and amendments shall refer only to said store.

b) Plot plan is attached hereto solely to identify the demised premises, the same shall not be deemed to be a warranty, representation or agreement on the part of the Landlord that the said shopping center will be exactly as indicated on said plan. Landlord may increase, reduce, or change the number, dimensions or the locations of the walks, ramps, buildings and parking areas in any manner Landlord shall deem proper, and Landlord reserves the right to make alterations to or add buildings elsewhere in the shopping center, including construction of Kiosks in the common areas.

January 1, 1997

## TERM

2. To have and to hold said premises for the term of twelve (12) years (or until such term shall sooner cease and terminate, as hereinafter provided), said term to commence thirty (30) days after date of notice of delivery of possession of premises to the tenant, or on the date that the tenant opens the demised premises for business, whichever is earlier. Said Lease term shall end twelve (12) Lease years after such commencement of term. Lease year is defined to be the period of 12 consecutive calendar

\*unless extended as hereinafter provided.

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LANDLORD TENANT

except for payment of rent and additional rent.

months, beginning with the first day of the first full month after the Lease term commences and ending on the last day of the 12th month thereafter. However, all the provisions of this Lease shall apply during the period prior to the term of this Lease, as herein above defined.

When the exact dates of the commencement and termination of the Lease term have been determined in accordance with this Section, the Landlord, at its option, shall prepare an agreement in triplicate, suitable for recording, setting forth the commencement and termination dates, which agreement shall be attached to and constitute a part of this Lease. The agreement shall be promptly executed by Tenant and returned to Landlord.

RENT

3. (a) Tenant covenants to pay to Landlord or Landlord's designated agent at its office, or at a place and in a manner otherwise designated by Landlord, as rent for said premises during the Lease term, an annual minimum guaranteed rental in the sum of \$ \* , payable in equal monthly installments of \$ \* on the first of each and every month, without demand and without offset or deduction. The annual minimum rent shall be increased proportionately on a pro rata basis for any increase in the area of the demised premises as a result of the construction of any mezzanine areas used for any purposes. Further, the minimum rent shall be increased by ten (10%) per cent from the opening date of any department store in addition to those shown on the plot plan attached hereto should the Landlord elect to add any additional department stores. In the event that gross sales of Tenant, as hereinafter defined, for a calendar year shall exceed \$ \* the Tenant shall pay as additional rental \* per cent of gross sales in excess of \$ \* .

\*See Page 2 (A).

fifteen (15)

15th

A calendar year is defined as the period between January 1 and December 31. An installment of percentage rent shall become due and payable quarterly on (15) days after the last day of each calendar year, viz: on the 15th day of April, July, October and January, based upon gross sales during the preceding quarter. The amount of such quarterly payment of percentage rent shall be equal to the amount, if any, by which the aforesaid percentage of gross sales for such quarter exceeds the minimum guaranteed rental payable with respect to such quarter. Within ten (10) days after the end of each month, Tenant will furnish to Landlord, in a manner and form designated by Landlord, a true and accurate report of all gross sales in the previous month. During the second and subsequent lease years, Tenant shall pay to Landlord monthly, on the first day of each month during the lease year, an amount equal to one-twelfth (1/12th) of the actual amount of percentage rent, if any, payable during the immediately preceding lease year. Within 30 days after the end of each calendar year, Tenant shall furnish to Landlord, in form and manner designated by the Landlord, a statement by a certified public accountant, or a

or shareholder

certified public accountant normally retained by Tenant, a statement sworn to under oath by Tenant or by an officer thereof if Tenant is a corporation, setting forth the gross sales during the preceding calendar year and itemizing all appropriate deductions and exclusions from gross sales permitted under the Lease. Tenant shall, at that time, pay to Landlord an amount equal to the percentage not theretofore paid on account of Tenant's gross sales. In the event Tenant shall be entitled to a refund by reason of overpayment of such percentage rent, Landlord shall, after reviewing such statement, make appropriate refund to Tenant within sixty (60) days after submission of Tenant's statement. It is agreed that in the event the gross sales of Tenant shall not equal or exceed the gross sales level set forth above, which would require Tenant to pay percentage rent during the third full lease year and each lease year thereafter, Landlord may, at its option, within sixty (60) days following receipt by Landlord of the statement of gross sales, by written notice to Tenant, elect to either (i) terminate this lease as of a date thirty (30) days following the receipt of such notice; or (ii) increase Tenant's fixed annual minimum rent in each lease year thereafter, such increase to be determined by multiplying said annual rent by a percentage (which in no event shall be less than 100%) found by dividing the Index as defined below for the first month of the lease year in which the election is made by the Index for the calendar month in which falls the Term Commencement Date under this Lease. Notwithstanding anything contained herein from the commencement of the fourth lease year, Tenant's minimum rent shall be the higher of total minimum and percentage rent calculated hereunder, or a minimum rent calculated using the formula set forth above. Failure by Landlord to exercise its right hereunder with respect to any lease year shall not constitute a waiver of its right with respect to any subsequent lease year. The "Index" is defined to mean the "then higher of either the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or the Consumer Price Index for All Urban Consumers (CPI-U) of the United States Department of Labor's Bureau of Labor Statistics" in effect and generally published at the time the computation is to be made. If the aforesaid price indices shall no longer be published, then another price index generally recognized as authoritative shall be substituted by agreement of the parties.

It is agreed that the time from the commencement of the term to the December 31 next ensuing, shall be a separate period for the purpose of determining the total amount of rent due for such period. It is further agreed that the time from the last day of a calendar year (December 31) to the last day of the term of this Lease, shall also be a separate period for the purpose of determining the total amount of rent due for such period. The Tenant covenants and agrees to pay to the landlord the pro rata portion of the guaranteed minimum rent agreed to be paid by it hereunder for the aforementioned periods within five (5) days after the last day of such periods. Within fifteen (15) days after the last day of such periods the Tenant shall deliver to the Landlord a statement certified under oath to be complete and correct, setting forth the gross sales during such periods and the Tenant shall at that time pay to the Landlord an amount equal to the percentage rent provided for in Paragraph 3 herein on the amount of Tenant's gross sales as shown by such statement, less the pro rata portion of the guaranteed minimum monthly rent paid by it for such periods. In no event shall the rental be less than said pro rata guaranteed minimum monthly rent in order to determine the rental rent for those periods. Tenant shall comply with all provisions as to the maintaining of records of gross sales as hereinafter set forth.

GROSS SALES

4. (a) The term "gross sales" as herein used shall in all cases mean and include the total gross sales prices of any and all merchandise, goods, wares and chattels of any kind, sort or nature whatsoever sold, leased or licensed, in, from, through or upon the demised premises, or any part thereof, and shall include the amounts of any and all charges for any and all services sold, rendered or performed, for which any charges are or may be made, in, from through or upon the demised premises or any part thereof, whether said sales or services are made, rendered or performed by tenant, directly or indirectly, by or through any departments, by any sublessee or any licensee or by any other person, persons, party or parties, selling merchandise and/or chattels of any kind, and/or performing services of any kind, in said premises, and whether said sales or services are wholesale or retail, including, but not limited to, sales, leases or licenses of merchandise, goods, wares or services where the orders therefor originated and/or are accepted in, at, on or from the premises, but performance or delivery thereof is made from or at any other place, or made pursuant to mail, telegraphic, telephone or other similar orders received or filled in, at, on or from the premises or directed thereto, or made as a result of solicitation off the premises conducted by personnel operating from, or reporting to, or under the supervision of any employee of any tenant, subtenant or licensee located at the demised premises; in all cases whether said sales or services are for cash or credit or otherwise, and without reserve or deduction for inability or failure to collect. Gross sales shall also include all service, finance or interest charges made on any type of account or note receivable. Each sale on an installment basis, including, but not limited to, so-called "lay-away" sales or otherwise involving the extension of credit shall be treated as a sale for the full price in the period in which occurs the earliest of: (1) the date when the seller first considers the same as a sale for its own regular accounting purposes. (2) the time when the seller shall receive full payment or (3) the time when title thereto shall have passed. Merchandise returned for which cash has actually been refunded or credited to the customer's charge account and which has been included in the aggregate amount as actually having been

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RENT: The minimum guaranteed annual rental, payable in equal monthly installments shall be established as follows, all in accordance with Paragraph 3 hereof:

<u>Lease Year of 12 - Year Term</u>	<u>Annual Minimum Rental</u>	<u>Equal Monthly Installments</u>
1 - 7	\$120,150.00	\$10,012.50
8 - 12	\$146,850.00	\$12,237.50

In addition to the minimum rental as set forth hereinabove, Tenant shall pay percentage rental in accordance with the following provisions of Paragraph 3 hereof:

<u>Lease Year of 12 - Year Term</u>	<u>(PERCENTAGE RENT BREAKPOINT) Five (5%) Percent on Gross Sales in Excess of:</u>
1 - 7	\$2,403,000.00
8 - 12	\$2,937,000.00

Section 2 - TERM (continued):

\*Provided Tenant is not then in default under any of the terms, covenants or conditions of this Lease after any applicable notice or grace period, and further provided Tenant gives Landlord six (6) months prior written notice of its intention to exercise this option, Tenant shall have the one-time only option to renew this Lease for an additional term of five (5) years upon the same terms and conditions contained in this Lease Agreement except the minimum guaranteed annual rental shall be One Hundred Fifty-Three Thousand Five Hundred Twenty-Five Dollars (\$153,525.00) payable in equal monthly installments of Twelve Thousand Seven Hundred Ninety-Three and 75/100 Dollars (\$12,793.75) and percentage rental shall be five percent (5%) of gross sales in excess of total annual sales of Three Million Seventy Thousand Five Hundred Dollars (\$3,070,500.00) payable in accordance with the provisions of Section 3. It is expressly understood that this option is exercisable by Tenant herein only and cannot be assigned and, if not so exercised as hereinabove provided, said option shall lapse.

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\*(excluding sales of tobacco products at cost)

sold, shall be deducted in determining gross sales. The amount of any sales, use, excise or similar taxes imposed, for sales made in, on, upon or from the demised premises payable over to appropriate governmental authority, which sales taxes shall have been reported as part of the total gross sales and only if such sales taxes have been included in the aggregate amount of gross sales, shall be deducted in determining gross sales provided a specific record is made at time of each sale of the amount of sales tax, and the amount thereof is specifically charged to the purchaser. Merchandise transferred from the Tenant's premises to another store or stores of the Tenant, except for the purpose of filling orders taken from the premises, merchandise returned for credit to factories or jobbers, and discounts allowed to the trade, whether in cash or in merchandise, shall not be included in determining gross sales. Gross sales shall also include all sales by any vending machines in the demised premises except vending machines installed in the demised premises solely for the use and convenience of Tenant's employee, and Tenant's share of the receipts of any other coin operated machines. Gross sales shall also include amounts paid for services rendered or to be rendered, and shall also include the agreed price for services actually rendered, whether said agreed price is paid or not. Notwithstanding anything to the contrary, any exclusions or deductions from gross sales permitted hereunder shall not be allowed in whole or in part unless Tenant can substantiate all such exclusions or deductions specifically with regard to gross sales from the demised premises.

(b) If Tenant's gross sales are required to be reported on any sales tax return or any other form of return, and gross sales as so reported on any of said returns or as determined by audit of said returns shall exceed gross sales as defined herein as reported by Tenant as herein provided, then the gross sales shall be taken at the highest figure so reported or so determined by audit adjusted as set forth herein above. If any governmental agency shall increase the gross sales as reported on the aforesaid forms, for any Lease year for which sales have been reported and rent paid to the Landlord, then tenant shall promptly notify the Landlord of such increase and pay any additional rent due at such time.

(c) Notwithstanding that the Landlord may receive rent based on a percentage of Tenant's sales, it is understood and agreed that the Landlord is not and shall not in any way or for any purpose, be deemed to be an agent or partner or associate of the Tenant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Tenant, and nothing in this Lease contained shall be deemed to create any relationship other than that of Landlord and Tenant.

#### RECORD KEEPING

5 (a) The Tenant agrees to keep and to require all its sub-lessees and licensees, if any, to keep, on the demised premises or at its principal office, in accordance with recognized sound accounting practices, a complete record of such gross sales, including the recording of gross sales and the delivery of all merchandise from the demised premises, all sales tax returns, and shall retain such books and records, as well as all contracts, vouchers, checks, cash register tapes, bank statements, duplicate bank deposit slips, sales checks and sales books, duplicate slips from cartograph machines and records of any other means or devices used in the recording of individual sales, all refund slips and other documents and papers in any way relating to the operation of such business for at least three (3) years after the end of the lease year to which they are applicable, or if an audit is required or is being made or a controversy should arise between the parties hereto regarding the rent payable hereunder, said records shall be retained until the subsequent termination of such audit or controversy.

(b) Landlord or Landlord's designated representatives shall have the right at any time and from time to time during regular business hours, during each lease year and anytime thereafter to check and to inspect, verify, examine and audit all records of gross sales for each year, including all records required to be kept as specified above and any and all other records and documents used in the conduct of the business, and all sales tax returns to every political subdivision, any such examination and audit to be made during the term of the Lease within three (3) years after the expiration of each Lease year or within three (3) years after the termination of this Lease or any renewal thereof as to the last year. If said audit shall disclose any deficiencies in rent paid for any year such deficiency, together with interest thereon, at the maximum legal rate allowable from the time such additional amount should have been paid, shall be forthwith paid to Landlord upon Landlord furnishing Tenant a statement thereof. If the deficiency in rent for any year as determined by said audit shall exceed two (2%) per cent of the rent actually paid for said year, the Tenant shall reimburse Landlord for the expenses of said examination and audit. Failure to audit the gross sales for any one year shall not waive Landlord's right at any time to collect any additional rent which Landlord may at any time ascertain to be due it. The furnishing by Tenant of any grossly incorrect statement of gross sales shall constitute a breach of this Lease.

#### USE

6. (a) The Tenant shall use said premises during the entire term of this Lease for the operation of a sit-down restaurant with a full-service bar including the sale of alcoholic beverages

and for no other purpose whatsoever.

(b) If 6. (a) provides in any manner for the sale of food or other items sold for human consumption, Tenant will advise its Customers, via posted notices that the Landlord's rules and regulations prohibit the consumption or carrying of unpackaged items of food or beverages, within other stores in the Shopping Center. Tenant agrees that any such items that are taken off the premises shall be packaged in a manner suitable for transportation by automobile.

#### USE RESTRICTIONS

7. (a) Tenant shall not injure, overload, deface or otherwise harm the demised premises or any part thereof or any equipment or installation therein; nor commit any nuisance, nor permit the emission of any objectionable noise or odor; nor burn any trash or refuse within the Shopping Center (except in an incinerator if same has been authorized by Landlord); nor sell, display, or distribute any alcoholic liquors or beverages (unless the use clause Section 6. (a) specifically permits same); nor install or cause to be installed any automatic garbage disposal equipment; nor make any use of the demised premises or any part thereof or equipment therein which is improper, offensive or contrary to any law or ordinance or to reasonable rules and regulations of Landlord as such may be promulgated from time to time, or which will invalidate from time to time or increase the cost of any of Landlord's insurance over a standard mercantile rating, notwithstanding the permitted uses; nor place or permit any radio, television, loud-speaker, sound amplifier or any phonograph or any other device, outside the demised premises or any place where

(except for those currently installed in the premises and any replacements thereof);

same may be heard outside the demised premises, without first obtaining Landlord's consent in writing thereto which consent shall be at Landlord's sole discretion; nor do or permit anything tending to create a nuisance or to disturb any other Tenant or the occupants of neighboring stores; nor do anything tending to injure the reputation of said property; nor conduct or allow upon the premises any business which is contrary to law; nor conduct or allow to be conducted any auction, fire, going out of business or bankruptcy sales without Landlord's prior written consent; nor sell or display merchandise on, or otherwise obstruct, the driveways, walks, ~~walks~~ courts, parking areas and other Common Areas in the Shopping Center; nor park or permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, ~~entrance~~ or other Common Area; nor permit Tenant or its officers or employees to use any parking areas other than those designated by Landlord for such use; and if any car of tenant, or a permitted concessionaire, officer, employee or agent of Tenant is parked in any other portion of the Shopping Center, Tenant shall pay to Landlord, upon demand, the sum of Ten Dollars (\$10.00) for each such car for each day, or part thereof, such car is so parked, and Tenant hereby authorizes Landlord to tow or cause any such car to be towed to the then designated parking area and agrees to reimburse Landlord for the cost thereof, upon demand provided that Landlord has informed Tenant's store manager that such car is parked in an unauthorized area, and to otherwise indemnify and hold Landlord harmless with respect thereto; nor use the ~~walks~~ courts and walks for any purpose other than pedestrian traffic; nor attach interior signs, placards or other advertising media or other objects to the windows or locate the same in such manner as to materially obstruct the view of Tenant's store ~~from the mall area~~ from the outside; nor use the premises for living quarters, sleeping apartments, lodging rooms or other residential purposes.

The Tenant agrees that the Tenant in the demised premises shall warehouse only such goods as are intended to be sold within a reasonable time and shall use only such space in the demised premises for nonselling purposes as is reasonably required for Tenant's business at its demised premises.

(b) Tenant shall not without the prior written consent of Landlord first obtained, operate any coin or token operated vending machine or similar device for the sale of any goods, wares, merchandise, food, beverages, or services, except for employees' convenience, including, but not limited to, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, foods, candy, tobaccos, or other commodities.

(c) Tenant agrees that it will not, during the term of this Lease, directly or indirectly or through a subsidiary or affiliate, operate another store within a radius of five (5) miles of the demised premises. In addition to any and all other remedies available to Landlord for breach of this covenant, it is agreed that Landlord may, at its election, require that any and all sales made at, in, on or from any such store be included in the computation of the percentage rent due hereunder with the same force and effect as though such sales had actually been made at, in, on, or from the herein demised premises.

(d) It is specifically understood between the parties that throughout the term of the Lease or any extensions thereof, Tenant will do whatever is necessary from time to time to prevent the emission of any odors into the ~~mall~~ ~~premises~~ other stores in the Shopping Center. Any failure by Tenant to comply with this paragraph shall be a breach of this Lease.

#### ALTERATIONS ETC.

8. Tenant shall have the right to make interior, non-structural changes not affecting the storefront or signs at a cost not to exceed \$10,000 without the prior consent of Landlord provided Tenant gives Landlord notice of such work 30 days prior to commencement and submits plans to Landlord for Landlord's records only. Any other changes, alterations, additions or improvements in, or to the demised premises, of any kind or nature whatever, whether it be in the store front or in the amount or nature of equipment, or the location thereof, or in additions thereto, or whatever may be the nature thereof desired by the Tenant may be done by the Tenant, at its own cost and expense, only upon the following terms and conditions:

(a) The Tenant shall first notify the Landlord, in writing, specifying in detail the alterations or additions contemplated.

(b) Such notice shall be accompanied by a plan, blueprint or diagram showing such proposed alterations or additions.

(c) The Landlord shall, within a reasonable time, indicate in writing its approval or disapproval of said contemplated alterations or additions and may require prior to such approval or disapproval additional specifications and data.

(d) If the Landlord approves thereof and the specified cost as above stated is less than Ten Thousand Dollars (\$10,000), such approval shall constitute the necessary consent to such alterations or additions. If, however, the aforesaid specified cost is in excess of Ten Thousand Dollars (\$10,000), then, at Landlord's option, the consent of the Landlord shall not be valid or binding upon it until the Tenant furnishes the Landlord a bond indemnifying the Landlord against any and all claims, losses or damages resulting from the failure of the Tenant, its agents, servants and employees or independent contractors to fully complete said alterations or additions in accordance with said plan or blueprint, or to fully pay therefor, or to remove or bond any and all mechanic's liens filed against the demised premises or the building of which the same form a part, for claims for work done or materials furnished, it being understood that Tenant's failure to remove or bond any such lien within ten (10) days after notice of filing thereof shall in and of itself constitute damage to the Landlord in the amount of said lien and any expenses it may be put to in removing the same, including attorneys' fees. Such policy and such bond shall be in a recognized insurance company or surety company authorized to do business in the State wherein the property is located.

(e) No changes, alterations, additions or improvements shall be commenced until Landlord's consent shall be obtained as provided above, and the foregoing terms, furnished and complied with by the Tenant.

#### IMPROVEMENTS, FIXTURES AND LIENS

\*Notwithstanding the foregoing, Tenant shall be permitted to remove its moveable restaurant equipment.

9 (a) All constructions, additions and improvements, whether temporary or permanent, fixed or movable, made and maintained in or on the said premises, either by the Tenant or the Landlord shall be deemed to become part of the real estate and shall be the sole property of the Landlord from the time of construction or installation, and shall not be removed or injured by the said Tenant, nor shall the Tenant claim at any time compensation therefor. It is understood and agreed that any movable furniture or unattached movable trade fixtures and furnishings, except carpeting or lighting fixtures, placed upon the demised premises by the Tenant are to remain the property of the Tenant and upon Landlord's request shall be removed by Tenant from the demised premises promptly at the expiration of the demised term. Tenant, at its own cost and expense, shall repair any damage caused by such removal. In the event Tenant fails to remove such property Landlord may at its option remove same at Tenant's cost and expense. Any personal property of Tenant not removed at the termination of this Lease shall, at Landlord's option, be deemed abandoned by Tenant and become the property of Landlord.

(b) The Tenant shall not suffer any mechanics' lien to be filed against the demised premises by reason of work, labor, services or materials performed or furnished to the Tenant or to anyone holding the demised premises

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through or under the Tenant. If any such mechanics' lien shall at any time be filed against the demised premises, the Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but the Tenant shall have the right to contest any and all such liens. If the Tenant shall fail to cause such lien to be discharged by payment within ten (10) days after being notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by the Landlord, and the amount so paid by the Landlord and/or all costs and expenses, including reasonable attorneys fees, incurred by the Landlord in procuring the discharge of such lien, shall be deemed to be additional rent for the demised premises and shall be due and payable by the Tenant to the Landlord on the first day of the next following month. Nothing in this Lease contained shall be construed as a consent on the part of the Landlord to subject the Landlord's estate in the demised premises to any lien or liability under the Mechanics' Lien Law or other law of the state where the demised premises are located, and any action of the Tenant in violation of this covenant shall be a default under the Lease and Landlord shall be entitled to all remedies against Tenant provided for hereunder in the event of default.

**REPAIRS**

10. Landlord covenants to keep or cause to be kept the structural components including the roof and walls of the exterior of the building of which the demised premises form a part, except as affected by Tenant's work or Tenant's negligence or omissions, in good order, repair, and condition. A licensed professional architect or professional engineer chosen by Landlord shall determine the soundness of all structural components of building. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or by Eminent Domain, in which event the obligations of the Landlord shall be controlled by Sections 21 and 22. Except as provided in this Section 10, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the demised premises or any equipment, facilities or fixtures contained therein, which repairs and or replacements shall be the responsibility of Tenant. Except for the aforesaid repairs to be made by Landlord, Tenant shall without limitation keep the demised premises, including equipment, facilities and fixtures therein, and the entire store front including store front metal work and doors, at Tenant's expense, clean, neat and in good order, repair and condition as specified in this Lease and to replace any glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Further, Tenant agrees to contract for at the commencement of the term and to maintain throughout the entire term of this Lease, at its cost and expense a maintenance contract covering the heating and air conditioning systems, with a service company approved by Landlord, which approval shall not be unreasonably withheld. Tenant agrees to comply with the "Americans with Disabilities Act of 1990" as the same may be changed or supplemented and Tenant also agrees to comply with any and all similar Federal, State and local laws, rules and regulations (hereinafter "ADA"). Tenant assumes sole responsibility for compliance with the ADA within and about Tenant's demised premises and all means of ingress and egress, including all required additions, repairs, auxiliary aids, barrier removal and/or alternative measures to barrier removal. Tenant shall be responsible for cleaning the sidewalk in front of its store premises including removal of snow and ice. \*

without limitation, foundation,

\*See Page 5(A).

**SIGNS**

11. Tenant shall not place, erect or install any signs on building exterior or on the exterior of the demised premises, or allow any signs, printed displays or show window lettering in such manner as to be seen from the mall or exterior of building without prior written approval by Landlord. Any such sign permitted shall comply with sign regulations which shall be established by Landlord. All such signs shall be maintained in good and safe condition and appearance by the Tenant at its own expense. Tenant shall repair any damage to the premises, either inside or outside, resulting from the erection, maintenance or removal of said signs. In any event, however, the sign box erected by Tenant at Landlord's election shall not be removed by Tenant. Landlord agrees that the current exterior signage is hereby deemed approved.

**PAYMENT OF WATER, HEAT, ETC.**

12 (a) Tenant shall pay for installation and maintenance of all devices for metering consumption on the demised premises of light, heat, power, electricity, gas, water, fuel, sewerage and other similar services and Tenant shall pay all charges for such services from the time Landlord has notified Tenant that space is ready for his occupancy in accordance with Section 2 above. Sewerage charges shall include the cost, if any, of the operation, maintenance, repair and administration of a sewage treatment plant, in the event such a plant services the demised premises.

(b) In the event the Landlord purchases and pays for or is required to purchase and pay for light, heat, power, electricity, gas, water, fuel or other similar services to the demised premises, then the Tenant agrees to pay his share of the cost for providing such services to the demised premises as determined by the Landlord. Such charges shall be deemed additional rent and be paid by Tenant as and when bills are rendered by Landlord. Nothing herein shall be deemed to obligate or require Landlord to purchase and submeter any service.

(c) Landlord may at any time elect to discontinue furnishing any of the hereinabove described services and, upon written notice to Tenant, may require Tenant to contract directly with the utility company or other company for any such service and any additional rent charged to Tenant as a result of Landlord's furnishing such service shall be eliminated accordingly.

(d) During all business hours, Tenant shall operate the heating, ventilating and air conditioning equipment serving the demised premises so that temperatures within the premises are maintained in accordance with standards established or to be reasonably established by Landlord, so that the heat, ventilation and air conditioning equipment is not damaged from the equipment itself.

In the event Landlord supplies utilities to Tenant,

(e) Tenant shall promptly pay to Landlord, as additional rent, charges for sewer, water, heating, lighting, ventilating, and air conditioning furnished or made available to the Demised Premises. Such services, together with electric service, are hereinafter collectively referred to as "Utility Services". Each Service Tenant shall pay to Landlord for the operation, repair and maintenance of such services. The Utility Service to be provided by Landlord shall be as set forth on Exhibits 1 and 4.

**GLASS REPLACEMENT AND INSURANCE**

13 (a) The Tenant shall replace all damaged or broken plate glass and other glass including vitrolite and structural glass promptly with glass of equal quality with that broken, except in cases of damage by fire, or other casualty covered by Landlord's fire and extended coverage policy. The Tenant shall cause to be insured and kept insured all plate glass, vitrolite or other structural glass, plastic or see-through material in the demised premises for and in the name of the Landlord and pay the premium therefor when due and payable. The Tenant shall, at its own cost and expense, pay all premiums when due and payable.

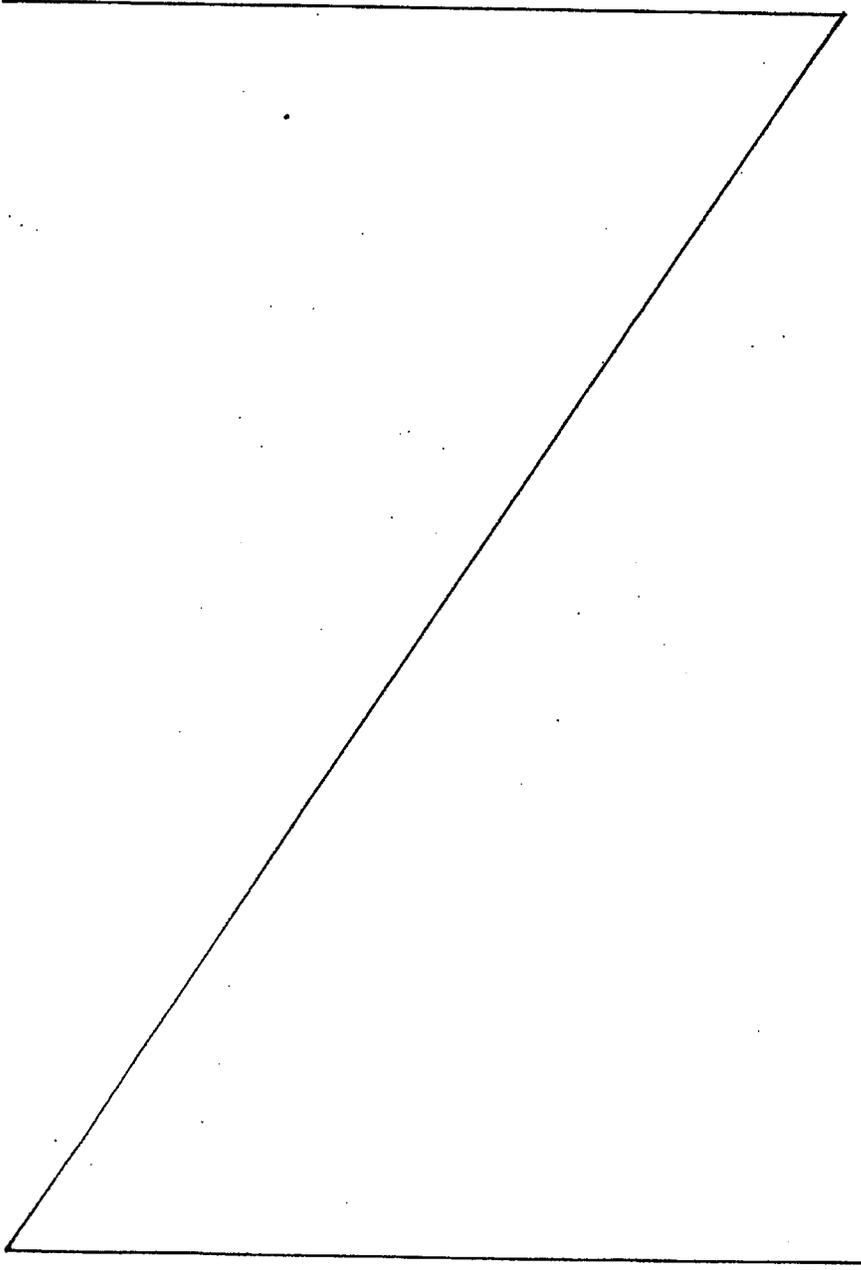
Including liquor or dram shop liability

(b) The Tenant agrees to maintain in full force throughout the demised term, at its own cost and expense, one or more policies of public liability and property damage insurance which, up to the maximum liability amounts thereof, insures the Tenant and the Landlord (and such other person(s) designated by the Landlord, having an insurable interest) against liability for injury to persons and, or property (and death) of any person or persons, in or

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Section 10 continued:

\*If Landlord shall at any time be in default continuing after thirty (30) days written notice thereof in its repair obligations pursuant to this Section 10 or if the repair is of a nature that cannot be cured within said thirty (30) day period, if Landlord does not commence and diligently pursue the curing of said repair within said thirty (30) days, Tenant may perform such repair obligations on Landlord's behalf, in which event Tenant may recover from Landlord the reasonable amounts expended by Tenant for said purposes.



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about the demised premises. The limits of liability of such insurance shall not be less than One Million Dollars (\$1,000,000) for injury (or death) caused to any one person, not less than Three Million Dollars (\$3,000,000) for injury (or death) to more than one person arising from any one accident, and not less than Two Hundred Fifty Thousand Dollars (\$250,000) with respect to damage to property. The insurance required by this section shall be primary insurance and the insurer shall be liable for the full amount of the loss up to and including the total limit of liability as set forth in the declarations without the right of contribution from any other insurance coverage held by Landlord.

(c) During the lease term, Tenant shall maintain in full force on all its trade fixtures and equipment in the demised premises a policy or policies of fire insurance insuring Landlord and Tenant with standard extended coverage endorsements, to the extent of at least eighty (80%) percent of their insurable value, containing the proper co-insurance provisions to prevent Tenant from being a co-insurer. As long as this Lease is in effect, the proceeds from any such policy or policies shall be used for the repair or replacement of the items so insured.

(d) All insurance required to be secured by the Tenant in accordance with subparagraphs (a), (b) and (c) hereof shall be obtained from casualty companies licensed to do business in the state in which the Shopping Center is located and certificates of said insurance shall be furnished by the Tenant to the Landlord, each of which policies shall be endorsed to provide that thirty (30) days notice of cancellation or amendment will be given to the Landlord. Upon tenant's failure to procure such insurance and deliver the policy or policies or certificates therefor to the Landlord within ten (10) days from the date of commencement of the term hereunder or ten (10) days before the expiration of any policy delivered to the Landlord, the Landlord may, at its option obtain such insurance or any of same and the premium or premiums therefor shall be deemed to be and be paid as additional rent at the next rent payment day.

(e) During the lease term, Landlord shall maintain in full force on the building and leasehold improvements therein a policy or policies of fire insurance. Tenant shall, at the inception of the term, document to the Landlord, in writing, the value of its leasehold improvements, it being understood that in the event of casualty, Tenant shall be responsible for any loss to the leasehold improvements in excess of the amount stated. In addition, Landlord shall maintain in full force a policy or policies of public liability and property damage insurance against liability for injury to persons and/or property (and death) of any person or persons in or about the Common Area.

(f) Tenant may provide the insurance required by subsections (a) and (c) above under a blanket insurance policy.

insuring the demised premises to at least 90% of the replacement value thereof.

**GARBAGE AND RUBBISH REMOVAL**

14. (a) The Tenant agrees that it will handle and dispose of all rubbish, garbage and waste from the Tenant's operations in the demised premises in accordance with regulations established by the Landlord therefor from time to time and then in effect. Without in any way limiting the generality of the foregoing, it is understood that the Tenant shall store rubbish or garbage within the area of the demised premises, out of the view of the general public, and shall not allow accumulations ~~for more than forty-eight (48) hours or otherwise~~, in accordance with regulations established by the Landlord therefor; will not burn any trash or garbage of any kind in or about the demised premises and/or the Shopping Center; and will not, unless specifically authorized in writing by Landlord, permit any garbage or rubbish to be collected or disposed of from the demised premises except by the Landlord or a person(s) designated by the Landlord (but the Landlord agrees that the prices to be charged therefor by the Landlord or such person(s) so designated shall be reasonable); all the foregoing, however, subject to rules and regulations established by the Landlord therefor from time to time then in effect.

(b) Tenant agrees to keep the demised premises free of dirt, fumes, odors, debris, pests and vermin, and, if required by Landlord, Tenant will purchase extermination and pest control service from one of the companies as approved by the Landlord.

(c) Upon Tenant's failure to comply with the foregoing, the Landlord may cause the necessary work to be done to cure any failure of Tenant to comply with the foregoing and bill Tenant for said cost plus twenty (20%) per cent. Said costs shall be deemed to be additional rent and shall be due and payable immediately after the forwarding of a bill by Landlord to Tenant. The right of Landlord to take such steps shall not be deemed to be a termination of Tenant's obligation to comply with the required procedure of trash placement and the failure of Tenant to comply with the procedure or failure to pay the charges when due shall constitute a material breach of this Lease for which Landlord is hereby granted the same rights as if the Tenant had failed to pay rent when due.

(d) Tenant shall provide and maintain throughout the term of this Lease, a storage area within the demised premises sufficient in size to contain the rubbish, refuse, garbage or other waste anticipated to be generated in any forty eight (48) hour period as required above, and shall indicate on the Tenant plans to be submitted for approval hereunder, the location of said area.

~~(e) Notwithstanding the foregoing, as to Food Court, Tenant's provisions of Exhibit C shall continue to the extent Exhibit C is inconsistent with the Section 14.~~

Tenant's storefront,

In Tenant's dumpster outside

unreasonable

**LABOR DISPUTES**

15. The Tenant covenants and agrees that with respect to all alterations, additions, improvements, repairs and installations of fixtures or other equipment, or with respect to any other work in, on, or to said premises to the end that there shall be no labor dispute which would interfere with the construction, completion or operation of the Shopping Center or with any other work being carried on therein, the Tenant shall engage the services of only such contractors and subcontractors as will work in harmony with each other, those of the Landlord and any others then working in the Shopping Center, and the Tenant shall require its contractors and subcontractors to employ only such labor as will work in harmony with all other labor then working in the Shopping Center.

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**LIABILITY**

16. (a) Except for Landlord's negligence, the Landlord and its agents shall not be liable in damages by abatement in rent or otherwise, for any damage either to the person or the property of the Tenant nor for the loss of or damage to any property of the Tenant by theft or from any other cause whatsoever, whether similar or dissimilar to the foregoing. The Landlord or its agents shall not be liable for any injury or damage to persons or property or loss of or interruption to business resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of said building or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature unless caused by or due to the negligence of the Landlord, its agents, servants and employees, nor shall the Landlord or its agents, servants and employees be liable for any damage caused by other Tenants or persons in said building or caused by operations in construction of any private public or quasi-public work, nor shall the Landlord be liable for any latent defects in the demised premises or in the building of which they form a part.

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(b) The Tenant shall be liable for any damage to the building or property thereon which may be caused by its act or negligence or the acts of its agents, employees or customers and the Landlord may, at its option, repair such damage and cure any other default of the Tenant and the said Tenant shall thereupon reimburse and compensate the Landlord as additional rent within five (5) days after rendition of a statement by the Landlord for the total cost of such repair and damage or cost of curing other defaults. The Tenant hereby indemnifies and agrees to hold the Landlord harmless and free from damages sustained by person or property and against all claims of third persons for damages arising out of the Tenant's use of the demised premises and for all damages and monies paid out by the Landlord in settlement of any claims or judgments as well as for all expenses and attorneys' fees incurred in connection therewith, unless due to the negligence of the Landlord, its agents, servants and employees. \*

\*See Page 7(A).

**DEFAULT**

17 (a) If the Tenant shall at any time be in default continuing after ten (10) days written notice thereof in the payment of any rent or any additional or percentage rent or any other payments required of Tenant hereunder, or any part thereof, or if Tenant shall be in default in any of the other covenants and conditions of this Lease to be kept, observed and performed by Tenant, continuing after thirty (30) days written notice thereof or if default is of a nature that cannot be cured within said thirty (30) day period, if Tenant does not commence and diligently pursue curing of said default within said thirty (30) days, or if Tenant shall vacate or abandon the premises during the term hereof, or fail to take possession of the premises and actively operate its business thereon, or if this leasehold interest shall be levied on or taken or attempted to be taken by execution, attachment or other process of law, or if any execution of attachment shall be issued against Tenant, or any of Tenant's property in the demised premises, whereby the demised premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant, or if this Lease shall by operation of law devolve upon or pass to any person or persons other than the Tenant except as may be permitted in this Lease, then in any of said cases, the Landlord may:

subject to New York law:

(i) at its option, upon written notice to Tenant, terminate this Lease, and this Lease and the term thereof shall automatically cease and terminate as of the date of such notice;

(ii) enter into the premises, remove Tenant's property and effects as elsewhere in the Lease provided, take and hold possession thereof, without such entry and possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligations to pay rent and all its other obligations hereunder for the full term;

(iii) require that upon any termination of this Lease whether by lapse of time, the exercise of any option by Landlord to terminate the same or in any other manner whatsoever, or upon any termination of Tenant's right to possession without termination of this Lease the Tenant shall at once surrender possession of said premises to the Landlord and immediately vacate the same, and remove all effects therefrom, except such as may not be removed under other provisions of this lease. If Tenant fails to do so Landlord may forthwith re-enter said premises, with or without process of law, and repossess itself thereof as in its former estate and expel and remove Tenant and any other persons and property therefrom, using such force as may be necessary, without being deemed guilty of trespass, eviction or forcible entry, without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity;

(iv) if the Tenant shall not remove all effects from said premises as in this Lease provided Landlord, at its option, may remove any or all of said effects in any manner that Landlord shall choose and store same without liability for loss thereof, and Tenant will pay the Landlord, on demand, any and all expenses incurred in such removal and storage of said effects for any length of time during which the same shall be in possession of Landlord or in storage, or Landlord may at its option, without notice, sell any or all of said effects in such manner and for such price as the Landlord may deem best and apply the proceeds of such sale upon any amounts due under this Lease from the Tenant to the Landlord, including the expenses of removal and sale;

(v) collect from Tenant any other loss or damage Landlord may sustain by reason of any breach and any diminished value of said premises resulting from said breach;

(vi) in the event of a breach, or threatened breach by Tenant of any of the covenants or provisions of this Lease, have the right to enjoin any such breach or threatened breach;

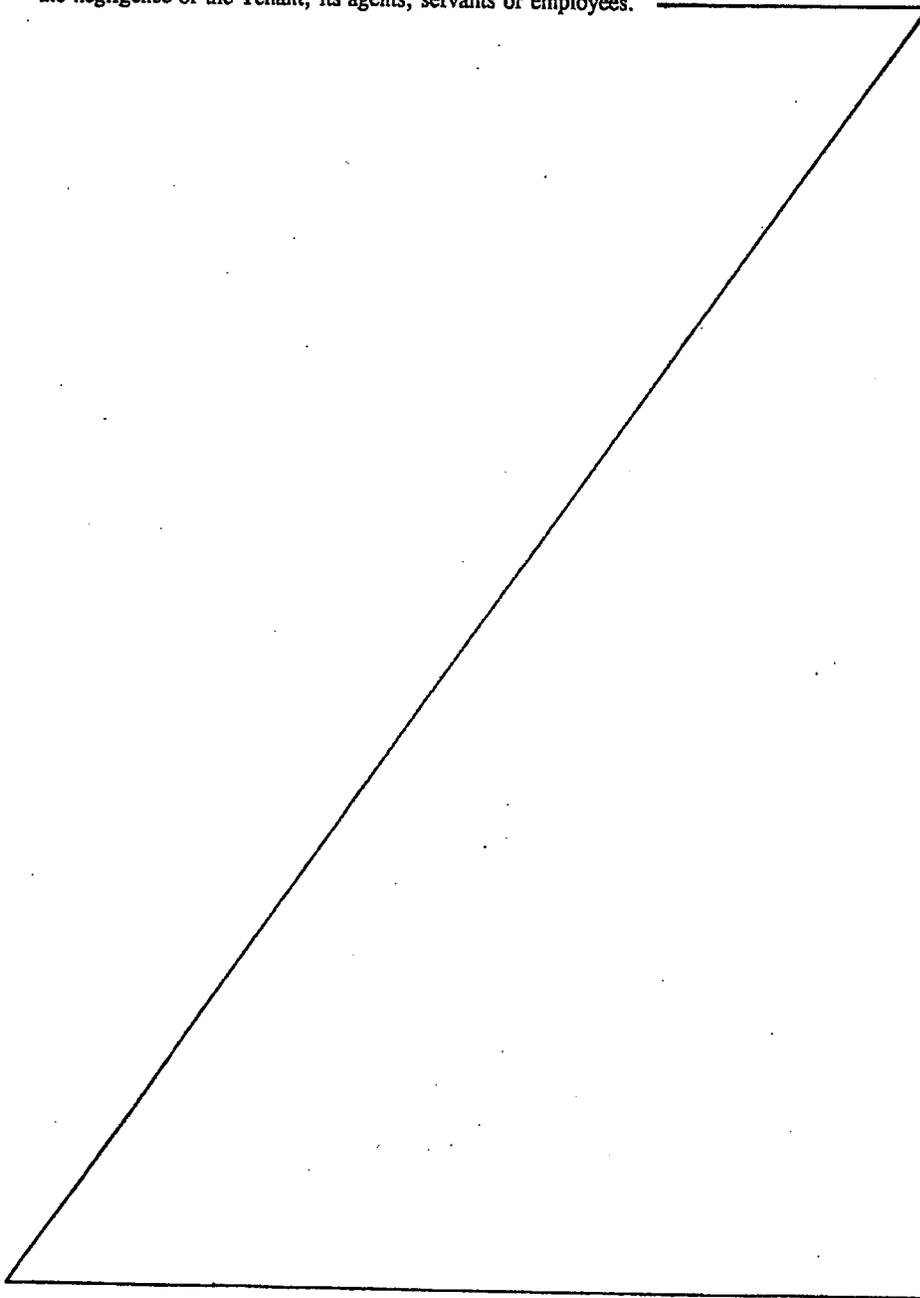
(vii) in the event Tenant defaults in the payment of rent, continuing after ten (10) days written notice thereof declare the entire rental for the balance of the term, or the entire term, including the guaranteed minimum rental herein provided for plus the percentage rental for the entire term, based on the highest average monthly percentage rental earned during any prior Lease year, immediately due and payable at once, provided, however, that if Tenant remains in possession after Landlord has exercised such right, and the percentage rental for any year of years thereafter shall exceed the amount for which Landlord has taken judgment for said year or years, based on the highest average monthly percentage rental earned during any prior Lease year, then Tenant at the end of each lease year, shall pay the additional percentage rental as herein provided, and upon failure to do so, Landlord may take judgment for said additional percentage rental each year. Notwithstanding the foregoing, in the event Landlord obtains judgement hereunder Tenant shall only be required to pay said judgement in monthly installments upon the rental payment dates as set forth in this lease agreement, unless Tenant defaults in making said payments in which event the entire judgement shall be immediately due and payable;

(viii) in the event of termination of this Lease before the expiration date thereof originally fixed by reason of any provision of this Lease relating to earlier termination, by reason of the Landlord's exercising any option to terminate, by reason of any default, neglect or omission on the part of the Tenant, or if the Landlord shall enter or re-enter upon the demised premises, or if the Tenant shall be ejected, dispossessed or removed therefrom by summary proceedings or in any other manner, whether or not specifically enumerated in this Lease, or if the demised premises become vacant, deserted or abandoned, the Landlord at any time may re-let the premises, or any part or parts thereof, either in the name of or for the account of Landlord or Tenant, for such rent and for such term and terms as Landlord may see fit, which term may at Landlord's option extend beyond the balance of the term of this Lease. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instruction given by Tenant about such re-letting. In any such case, Landlord may make such repairs, alterations and additions in or to the premises and redecorate the same as it sees fit. Tenant shall pay Landlord any deficiency between the rent hereby reserved and covenanted to be paid and the net amount of the rents collected on such re-letting, for the balance of the term of this Lease, as well as any expenses incurred by Landlord in such re-letting, including, but not limited to attorneys' fees, brokers' fees, the expense of repairing, altering and adding to and redecorating the premises, and otherwise preparing the same for re-rental. All such costs, other than the rental, shall be paid by Tenant upon demand by Landlord. Any deficiency in rental shall be paid in monthly installments, upon statements rendered by Landlord to Tenant, unless Landlord has declared the entire rental for the balance of the term due, as elsewhere in this Lease provided. For the purpose of determining the deficiency in rent the rent reserved shall be deemed to be the guaranteed minimum monthly rental herein provided for, plus the highest average monthly percentage rental earned during any prior Lease year prior to said default. Any suit brought to collect the amount of the deficiency for any one or more months shall not preclude any subsequent suit or suits to

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Section 18(b) continued:

\*The Landlord hereby indemnifies and agrees to hold the Tenant harmless and free from damages sustained by person or property and against all claims of third persons for damages arising out of Landlord's negligence in the operation of the Shopping Center and for all damages and monies paid out by the Tenant in settlement of any claims or judgments as well as for all expenses and attorney's fees incurred in connection therewith, unless due to the negligence of the Tenant, its agents, servants or employees.



collect the deficiency for any subsequent months. Landlord shall in no event be liable in any way whatsoever for failure to re-let the demised premises or in the event that the premises are re-let, for failure to collect the rent thereof under such re-letting.

and any notice required by statute or law

(b) Except for the notice provided in Section 17 (3) herein, the Tenant expressly waives the service of any further notice of intention to terminate Tenant's right of possession of said premises or to re-enter said premises and waives the service of any demand for payment of rent or for possession and waives the service of any process or other further notice or demand prescribed by any statute, law or ordinance and agrees that in compliance with any of the covenants of the Lease shall, at least, without the service of any notice or demand whatsoever, at Landlord's option, constitute a forcible detainer by the Tenant of said premises within the meaning of the statutes of the state in which the demised premises are located. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws, in the event of eviction or dispossession of Tenant by Landlord under any provisions of this Lease. No receipt of monies by the Landlord from or for the account of Tenant or from anyone in possession or occupancy of the premises after the termination in any way of this Lease or after the giving of any notice, shall reinstate, continue or extend the term of this Lease or affect any notice given to the Tenant prior to the receipt of such money, it being agreed that after the service of notice or the commencement of a suit or after final judgement for possession of said premises, the Landlord may receive and collect any rent or other amounts due Landlord and such payment shall not waive or affect said notice, said suit or said judgement.

(c) The Landlord and Tenant do hereby waive a trial by jury of any and all issues either now provided by law or hereinafter provided by law arising either directly or indirectly in any action or proceeding between the parties hereto, or their successors out of or in any way connected with this lease or any of its provisions, the Tenant's use or occupancy of said premises and/or any claim of injury or damage. It is intended that said waiver shall apply to any and all defenses, rights and/or counterclaims in any action or proceeding.

(d) Any and all rights and remedies which Landlord may have under this Lease and at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more or all of said rights and remedies may be exercised at the same time or at different times and from time to time.

(e) In the event either party shall bring legal action hereunder against the other party, the prevailing party shall be entitled to recover from the other party all expenses incurred, including reasonable attorney's fees.

(f) If any of the aforesaid provisions or any other provision of this Lease shall be unenforceable or declared invalid or void, said provision shall be deemed eliminated and of no force and effect and the balance of this Lease shall continue in full force and effect. If any notice is required by law to be given such notice shall be given.

(g) The Landlord shall have the first lien on Tenant's interest in this Lease to secure the payment and performance of Tenant's obligation hereunder, prior and preferable to all other liens.

~~Tenant hereby grants to Landlord a security interest in all inventory, equipment, fixtures, improvements and merchandise now or hereafter located in the premises, and all proceeds and accounts receivable therefrom (the "Collateral"), to secure the payment and performance of Tenant's obligations set forth in this Lease. Tenant hereby agrees that, within ten (10) days of Landlord's request to do so, Tenant will execute and file any financing statement(s) and to any and all acts and to execute and file any and all documents which may be necessary to perfect, perfect, continue, preserve and protect Landlord's security interest in the Collateral. If Tenant shall at any time fail to comply with the foregoing provision, Landlord may, in addition to any other remedies available to it in consequence of said default, then file any financing statement or undertake any other action necessary to realize, perfect, continue, preserve and protect Landlord's security interest as the attorney in fact for the Tenant in Tenant's name and Tenant hereby irrevocably appoints Landlord as its attorney in fact for that purpose.~~

**SURRENDER OF PREMISES**

18 (a) On the last day or sooner termination of the Lease term, Tenant shall quit and surrender the premises, broom clean, in good condition and repair (reasonable wear and tear, and damage by fire excepted), together with alterations, additions and improvements that may have been made in, to, or on the premises, except movable furniture or unattached movable trade fixtures, with the exception of carpeting, light fixtures, and, at Landlord's election, the sign box, put in at Tenant's expense. On or before the end of the Lease term, Tenant shall remove all its property from the premises and all property not removed shall be deemed abandoned by Tenant (but nothing herein contained shall be deemed to eliminate the right of Landlord to have Tenant restore the premises and remove any alterations, fixtures, equipment, etc. all at Tenant's sole cost and expense). If the premises are not surrendered at the end of the Lease term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in surrendering the premises, including, without limitation, any claims made by any succeeding Tenant founded on the delay.

(b) If Tenant should remain in possession of the premises after the expiration of the Lease term, then in addition to the indemnification of Landlord by Tenant required in subparagraph (a) of this Section, the Tenant holding over shall be deemed to be a Tenant from month-to-month only, upon the same terms and conditions as specified in this Lease, unless different terms and conditions are imposed by Landlord prior to or at any time from time to time after the expiration of this Lease and further provided that the rental for such period shall be an amount equal to ~~60%~~ the minimum and percentage rent for the last year of the expired term, but Tenant shall nevertheless be considered a Tenant from month-to-month only.

unless Tenant and Landlord are conducting good faith negotiations for a renewal of this Lease,

one and one-half (1½) times

**EVENTS OF TERMINATION**

19 (a) The Tenant shall be deemed to be in default under this Lease if:  
(i) Tenant shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;  
(ii) Tenant shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization for relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;  
(iii) Tenant shall take any corporate action to authorize any of the actions set forth above in subparagraph (i) or (ii), or  
(iv) Any case, proceeding or other action against the Tenant shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property and such case, proceeding or other action (1) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (2) remains undismissed for a period of forty-five (45) days.

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(b) If tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq., to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Tenant, then notice of such proposed assignment, setting forth (i) the name and address of such person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such person's future performance under the Lease, including, without limitation, the assurance referred to in section 365 (b) (3) of the Bankruptcy Code, shall be given to Landlord by the Tenant no later than twenty (20) days after receipt by the Tenant but in no event later than ten (10) days prior to the date that the Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease.

(c) If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq., any and all monies or other considerations payable or otherwise delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of the Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to the Landlord.

(d) Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

(e) Nothing contained in this Section shall, in any way, constitute a waiver of the provisions of this Lease relating to assignment. Tenant shall not, by virtue of this Section, have any further rights relating to assignment other than those granted in the Bankruptcy Code, 11 U.S.C. §101 et seq.

(f) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of section 502(b) (7) of the Bankruptcy Code, 11 U.S.C. §502 (b) (7).

(g) Landlord reserves the right in connection with any assignment of this lease to contest the assignment if in Landlord's reasonable judgment the permitted use thereunder is not compatible with the tenant mix in the Shopping Center.

(h) The term "Tenant" as used in this lease includes the Tenant named on page 1 of this agreement and also any trustee, debtor in possession, receiver, custodian or other similar officer.

**WAIVER** 20. No waiver of any condition or legal right or remedy shall be implied by the failure of the Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by the Landlord, and no waiver by the Landlord in respect to one Tenant shall constitute a waiver in favor of any other Tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant or any other condition or covenant.

**PREMISES  
UNTENANTABLE**

21 (a) If the demised premises or the building in which they are located, or any portion of either thereof, shall be damaged during the term by fire or any other casualty insurable under the standard fire and extended coverage insurance policies, but are not wholly untenable, the Landlord shall repair and/or rebuild the same as promptly as possible provided that the proceeds from insurance policies are made available to Landlord. The Landlord shall not be required to repair or rebuild any of Tenant's trade fixtures and equipment required to be insured by Tenant under Section 13(c) hereof nor Tenant's exterior signs. Such repairs and/or replacements are to be made by Tenant. In such event the Lease shall not terminate but shall remain in full force and effect and a proportionate reduction in the fixed minimum monthly rental and the minimum gross sales base for percentage rent purposes shall be made for the time required to make such repairs, except (i) if the Tenant can use and occupy the demised premises without substantial inconvenience or (ii) if said repairs are delayed at the request of or by reason of any act on the part of the Tenant, which prevents or delays the repair of said premises by Landlord, there shall be no reduction in rental while said premises are being repaired, nor for any period of delay caused or requested by Tenant. Landlord's obligation to repair shall be subject to any delays from labor troubles, material shortages, insurance claim negotiations, or any other causes, whether similar or dissimilar to the foregoing, beyond Landlord's control.

(b) If the demised premises are rendered wholly untenable by fire or other causes or if the demised premises or the building in which they are located should be damaged or destroyed by fire or other casualty to the extent of fifty percent (50%) or more of the monetary value of either thereof, whether the demised premises themselves be damaged or not, or so that fifty percent (50%) or more of the floor space contained in either thereof shall be rendered untenable, then in any such event the Landlord may, at its option, terminate this Lease or elect to repair or rebuild the same. If, as a result of any damage either to the demised premises or to the building of which they are a part, the Landlord determines to demolish or rebuild the premises or the building of which they are a part, then in any such event the Landlord may also terminate this Lease. In any of the foregoing instances the Landlord shall notify the Tenant as to its election, within ninety (90) days after the casualty in question. If the Landlord elects to terminate this Lease, then the same shall terminate three (3) days after such notice is given and the Tenant shall immediately vacate the demised premises and surrender the same to the Landlord, paying rent to the time of said vacation and surrender, subject to an equitable abatement from the time of said damage. If the Landlord does not elect to terminate this Lease, the Landlord shall repair and/or rebuild the demised premises as promptly as possible, subject to any delay from causes beyond its reasonable control, and the term shall continue without interruption and this Lease shall remain in full force and effect, subject to equitable abatement in the fixed minimum monthly rental and the minimum gross sales base for percentage rent purposes from the time of said damage or destruction until said premises are repaired or restored. Nothing in this Section, however, shall be construed to abate or diminish the percentage rent. \*

(c) If any or all of the buildings or Common Areas comprising this Shopping Center are damaged by fire or other casualty or are taken by condemnation or appropriation to such an extent that the Center cannot, in the sole judgement of Landlord, be operated as an integrated Shopping Center, then the Landlord may cancel this Lease, although the within premises be not themselves damaged or appropriated. Written notice of said cancellation shall

Including, without limitation, the default of Landlord (beyond the same cure periods as set out for Tenant in Section 17(a))

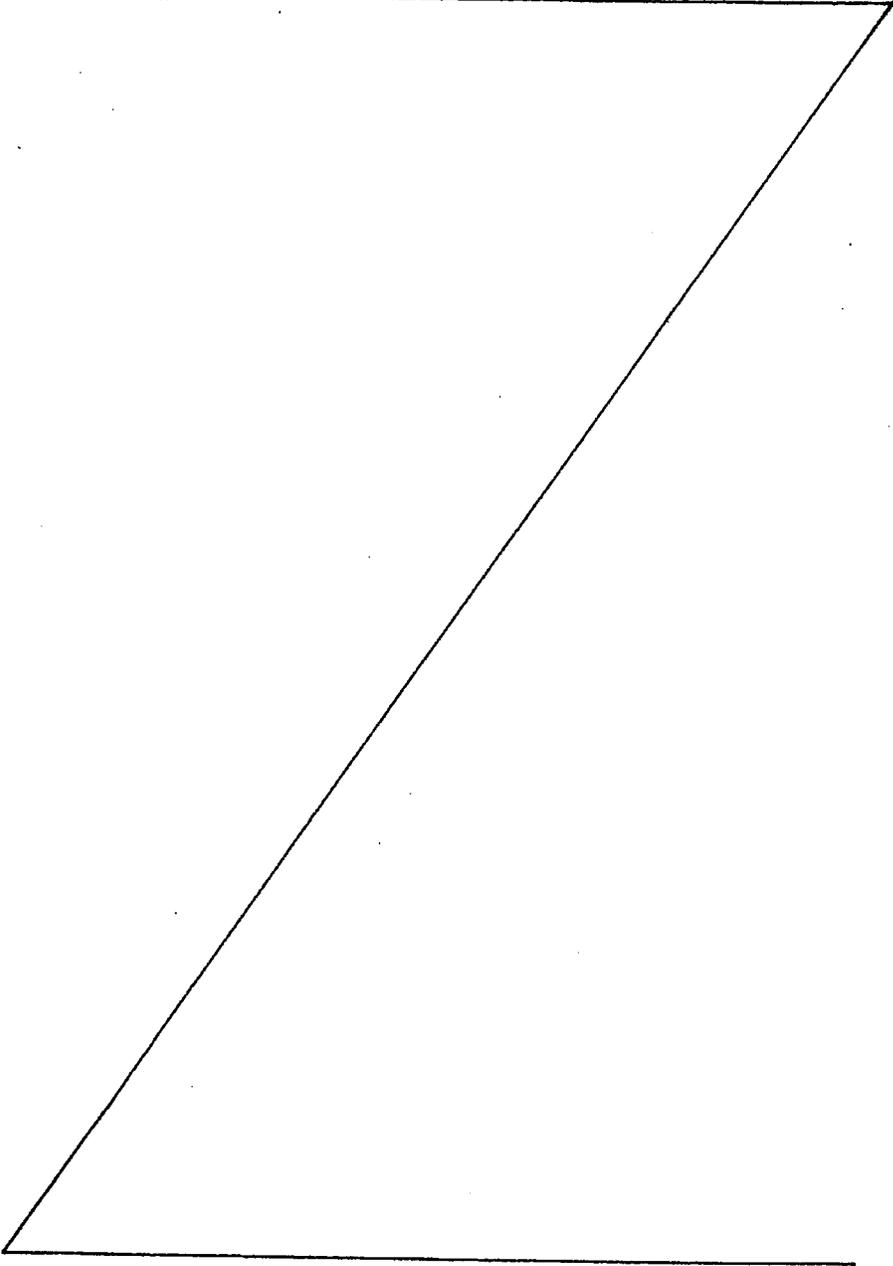
\*See Page 9(A).

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\*\*Landlord agrees it will not terminate this Lease in a discriminatory fashion.

Section 21(b) continued:

\*In the event Landlord has not completed or is not diligently pursuing completion of the repair and restoration work pursuant to the Section 21(b) within twelve (12) months of the date of the damage, subject however to unavoidable delays defined in Section 28 hereof, Tenant may terminate this Lease effective upon thirty (30) days written notice to Landlord provided said work is not completed within said thirty (30) day notice period. Landlord agrees to not terminate Tenant's Lease unless it also terminates leases of other similarly situated tenants.



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be given Tenant within ninety (90) days after such damage or after such appropriation becomes effective and Tenant shall immediately surrender possession, paying rent to the time of said surrender, subject to equitable abatement from the time of damage to the demised premises.

#### EMINENT DOMAIN

22. (a) If the fee of the entire demised premises and the land underlying the same is condemned or appropriated by any apparent competent authority, then and in that event the term of this Lease shall cease and terminate on the date possession is to be given to the condemning authority unless an earlier date is set by Landlord. If the fee of a substantial part but less than all of the demised premises and the land underlying the same is so condemned or appropriated, and if the remainder of the demised premises can reasonably be used for substantially the same purposes and in substantially the same manner, except for the amount of floor space, as the demised premises prior to such condemnation or appropriation, then this Lease shall continue in full force and effect without change, with respect to the remaining portion of the premises, except that the fixed minimum rent and the minimum gross sales base for percentage rent purposes shall be equitably adjusted. The foregoing notwithstanding, the Landlord at its option, may notify Tenant of its desire to terminate this Lease, such termination to be effective on date set by Landlord. If this Lease shall so continue, the Landlord shall, at its own cost and expense, with reasonable promptness, repair and/or rebuild the remaining portion of the demised premises; provided, however, that the Landlord shall in no event be required to expend for such work an amount in excess of the amount of money received by said Landlord for the taking of the portion of the demised premises condemned. The amount of money received by Landlord shall mean that part of the award in condemnation which is free and clear to Landlord of any demand by mortgagee, mortgagees or other secured parties for the value of the diminished fee. If, during the performance of any such work, the business of the Tenant is substantially interrupted, the fixed minimum rent and the minimum gross sales base for percentage rent purposes shall be equitably adjusted until such work is completed. If the part of the demised premises not condemned cannot be used for substantially the same purposes and in substantially the same manner, except for the amount of space, as the demised premises prior to such condemnation, the Landlord and the Tenant shall each have the option to terminate this Lease by written notice to the other within ninety (90) days after the date of taking. If any such notice be given, the Lease shall terminate at the end of the month in which occurs the thirtieth (30th) day after the giving of such notice. The foregoing notwithstanding, the Landlord, at its option may notify Tenant of its desire to terminate this Lease, such termination to be effective on date set by Landlord.

(b) In the event of any condemnation or taking as aforesaid, whether whole or partial, the Tenant shall not be entitled to any part of the award paid for such condemnation and Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right or claim to any part thereof; provided, however, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant, in Tenant's own right, on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in the loss or removal of Tenant's merchandise, furniture, fixtures and such leasehold improvements and equipment to which title has not vested in Landlord pursuant to the terms of this Lease.

(c) In the event of any termination of the Lease under this provision, the fixed minimum rental and the minimum gross sales base for percentage rent purposes shall be prorated to the date of vacation of the premises.

(d) Tenant agrees to promptly execute any and all instruments as may be required to effectuate the provisions of this Section.

#### SUBORDINATION

23. This Lease is subject and subordinate to any mortgages, deeds of trust, deeds to secure debt, ground rents and to all renewals, modifications, consolidations, replacements and extensions of any of the foregoing or of substitutions therefor or any other forms or methods of financing or refinancing which may now or hereafter affect the real property or leasehold estates of which the demised premises form a part whether now in use or not and any instruments executed for said purposes or hereafter executed by the owners of the fee or leasehold, if Landlord is not the owner of the fee. Tenant agrees upon demand to execute, acknowledge and deliver to the owners of the fee or leasehold estate, without expense to them, any instruments that may be necessary or proper to confirm this subordination of this Lease and of all of the rights herein contained to the lien or liens created by any such instruments. If the Tenant shall fail at any time to execute and deliver any such subordination instruments upon request, the mortgagors in any such new mortgage or mortgages or the obligors in any form of refinancing as provided above, in addition to any other remedies available to them in consequence of said default may execute, acknowledge, and deliver such subordination instruments as the attorney-in-fact of the Tenant and in the Tenant's name, place and stead; said Tenant hereby makes constitutes and irrevocably appoints said mortgagors or obligors as its attorney-in-fact for that purpose. It is further agreed that any secured lender as aforesaid may, at its option, elect to make this Lease superior to its mortgage, deed to secure debt, or other instrument referred to herein, by written notice thereof to the Tenant. No such subordination provided for herein shall be valid without the consent of all prior lien owners, if there be any.

Upon request of Tenant, Landlord agrees to request of any mortgagee that it enter into a Subordination Non-Disturbance and Attornment Agreement with Tenant, Tenant agrees to execute said agreement in the form required by such mortgagee.

#### TENANT NOT TO SUBLET OR ASSIGN

24. (a) The Tenant shall not have the right at any time or times to sublet any part or parts, or the whole of the demised premises without the prior written consent of the Landlord. The Tenant shall not have the right to sell, assign, transfer or otherwise dispose of this Lease or any interest therein by voluntary or involuntary act or deed, whether by testate or intestate succession or by merger, consolidation or reorganization, or by any other method or means, voluntary or involuntary, and whether similar or dissimilar to the foregoing, or to mortgage, pledge or otherwise encumber this Lease or any interest therein or to grant concessions or licenses with respect to the same or the occupancy of any part or parts, or the whole of the demised premises, or to suffer or permit the use or occupancy by any other person (including, but not restricted to, any corporation into or with which the Tenant may merge or which may result from the consolidation of the Tenant with any other corporation) of the whole or any part or parts of the demised premises at any time during the demised term, without the Landlord's prior written consent in each of the foregoing cases. If the Tenant violates the provisions of this Section, the Landlord may accept from any assignee, sublessee or anyone who claims a right to the interest of the Tenant under this Lease or who occupies any part or parts or the whole of the demised premises the payment of rent and/or the performance of any of the other obligations of the Tenant under this Lease, but acceptance shall not be deemed to be a waiver by

the Landlord of the breach by the Tenant of the provisions of this paragraph, nor a recognition by the Landlord that any such assignee, sublessee, claimant or occupant has succeeded to the rights of the Tenant hereunder, nor a release by the Landlord of the Tenant from further performance by the Tenant of the covenants on the Tenant's part to be performed under this Lease; provided, however, that the net amount of rent collected from any such assignee, sublessee, claimant or occupant shall be applied by the Landlord to the rent to be paid hereunder. If this Lease be assigned or transferred in any manner whatsoever, such assignment or transfer shall be upon and subject to all of the above provisions and conditions contained in this Lease and, notwithstanding any consent by the Landlord to any such assignment or transfer or any subletting by the Tenant, the Tenant and Guarantor, if any, shall continue to be and remain liable thereunder, and agree that the Landlord may enforce its rights directly against the Guarantor and Tenant in any proceeding thereafter commenced by the Landlord against the assignee and do further consent and agree to the jurisdiction of the court in which the Landlord elects to commence the proceeding against the assignee. Any consent by the Landlord to any such assignment, transfer, subletting or other matter or thing contained in this Section shall not in any way be construed to relieve the Tenant from obtaining the prior consent of the Landlord to any other of future such assignment, transfer, subletting, matter or thing.

(b) Landlord's consent to any assignment or any encumbrance of this Lease or to any subletting or license may be given or withheld, at its sole discretion.

(c) See Page 11 (A)

#### ACCESS TO PREMISES

25 (a) The Landlord shall have the right to install and maintain in column lines, floors and/or ceilings in the demised premises all water, drain, gas, heating pipes and fixtures and electrical wiring and all other appliances necessary for the operation of the balance of the building of which these premises are a part and shall have access to the premises at all reasonable times and in case of emergency at any time for the purpose of examining the same or of making such repairs or changes thereto or to the pipes, wires, fixtures and appliances referred to above as Landlord may deem necessary. The Tenant agrees that it will not install any equipment which will exceed the capacity of the utility lines leading into the premises or the building and that if any equipment so installed shall require additional utility facilities to be brought into the premises that they shall be installed at Tenant's expense. Such additional utility facilities shall become the property of the Landlord pursuant to the provisions of Section 9 of this Lease. Landlord shall have access during the last six (6) months of the term of this Lease for the purpose of exhibiting said premises and putting up the usual notice "To Rent," which notice shall not be removed, obliterated or hidden by Tenant.

Upon reasonable notice,

(b) Landlord shall have access to the demised premises during the entire term of this Lease, at all reasonable hours for the purpose of exhibiting the premises to any prospective purchaser or mortgagee.

In the event of an emergency, if Tenant shall not be personally present to permit an entry into said premises when an entry therein shall be permissible, Landlord may enter the same by use of force without rendering Landlord responsible therefor and without in any manner affecting the obligations of this Lease.

#### ADJACENT EXCAVATION, SHORING

26 (a) In the event that an excavation shall be made for building or other purposes upon land adjacent to the demised premises, or shall be contemplated to be made, Tenant shall afford to the person or persons causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person or persons shall deem to be necessary to preserve the wall or walls, structure or structures of the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Landlord, diminution or abatement of rent.

(b) In the event of such excavation the Tenant shall permit the Landlord or the person making said excavation to do any and all things required of an owner under any statute or ordinance then in effect in connection with said excavation.

#### COMPLIANCES WITH LAWS, ORDINANCES AND REGULATIONS

27 The Tenant shall promptly comply with all present and future laws and ordinances and all orders, rules and regulations of all federal, state, county, municipal and other governmental authorities having any jurisdiction over the premises and with any direction or recommendation of any public officer or officers, pursuant to law, and of any insurance company carrying any insurance on the demised premises and the Board of Fire Underwriters and any other board or organization exercising similar functions, affecting the demised premises, and the cleanliness, safety, use and occupation thereof, whether said duty is imposed upon the Landlord or Tenant. Without limiting the foregoing, the Tenant agrees to furnish an adequate number of fire extinguishers of any type and size as required by any law or recommended by any insurance carrier, underwriter or fire inspection bureau, and Tenant shall keep the said extinguishers in good operating condition at all times. If the Landlord shall be required by any lawful authority to alter, or improve any part of the said building, compliance with such lawful authority shall not in any way affect the obligation or covenants of the Tenant and the Tenant hereby expressly waives any and all claims for damages or for abatement of rent.

(b) See attached Page 11 (A).

#### UNAVOIDABLE DELAYS

28 In the event that there shall occur, during the demised term, or prior to the commencement thereof, any (i) strike(s), lockout(s) or labor disputes; (ii) inability to obtain labor or materials, or reasonable substitutes therefor; or (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion, riot, fire or other casualty, or other conditions similar to those enumerated in this item (iii) beyond the reasonable control of the party obligated to perform, and if the Landlord or the Tenant shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under the Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent occasioned by such event, if any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time and such named date shall be deemed to be extended or delayed, as the case may be, for a period equal to the period of the delay occasioned by any above-described event. Notwithstanding anything herein contained, however, the provisions of this Section shall not be applicable to the Tenant's obligations to pay rent under the provisions of Section 3 or its obligations to pay any other sums, monies, costs,

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Section 27(b) continued:

The Landlord shall promptly comply with all present and future laws and ordinances and all orders, rules and regulations of all federal, state, county, municipal and other governmental authorities having any jurisdiction over the common areas of the Shopping Center and with any direction or recommendation of any public officer or officers pursuant to law and of any insurance company carrying any insurance on the common areas of the Shopping Center and the Board of Fire Underwriters and any other board or organization exercising similar functions affecting the common areas of the Shopping Center and the cleanliness, safety, use and occupation thereof, whether said duty is imposed upon the Landlord or Tenant. Without limiting the foregoing, the Landlord agrees to furnish an adequate number of fire extinguishers of any type and size as required by any law or recommended by any insurance carrier, underwriter or fire inspection bureau and Landlord shall keep the said extinguishers in good operating condition at all times.

(c) Section 24 continued:

Notwithstanding anything contained herein to the contrary, Tenant shall be permitted to sublet this Lease to Darton LLC without Landlord's consent. Tenant agrees to give Landlord notice of such subletting within ten (10) days of its effective date. Tenant shall at all times remain responsible for the payment of rent and all other terms, covenants and conditions hereunder and shall be joined in any suit to enforce this Lease unless expressly released by Landlord.

charges or expenses required to be paid by the Tenant hereunder.

**BUSINESS OPERATION**

29. (a) Tenant covenants to, and it is of the essence of this Lease, that Tenant shall open for business within the time limited by Section 2, and shall, continuously and uninterruptedly during the term of this Lease and renewal, if renewed daily, during all usual business hours in said Shopping Center, keep open, occupy and use the premises for the purposes hereinabove set forth, except when the premises may be untenable by reason of fire or other casualty. Tenant further agrees that in the operation of its store in the premises it will at all times carry therein a substantial, full and complete stock of seasonable merchandise offered for sale at competitive prices and will maintain adequate equipment and personnel for the efficient service of its customers, and in general employ its best judgment, efforts and abilities to operate said store in the manner calculated to produce the maximum volume of profitable sales obtainable. Tenant further agrees to keep its store open for business on the same Sundays and nights and during the same Sunday and night hours that any or all department stores in this Shopping Center are open for business, and such additional hours as may be determined by the Merchants Association and/or Shopping Center owners and managers. The Tenant shall keep the show windows and signs of said premises fully lighted during the business hours of the Shopping Center.

(b) The Tenant recognizes that it is to the mutual advantage of the Tenant and all other occupants that the Shopping Center acquire and maintain a reputation as a desirable place to shop. The Tenant accordingly agrees that the Landlord shall have the right to prohibit the continued use by Tenant of any unethical or unfair method of business operation and/or of any method, type or medium of advertising (whether circulated within or outside the Shopping Center), and/or of any method or type of interior display or show window display (including, without limitation, intensity of illumination of signs, show windows, store fronts, lighting fixtures, etc.). If, in the Landlord's opinion, the continued use thereof would tend to impair the reputation of the Shopping Center as a desirable place to shop or is otherwise out of harmony with the general character thereof or constitutes a nuisance to or a menace to, or unduly interferes with the business of, or is otherwise objectionable to, the Landlord or any other occupant, and upon notice thereof from the Landlord, the Tenant shall forthwith refrain from and/or discontinue such activities so prohibited by the Landlord.

(c) The parties hereto covenant and agree that because of the difficulty or impossibility of determining the damages to the Landlord, by way of loss anticipated percentage rent from the Tenant herein or other merchants in the Shopping Center or by way of loss of value in the property because of bad publicity or appearance by Tenant's actions, or should the Tenant at any time during the term hereof vacate the demised premises, or cease operating its store therein as provided for above, except when the premises may be untenable by reason of fire or other casualty, the minimum guaranteed rent provided to be paid shall be increased to the highest total annual rental paid in any preceding Lease year. Said increased minimum rent shall be paid in advance for each month or fraction thereof during which said store is not continuously operated as provided above.

or except when the Landlord is in default hereunder (beyond the same cure periods as set out for Tenant in Section 17(a))

years

average

**ROOF PROHIBITIONS AND REPAIRS**

30. The Tenant, its agents, employees and/or contractors shall not erect, construct, alter or move anything on the roof or do any other thing on the roof without the written authorization of the Landlord including, without limitation, the erection of a "T.V. antenna," evaporative condenser or water tower. The Tenant shall be liable for any and all damage to the roof as a result of any work it performs on the roof notwithstanding the written approval of Landlord.

Exterior

**COMMON AREAS**

31. (a) Common areas and facilities (hereinafter "Common Area") furnished by Landlord shall include parking areas, access driveways, walks, ~~with the exception of the exterior walls, roof, and other areas~~ and such other areas and facilities as may be furnished by Landlord and designated for the benefit of the Tenants in the Shopping Center, all of which areas and facilities shall be subject to exclusive control and management by Landlord. Landlord shall have the right from time to time to establish, modify and enforce all reasonable rules and regulations in respect to such areas and facilities and use thereof.

(b) All of such areas and facilities and the Shopping Center shall be operated and maintained by Landlord in a manner deemed reasonable and appropriate by Landlord for the best interest of Tenants in the Shopping Center. Tenant shall pay to Landlord as additional rent a portion (as determined pursuant to subparagraph (c) hereof) of each year's operating cost of the Shopping Center, which said operating cost shall include but without limitation, the cost incurred for operating, managing, equipping, gardening and landscaping, repaving, replacing and maintaining all parking facilities, ~~repainting, rental, illumination and maintenance of signs and equipment, lighting, utilities serving the common areas of the Shopping Center, water and sewer charges, sanitary control, removal of barriers, ice, snow, trash, rubbish, garbage and other refuse, heating, ventilating and air conditioning of the common areas, depreciation of machinery and equipment used in such maintenance~~ (in lieu of depreciation on machinery and equipment, Landlord may lease such machinery and equipment in which event the lease rental shall not exceed the rental which is normally charged by equipment lessors), repair and/or replacement of on-site water lines, sanitary sewer lines and storm lines serving the property, repair and replacement of ~~escalators~~ and elevators, and the cost of personnel to administrate, maintain, supervise, implement policing and regulating traffic in such areas including, but not limited to, payroll, payroll taxes and insurance of all personnel, insurance required to be carried by Landlord as set forth in Section 13 hereof and other insurance (including all insurance, hazard, rent and otherwise, carried by the Landlord on all structures on the Shopping Center), operation of loudspeakers and any other equipment supplying music to the Common Areas. Common Area charges shall include a charge for general administrative expenses equal to 15% of the total cost of operating and maintaining the common areas.

exterior escalators

(c) Tenant agrees that the portion of the operating cost payable by Tenant shall be determined as follows:

(i) Each calendar year (January-December inclusive) within the term of this Lease shall be deemed a maintenance year.

(ii) Prior to the termination of each maintenance year, the Landlord shall prepare estimates of the operating costs of the exterior areas of the Shopping Center and the operating cost of the enclosed mall for the next maintenance year.

The cost of maintenance of the exterior areas of the Shopping Center shall be shared by the Shopping Center tenants on the following basis:

The tenants shall pay to the Landlord a pro rata share of the exterior Shopping Center maintenance charge (less any contribution to said costs made by the department store or stores and Theater(s)) which shall equal the product of said maintenance charge and a fraction the numerator of which shall be its respective floor area and the denominator of which shall be the total number of square feet of leased area of all tenants in the Shopping Center exclusive of department stores and Theater(s):

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85% but, in no event shall said denominator be less than 100% of the square footage of the gross leasable area of the Shopping Center (exclusive of department stores and theater(s)). Such floor area shall be adjusted from time to time by reason of any additions thereto or subtractions therefrom at periodic intervals of not less than thirty (30) days from such change.

~~The cost of maintenance of the enclosed mall shall be as follows:~~  
(mall stores being defined as those having an entrance to the enclosed mall) as follows:  
The Tenants shall pay to the Landlord a pro rata share of the mall maintenance charge which shall equal the product of the mall maintenance charge (less any contributions to said costs made by the department store or stores and theater(s)) and a fraction, the numerator of which shall be its respective floor area, and the denominator of which shall be the total gross leasable area of all mall stores, exclusive of department stores and theater(s) (but in no event shall said denominator be less than 80% of the square footage of the gross leasable area of the Shopping Center exclusive of department stores and theater(s)). Such floor area shall be adjusted from time to time by reason of any additions thereto or subtractions therefrom at periodic intervals of not less than thirty (30) days from such change.

For purposes of this section, floor area shall not include mechanical equipment rooms, penthouses, rear access corridors to Tenant's demised premises, delivery service and fire exit corridors, utility vaults, the manager's office, the security office, maintenance equipment storage areas or the Common Area in the ~~enclosed mall~~ Shopping Center.

(iii) Tenant shall pay the amount so determined as additional rent in equal monthly installments beginning January 1 of each maintenance year.

(iv) Upon the termination of each maintenance year, Landlord shall determine the actual operating cost for that year. To the extent that the actual cost exceeds the estimate, Tenant shall pay on demand its proportionate share of said excess. Should the actual cost be less than the estimate, Landlord shall return the overpayment to the Tenant.

(v) In the initial year of this Lease, Tenant's share of operating cost shall be based on the estimate for the entire maintenance year in which the lease term commences. Tenant's share of operating cost shall be determined pursuant to the provisions of subparagraph (c) of this paragraph and payment shall be made in equal monthly installments beginning with the month during which the term of this Lease commences regardless of the day of said month. The provisions of subparagraph (c)(iv) of this paragraph shall control in the event the actual operating cost for the maintenance year in which this Lease commences is greater or less than estimated.

(vi) In the event this Lease shall terminate on a date other than the end of a maintenance year, Tenant's share of the operating cost shall be based on the estimate for the entire year in which this Lease terminates, and shall be computed pursuant to subparagraph (c)(i) of this paragraph. Tenant shall pay the amount so determined monthly in equal installments to and including the month in which this Lease terminates regardless of the day on which this Lease terminates. The provisions of subparagraph (c)(iv) of this paragraph shall control in the event the actual operating cost for the maintenance year during which this Lease terminates is greater or less than estimated.

**MARKETING FUND AND TENANT ADVERTISING**

32 (a) ~~Landlord will promptly establish a Marketing Fund for the advertising and promotion of the Shopping Center and the public relations and related administrative expenses. Tenant agrees to pay to Landlord the Marketing Charge of \$2.00 per square foot of gross leasable area of the premises or the sum of \$2,000 per year, whichever is greater, subject, however, to annual adjustment determined by multiplying said Marketing Charge by a percentage (which in no event shall be less than 100%) found by dividing the Index as defined in Paragraph (d) below for the first month of the second and each subsequent Lease year by the Index for the calendar month in which the Marketing Fund is established. Such payment shall be made in equal monthly payments, in advance, on the first day of each month during the term hereof. Tenant also agrees to pay to Landlord in addition to the foregoing and within ten (10) days after demand therefor, an initial assessment in an amount equal to Tenant's contribution to the Marketing Fund for the first year for the purpose of defraying advertising, promotion and public relations expenses to be incurred by Landlord (or to reimburse Landlord for advancing funds therefor).~~

(b) Landlord agrees to contribute annually to said Marketing Fund not less than twenty-five (25) percent of the annual actual contributions of the other Tenants or occupants, including department stores, provided that Landlord shall be obligated to make such contribution only so long as the department stores also contribute to said Marketing Fund during any Lease year. Landlord may employ, at its option, a Promotion Director to assist in the advertising and promotion of the Shopping Center. Such Promotion Director shall be under the exclusive control and supervision of Landlord and Landlord shall be reimbursed by the Marketing Fund for reasonable fees and compensation paid by Landlord to such Promotion Director. In lieu and instead of the Marketing Fund, Landlord shall have the right and option to form a Merchants Association and in such case, Tenant shall become a member of the Merchants Association (as soon as the same has been formed) and thereafter remain a member in good standing of said Association. Landlord agrees to promptly pay to said Association Tenant's Marketing Charge and/or the initial assessment, as and when actually paid to Landlord by Tenant.

(c) Tenant further agrees that during each lease year during the term herein, or any extension thereof, it will spend a minimum amount equal to not less than ~~three (3%)~~ percent of its gross sales from the demised premises advertising its business in the Shopping Center through newspapers, radio, T V or other media available in the regional marketing area served by the Shopping Center. Within thirty (30) days at the end of each Lease year, Tenant shall submit to Landlord an itemized statement detailing said expenditures.

(d) ~~The Index is defined to mean the higher of the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or the Consumer Price Index for All Urban Consumers (CPI-U) of the United States Department of Labor's Bureau of Labor Statistics, in effect and generally published at the time the computation is to be made. If the above price indices shall no longer be published, then another price index generally recognized as authoritative shall be substituted by agreement of the parties.~~

(e) ~~Tenant agrees to participate at its cost and expense in at least an (6) major media promotions per year as sponsored by the Merchants Association and/or through the Marketing Fund.~~

Five Thousand Dollars (\$5,000.00) per year

, billboards, internal promotions

**TAXES**

33(a) Tenant shall in all instances, pay as additional rent a portion of all Real Estate Taxes and/or a portion of a payment in lieu of Taxes (PILOT) (hereinafter Taxes) which Taxes shall include but not be limited to real estate taxes extraordinary and/or special assessments (and all costs and fees incurred by Landlord in contesting the assessments) which may be levied, assessed or agreed to with or by apparent lawful taxing authority against the Land, buildings and all other improvements in that part of the Shopping Center owned by or under Lease to the Landlord, its successors and assigns. Such portion shall be determined as follows: the Tenant shall pay that portion of such Taxes (less any contribution to said Taxes made by any department store(s) and theater(s)) as shall be equal to the product obtained by multiplying said Taxes levied in each calendar year by a fraction the numerator of which shall be the square foot area of the demised premises and the denominator, the total number of square feet of leased area of all tenants in the Shopping Center (exclusive of department stores and theater(s)) but, in no event, shall said denominator be less than 80% of the square footage of the gross leasable area of the Shopping Center (exclusive of department stores and theater(s)). Such floor area shall be adjusted from time to time by reason of any additions thereto or subtractions therefrom at periodic intervals of not less than thirty (30) days from such change. A tax bill or a PILOT bill or agreement submitted to Tenant shall be conclusive evidence of the amount of Taxes assessed or levied against the Shopping Center. On or about the first of each calendar year, Landlord shall prepare an estimate of the anticipated Taxes for the ensuing year and Tenant shall pay the amount so determined as additional rent in equal

85%

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monthly installments commencing January 1 of each calendar year. Upon the termination of each calendar year, Landlord shall determine the actual Taxes for said year. To the extent that the actual Taxes exceed the estimate, Tenant shall pay on demand its proportionate share of said Taxes. Should the actual cost be less than the estimate, Landlord shall return the overpayment to the Tenant. In the initial year of this Lease, Tenant's share of Taxes shall be prorated based on the estimate for the entire calendar year in which the Lease term commences. Tenant's share of Tax cost shall be determined pursuant to the provisions of this paragraph and payment shall be made in equal monthly installments beginning with the month during which the term of this Lease commences. The provisions of the paragraph relating to overpayment shall control in the event the actual Taxes for the calendar year in which the Lease commences is greater or less than estimated. In the event this Lease shall terminate on a date other than the end of a calendar year, Tenant's share of the Taxes shall be prorated based on the estimate for the entire calendar year in which this Lease terminates and shall be computed pursuant to the provisions of this paragraph. Tenant shall pay the amount so determined monthly in equal installments to and including the month in which this Lease terminates. The provisions of this paragraph shall control in the event the actual Taxes for the calendar year during which this Lease terminates is greater or less than estimated, prorated to the end of the term.

(b) Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed and which become payable during the Lease term upon leasehold improvements, fixtures, furniture, appliances and personal property installed or located in or on the premises. If any such taxes, assessments, license fees, or public charges are not levied, assessed or imposed separately upon such property, a fair and equitable allocation of such taxes, assessments, license fees, or public charges shall be made between such property and all other property included in the same tax assessment or other bill.

(c) If at any time during the term of this Lease, or any extensions or renewals thereof, the methods of taxation prevailing at the commencement hereof shall be altered so as to cause the whole or any part of such taxes, assessments or levies, impositions or charges now levied, or hereafter assessed or imposed on, real estate and the buildings and improvements thereon to be levied, assessed and imposed, in whole or in part, as a capital levy or otherwise, on the rents received therefrom, or if as a result of such alteration any tax, assessment, levy, imposition or charge, or any part thereof, shall be measured by or based, in whole or in part as capital levy or otherwise, on the rents received therefrom, or if as a result of such alteration any tax, assessment, levy, imposition or charge, or any part thereof, shall be measured by or based, in whole or in part, upon the premises and shall be imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof, so measured or based, shall be obligations of the Tenant under this Lease to the extent that both (a) any of the foregoing shall be in substitution for ordinary real estate taxes or assessments as now levied and (b) such obligations would be payable if the premises and the buildings and improvements thereon were the only property of Landlord subject to such obligations.

(d) Tenant further agrees to and shall pay to Landlord, before any fine, penalty, interest or cost is added thereto for the nonpayment thereof, any tax that may be levied, assessed or imposed by way of license or otherwise upon the rent reserved therein, and/or this Lease and/or the demised premises, including Tenant's pro rata shares of special ad valorem levies, and/or service charge, anti-pollution, sewer or water charges by any governmental or quasi-governmental authority acting under any present or future law, statute, ordinance or the like.

(e) Landlord shall be under no obligation to contest any assessment of any taxing authority under this paragraph, but in the event the Landlord, at its option, elects to contest any assessment of any taxing authority then the costs incurred in contesting said assessment shall be paid by the Tenant on a pro rata basis as provided herein. Payment shall be made within ten (10) days of the rendering of an invoice by the Landlord. Payment required to be made hereunder shall be considered additional rent.

(f) Tenant shall not be required to pay any income, estate or gift tax levied against Landlord.

#### PROOF OF LEASE

34. The Tenant agrees that at any time and from time to time upon ten (10) days prior written request by Landlord, it will execute, acknowledge and deliver to the Landlord a statement in writing stating that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the Lease as so modified is in full force and effect), and the dates to which the rent and other charges have been paid. It being intended that any such statements delivered pursuant to this Section may be relied upon by any prospective purchaser of or any prospective holder of a mortgage or a deed of trust upon or any interest in the fee or any leasehold or by the mortgagee, beneficiary or grantee of any security or interest, or any assignee of any thereof or under any mortgage, deed of trust or conveyance for security purposes now or hereafter done or made with respect to the fee or any leasehold interest in the demised premises.

It is hereby understood and agreed that if Tenant shall fail to furnish the statement required to be furnished as hereinbefore provided, within fifteen (15) days after request therefor by Landlord then such failure on the part of the Tenant shall constitute an acknowledgment by Tenant that the Lease (as modified, if same has been modified) is in full force and effect and that there have been no prepayments of rent by Tenant. Should Landlord so elect it shall be deemed to be Tenant's attorney-in-fact for the purpose of executing any such statement if same has not been furnished by Tenant within said fifteen (15) day period.

#### QUIET ENJOYMENT

35. The Landlord covenants and agrees with the Tenant that upon the Tenant paying said rent and performing all the covenants and conditions aforesaid on the Tenant's part to be observed and performed, the Tenant shall and may peaceably and quietly have, hold and enjoy the premises hereby demised, for the term aforesaid without hindrance or molestation by Landlord, subject, however, to the terms of this Lease, mortgage and other instruments hereinbefore mentioned in Section 23.

#### RECORDING

36. Tenant agrees that it will not record this Lease or otherwise make it a matter of public record unless required in any litigation involving Tenant. If the Tenant or Landlord requests, the parties will enter into a short form Lease, describing the premises and the term of this Lease and including any other items necessary to permit the recording of such short form Lease. Such recording if requested by Tenant shall be at its cost and expense.

#### BILLS AND NOTICES

37. Unless otherwise expressly in this Lease provided, any notice or communication, which Landlord may desire

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or be required to give to Tenant including any notice of termination, shall be deemed sufficiently given or rendered if sent by Registered or Certified Mail, Return Receipt Requested to Tenant at the address as shown on the Lease or at such other address as the Tenant may designate in writing from time to time; or at the time when a copy of same is delivered personally to Tenant, ~~See agent, representative, or employee, or delivered in compliance with the laws of the state where the Shopping Center is located concerning substitute or abate service of process,~~ or the date when any such notice or communication is deposited in any post office or branch post office regularly maintained by the United States Postal Service, except for notice of change of address or revocation of a prior notice, which shall only be effective upon receipt. Any notice by Tenant to Landlord must be sent by Registered or Certified Mail, Return Receipt Requested, addressed to Landlord at the address as shown on the Lease or at such other address as the Landlord may designate in writing from time to time.

**MARGINAL TITLES** 38. The marginal titles are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**WAIVER OF SUBROGATION** 39. Landlord hereby releases Tenant, and Tenant hereby releases Landlord, except as to deductible amounts, to the extent of their respective fire, with extended coverage endorsement, insurance policies from all claims for loss or damage to the property of the other, whether or not caused by the act or negligence of the other. If, at any time, the insurance carrier of either party refuses to write (and if no other responsible insurance carrier will write) insurance policies which consent to or permit such release of liability, then such party shall notify the other party, and upon the giving of such notice, this Section 39 of Lease shall be void and of no effect.  
(b) See attached Page 15(A).  
(c) See attached Page 15(A).

**DELIVERY HOURS** 40. Landlord reserves the right to set reasonable rules and regulations with respect to deliveries to the demised premises. ~~No deliveries shall be made on Saturdays.~~

**BROKERS** 41. Landlord and Tenant warrant that it has not had any dealing with any realtor, broker, or agent, in connection with the negotiation of this Lease, and agree to pay and to hold the other party harmless from any cost, expense or liability for any compensation, commission, or charges claimed by any realtor, broker, or agent with whom the Landlord or Tenant has dealt.

**RULES** 42. The Landlord reserves the right to adopt and promulgate, from time to time, rules and regulations, and to amend and supplement the same, applicable to the occupancy of the building of which the demised premises form a part and to the parking space and common facilities hereinbefore referred to. Notice of such rules, regulations and amendments and supplements thereto, if any, shall be given to the Tenant.

**ENTIRE AGREEMENT** 43. It is understood and agreed by the parties hereto that this Lease shall constitute the only agreement between them relative to the demised premises and that no oral statements or no prior written matter extrinsic to this instrument shall have any force or effect. The Tenant agrees that it has signed this Lease fully aware of the condition of the premises and all other matters relative thereto and is not relying on any representations or agreements other than those contained in this Lease. This agreement shall not be modified except in writing, subscribed by both parties. The taking possession of the demised premises by the Tenant shall be conclusive evidence as against the Tenant that said premises and the buildings of which the same form a part were in good and satisfactory condition and fully completed in accordance with the terms of this lease at the time such possession was so taken.

**INTERPRETATION** 44. If more than one person, partnership or corporation or any combination of one or more of the same is set forth as Tenant herein, then the obligations imposed under this Lease upon the Tenant shall be joint and several. Any payment required to be made by the Tenant under the provisions of this Lease including the Exhibits hereto (in addition to the payments of rent provided in Section 3) shall be deemed to be additional rent hereunder. Similarly, all rents outstanding beyond thirty (30) days from due date under this Lease shall be due and payable by Tenant to the Landlord on demand with interest thereon from the date when the particular amount became payable under the provisions of this Lease to the date of payment thereof to the Landlord at the ~~maximum legal rate~~ allowable during the time the overdue payment or any portion thereof remains unpaid.

rate of prime plus one percent (1%) as then set by Chase Manhattan Bank of New York

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State where the demised premises is situated. The parties further agree, that for purposes of litigation arising between the parties, hereto that the venue for any action shall be laid in the County and State in which the Shopping Center is located or such other location as Landlord may determine.

**PROVISIONS BINDING, ETC.** 45. The conditions, covenants and agreements in this Lease contained to be kept and performed by the parties hereto shall be binding upon and inure to the benefit of said respective parties, their legal representatives, successors and assigns. This Section shall not be construed to permit any assignment or subletting, unless otherwise permitted in this Lease, without Landlord's consent. The term "Landlord" as used in this Lease means only the owner for the time being of the land and building (or the owner of a Lease of the building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said Lease, or in the event of a Lease of said building, the said Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said Tenant of the building, that the purchaser or tenant of the building as of the date of such purchase or lease has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

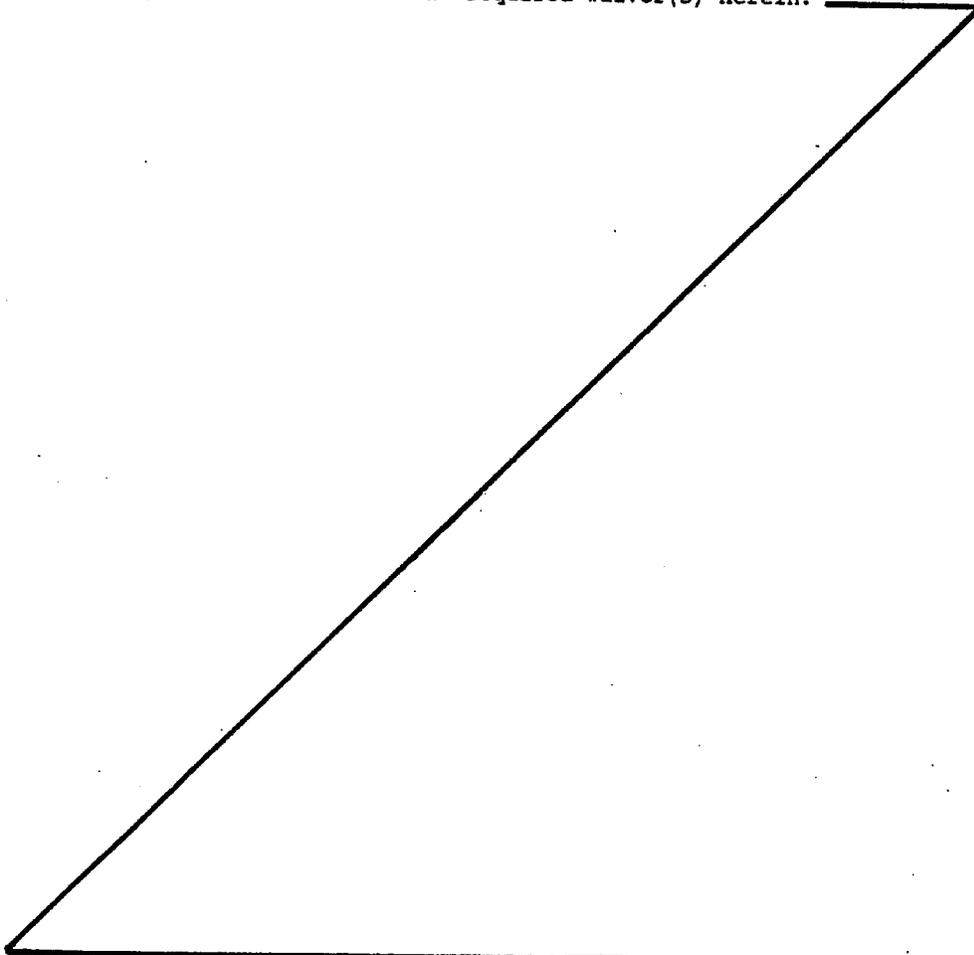
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Paragraph 39. WAIVER OF SUBROGATION (Page 15) (cont'd.)

(b) Tenant and each individual tenant or occupant of the Shopping Center, including all department stores and free standing tenants therein, hereby mutually release the other, and all parties claiming through, by or for either of them, to the extent of their respective fire insurance policies, with extended coverage endorsement(s) thereto, from any and all claims for loss or damage to any property of the other located in the Shopping Center whether such loss or damage was caused by the act, omission or negligence of the other party. If, at any time, the insurance carrier of any tenant herein refuses to write (and no other responsible carrier, with a minimum A+ rating by A.M. Best, will write) insurance policies which consent to or permit such release of liability, then such party shall notify Landlord and upon giving such notice, the provisions of this Section 39(b) shall be void and of no effect as to that tenant. This waiver shall only apply so long as such tenant and its insurance carrier keep this waiver in effect.

(c) Tenant's certificate(s) of insurance, as required hereunder and specifically at Section 13(d), shall be endorsed so as to provide evidence of the required waiver(s) herein.



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**LANDLORD'S CONSTRUCTION** 46. The Landlord will, in the construction of the demised premises unless otherwise noted herein, construct the building as designed by its architect in accordance with Exhibit 1 - Landlord's Construction.

**TENANT'S CONSTRUCTION** 47. The Tenant will perform the balance of the construction work necessary to prepare the premises for its use which work shall be as set forth in Exhibit 2 - Tenant's Construction and shall include all other items of work not specifically set out as Landlord's Work as set forth in Exhibit 1.

**SECURITY DEPOSIT** 48. Tenant has deposited with Landlord the sum of \$ - 0 - as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Landlord may at its option use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including but not limited to, any damages or deficiency in the re-security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**RIDER** 49. Any rider attached hereto and duly executed by initialing or signing by the Landlord and Tenant shall be deemed incorporated herein and made part hereof. In the event that any provision contained in said rider is inconsistent with the printed provisions of this Lease, the provision contained in said rider shall supersede said printed provision of the lease.

**FAILURE TO COMMENCE CONSTRUCTION** 50. It is mutually agreed that in the event that construction of the Shopping Center is not commenced within thirty-six (36) months from the date of execution of this Lease, either party may terminate this Lease at any time thereafter but prior to the commencement of construction by giving to the other party one hundred twenty (120) days written notice by Registered Mail. If notice of termination has been given to Landlord by Tenant, such termination shall not be effective if Landlord commences construction during said one hundred twenty (120) day period. If Landlord has not commenced construction within said one hundred twenty (120) day period, then this Lease shall terminate and thereupon there shall be no further liability or obligation upon either party by reason hereof. Such right of termination shall be the sole and exclusive remedy, either at law or in equity, available to the Tenant in the event of the Landlord's failure to commence construction within the time set forth herein and subsequent termination of this lease.

**CORPORATE TENANT** 51. If Tenant is 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 or persons executing this Lease on behalf of Tenant is an officer or are officers of such Tenant, and that he or they as such officers are duly authorized to execute, acknowledge and deliver this Lease to Landlord (a copy of a resolution to that effect to be supplied to Landlord upon request).

**DEPARTMENT STORE DEFINITION** 52. See attached Page 16(A).

**FINANCIAL STATEMENTS** 53. See attached Page 16(A).

**TENANT'S CONSTRUCTION** 54. See attached Page 16(A).

**REDUCTION OF PARKING SPACES** 55. See attached Page 16(A).

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DEPARTMENT STORE  
DEFINITION

52. For purposes of this Lease, a "department store" is defined as any Tenant which occupies single store premises of at least 50,000 square feet within the Shopping Mall.

FINANCIAL  
STATEMENTS

53. Upon Landlord's written request at any time and from time to time during the term of this Lease, Tenant and/or Guarantor, if any, shall promptly furnish Landlord with financial statements which accurately reflect such party's current financial position. Such financial statements shall be certified as true and correct by Tenant and/or Guarantor, if any, or by the chief financial officer thereof if Tenant and/or Guarantor is a corporation.

Section 54: Tenant's Construction

Tenant shall, prior to the commencement of this Lease, provide a grease interceptor in accordance with the specifications set forth on a proposal attached hereto as Exhibit 5. In addition, Tenant agrees to the following:

1. Maintain a service contract with Clean All Products, Inc. or similar company.
2. Obtain county approval for the use of the attached system.
3. In the event Landlord needs to repair and/or clean out the main sanitary sewer line from the demised premises and such repair or cleaning is due to grease buildup in said lines, Tenant agrees to pay for such repair or cleaning at its sole cost and expense.

Section 55: Reduction of Parking Spaces

Attached to this Lease as Exhibit C is a plan showing car parking spaces outlined in red which are located in the parking area proximate to the Leased Premises. The parties recognize that a significant diminution of the car parking spaces so delineated on Exhibit C would have an adverse impact on Tenant's business. Therefore, in the event that Landlord should alter said parking such that the car parking spaces outlined in red on Exhibit C shall be reduced by ten (10) or more spaces, Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to Landlord after six (6) months following such loss of parking spaces, unless within such six (6) month period Landlord shall have either replaced such lost parking spaces with alternative parking satisfactory to Tenant or, in the alternative, shall have made an arrangement satisfactory to Tenant to construct, at Landlord's expense, an entrance to the Leased Premises from the rear, so as to make useable for Tenant's customers the parking areas located behind the Leased Premises. If this Lease shall be terminated by Tenant pursuant to this Section, the provisions of the Lease relative to the rights of the parties upon termination shall control.

As of the date of this Lease, Landlord has no knowledge of any plans by the municipality to alter Tenant's parking.

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GREENELL ROAD

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EXISTING  
FOUR PLEX THEATER

EXISTING  
SCOTCH N'  
SIRLOIN

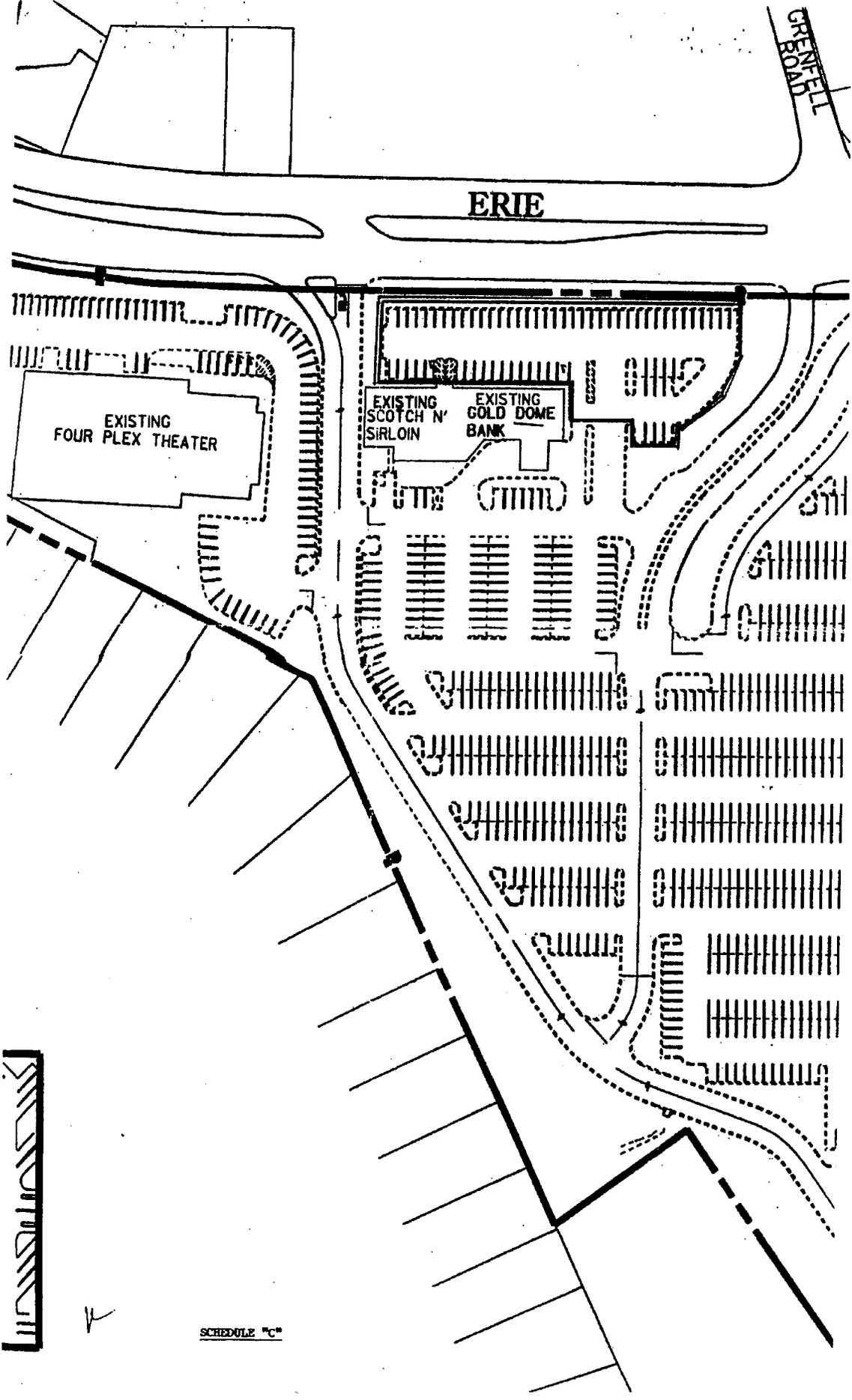
EXISTING  
GOLD DOME  
BANK

CALLERVILLE



K

SCHEDULE "C"



IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

SYRACUSE MALLS ASSOCIATES  
BY: SYRACUSE VENTURE ASSOCIATES  
GENERAL PARTNER  
BY: SHOPWEL ASSOCIATES  
GENERAL PARTNER  
BY: WILSHOP PROPERTY, INC.  
GENERAL PARTNER

WITNESSES:

*Kimberly J. Swigert*  
\_\_\_\_\_

1265 SCOTTSVILLE ROAD  
ROCHESTER, NEW YORK 14624  
LANDLORD

By: *[Signature]*  
*President*  
TITLE

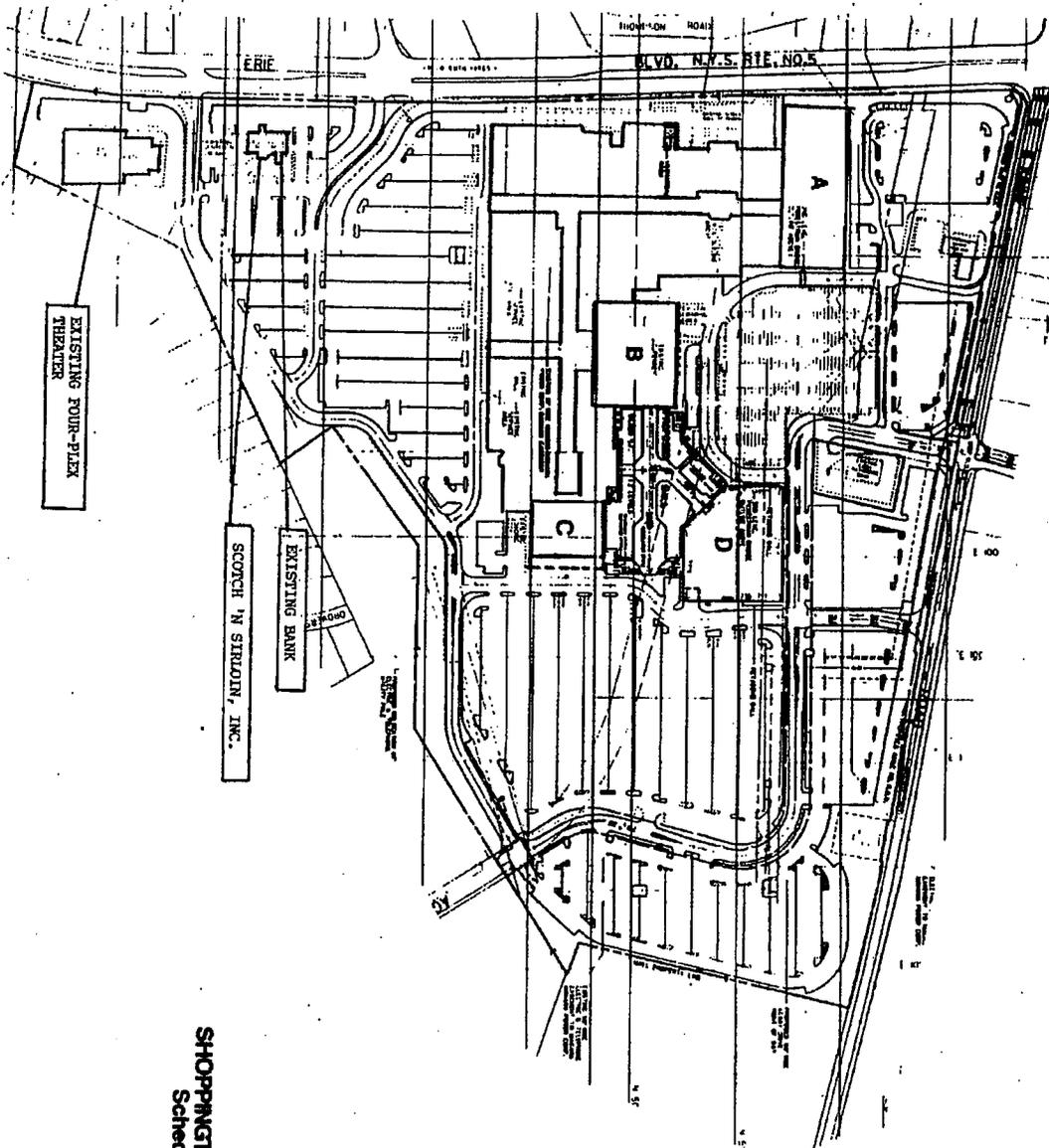
WITNESSES:

*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

SCOTCH 'N SIRLOIN, INC.  
~~SHOHJIA TOWN~~  
ONE MELBO AVENUE EXTENSION  
~~DEWITT~~ 13214  
FAVETTEVILLE, NEW YORK 13066

By: *[Signature]* - TENANT  
*SRC - TRS.*  
TITLE

INITIALS  
LANDLORD *[Initials]* TENANT *[Initials]*



**SHOPPINGTOWN MALL**  
Schedule A and B

THIS PLOT PLAN IS FOR THE SOLE PURPOSE OF DESIGNATING THE SIZE OF LESSEE'S STORE UNIT AND ITS APPROXIMATE LOCATION AND THE APPROXIMATE SIZE AND LOCATION OF PARKING AREAS. LESSOR RESERVES THE RIGHT TO RELOCATE OTHER STORE UNITS AND TO CHANGE THE SIZE AND NUMBER THEREOF AT ITS DISCRETION.

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 (K) LANDLORD (BT) TENANT

SCHEDULE C

CONSTRUCTION RULES AND REGULATIONS \*

1. Plans and specifications to be submitted for Landlord approval must be submitted within ten (10) days after the execution of the Lease by both parties. Along with said plans and specifications, Tenant is to advise Landlord as to the commencement and completion date of the proposed alterations. Commencement of the work to be pursued by Tenant and completion thereof is a material covenant of the Lease. Tenant is to commence construction and diligently pursue the same to completion so that the term shall commence as provided in Paragraph 2 of this Lease and so that Tenant shall comply with any and all construction or remodeling requirements contained in this Lease. In the event Tenant fails to commence and complete construction in accordance with this provision, Landlord at its own option, may terminate this Lease upon ten (10) days notice to Tenant.

2. At the time plans and specifications are submitted, also submit the design of the temporary storefront enclosure to be used while the store is under construction for Landlord's approval as provided in Exhibit 2 of the Lease. Said design shall include Tenant's name, type of business and anticipated opening date.

~~3. During construction the main entrance is to be closed. The storefront enclosure referred to above shall close off the entrance to the Hall so that there will be no traffic into the Hall by the workmen during construction.~~

~~4. All deliveries of material will be made through the delivery entrance only.~~

5. Tenant will be required to keep the Common Areas free of any debris. As a result of Tenant's failure to do so whereby the Landlord is required to do the necessary cleaning, Tenant will be charged directly for any costs incurred. The payment of said costs will be due within ten (10) days after the invoice is rendered by Landlord. Default in said payment will be treated in accordance with the provisions contained in Section 17 of the Lease.

\*Notwithstanding anything contained to the contrary in this Schedule, the provisions of this Section are for informational purposes and shall be applicable in the event Tenant performs any construction work on the Premises (i.e.: casualty or remodeling).

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EXHIBIT 2

TENANT'S CONSTRUCTION \*

1. Tenant has inspected the premises and accepts the same in an "as is" condition. Any work necessary to prepare the premises for the Tenant's use including but not limited to alterations, redecorating, modification of utilities, sprinkler systems if any, etc. is the Tenant's responsibility. All such work shall be in accordance with all the terms, covenants and conditions of this Lease and all work shall be completed in accordance with national, state and local codes and all authorities having jurisdiction.

2.a. Tenant shall provide temporary wood paneling storefront enclosure while store is under construction, the design of which shall be subject to the Landlord's approval.

3. All of Tenant's work must, before any work is started in the demised premises, receive the approval of Landlord. The Tenant shall submit for such approval detailed plans and specifications (except with respect to Tenant's trade fixtures and furnishings) for all of Tenant's work required to be performed pursuant to this Section and with respect to Tenant's trade fixtures and furnishings to the extent they will require mechanical or electrical installations or will in any way affect the exterior appearance of the building or its structural, mechanical or electrical components or the exterior appearance of the storefront of the demised premises. It is a requirement of this Lease that said plans must be approved by the Landlord which approval shall be at the sole discretion of the Landlord.

In order to obtain such approval of the Landlord for such work, all such plans and specifications therefor must comply with each of the following, and all terms, covenants and conditions of the Lease including any and all Schedules or Exhibits attached thereto:

(a) Comply with all applicable statutes, ordinances, regulations and codes and the requirements of any governmental regulatory body and deliver to Landlord appropriate certificates showing compliance with the foregoing. Landlord's approval of Tenant's drawings does not relieve Tenant of compliance with any of these requirements.

(b) Coordinate work schedule with the Manager of the Shopping Center.

(c) Comply with the general character of the Shopping Center.

(d) Comply with the standards of the National Board of Fire Underwriters (NBFU), applicable Rating Bureau, the National Electric Code (NEC), the American Gas Association (AGA) and the American Society of Heating and Air Conditioning Engineers (ASHAE), the Occupational Safety & Health Administration (OSHA), applicable State and City Building Codes and the requirements of all public utility companies serving the Shopping Center.

(e) All materials shall be new and be so specified.

(f) Tenant's work may be performed only by contractors or subcontractors approved in advance by the Landlord, but such approval shall not be unreasonably withheld.

(g) No wood or other combustible material shall be used above the ceiling nor shall such materials be used in concealed areas within the demised premises.

(h) No bare (unpainted or unfinished) walls or floors shall be visible to customers.

(i) Tenant shall furnish and install a complete heating and air conditioning system for the demised premises. Tenant's system shall be designed and installed in accordance with the design criteria included herein as Exhibit 3 - HVAC System Criteria. No Tenant's work as to heating and air conditioning is permitted to be done or contracted for without plans and specifications therefor having been approved by all governmental bodies having jurisdiction.

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~~\*Tenant shall construct hung ceilings at eleven (11) feet above finished floor, maximum, if a two (2) level mall and twelve (12) feet above finished floor, maximum, if a one (1) level mall.~~

4. The Tenant's contractors shall also be required in such contracts to provide insurance and performance bonds, if required by the Landlord, for protection of the Landlord, to the extent and in the amounts deemed appropriate by the Landlord. The Tenant shall file all applications, pay for all necessary permits and secure the certificates of occupancy if required.

5. If required by the use of the premises, Tenant's work shall include without limitation suitable grease traps and equipment to prevent grease from being transmitted into the sanitary drainage system. These traps shall be adequately sized and based on rated capabilities of dishwashers or other equipment producing grease. All grease traps shall be equipped with flow control valves. These traps shall be cleaned on a regular schedule which will prevent the grease from overflowing the trap and entering the sanitary system. Upon Tenant's failure to do so, Landlord shall perform this work at Tenant's expense. Tenant shall also provide a dry chemical extinguisher system on any stoves or range hoods.

6. Tenant shall provide storefront and signs as approved by Landlord. Landlord shall arrange for the installation and display of Tenant's name on the lighted store directories located within the Mall and on Tenant's rear service and/or service corridor door, all at Tenant's cost and expense.

\*Notwithstanding anything contained to the contrary in this Schedule, the provisions of this Section are for informational purposes and shall be applicable in the event Tenant performs any construction work on the Premises (i.e.: casualty or remodeling).

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EXHIBIT 3  
HVAC SYSTEM CRITERIA

The heating and air conditioning system including units, ducts and controls must be of sufficient size to heat and air condition the premises ~~without utilizing any portion of the heat and air conditioning in the Mall.~~ The design and installation of all heating, ventilating and air conditioning work shall be undertaken by Tenant and shall be subject to approval of the Landlord and must comply with the following:

1. The minimum standards of quality air conditioning and heating systems shall be controlled as follows:

(a) Complete plans and specifications of Tenant's system shall be submitted to the Landlord for examination and approval to insure adequacy of the design and feasibility of installation.

(b) All sales areas are to be air conditioned to assure a completely air conditioned project.

(c) Stores shall be fully air conditioned with a complete year round heating, ventilating and air conditioning system in accordance with good engineering practices for this type of operation.

three (3) (d) Minimum Tenant systems design shall be based on a lighting load of ~~five (5) watts per square foot~~ and a people load of ~~one (1) person per seventy-five (75) square feet of gross sales area~~ and shall provide for an <sup>actual</sup> seating capacity outside air supply of not less than 7.5 CFM per person. ~~A neutral condition shall be maintained between the Tenant space and the Mall proper.~~

Tenant systems shall be designed to maintain uniformly throughout the Tenant area the following minimum conditions: Summer - Outdoor Conditions - 92° Fahrenheit Dry Bulb/76° Fahrenheit Wet Bulb which is to give an Indoor Condition of 74° F.D.B. (50% Relative Humidity). During Winter the system shall be designed to maintain at Outdoor Condition of 0° Fahrenheit Dry Bulb (at "M" ASHRAE Wind Class) an Indoor Condition of 70° F.D.B.

In addition, all areas, including concealed spaces, containing sprinkler and plumbing lines are to maintain a temperature above 40° F.D.B.

(e) Tenant shall provide minimum ventilation and heating only in the following areas: toilet rooms (large public), stock spaces, receiving areas, electric closets, fan rooms, mechanical equipment rooms, etc.

(f) No air conditioning or heating shall be required in the rubbish rooms, however, ventilation shall be provided as required by Code.

(g) Tenant shall provide minimum exhaust ventilation only in the following areas in quantities not less than noted or in accordance with local codes having jurisdiction: toilet rooms (small interior) - 2 CFM per square foot.

(h) Ceiling diffusers or side wall double deflection grill as required for proper air distribution shall be provided for all enclosed areas.

(i) Tenant shall provide an indicator light next to their thermostat which will indicate whether or not the roof unit is in operation.

2. ~~In that event Landlord furnishes and installs a comprehensive energy control system which is intended to supplement and support the Landlord's overall "Energy Management Program" for this project, then Tenant shall be required to connect to said system.~~

The Landlord's energy control system will be arranged to automatically schedule the operation of Mall lighting and power systems as well as Mall and Tenant HVAC equipment. Landlord will submit to Tenant design criteria for its Energy Management System with the Lease Outline Drawings and Tenant Package or ~~as built~~ drawings, whichever applies.

3. If use of roof type units by Tenant is permitted by Landlord, they

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shall be on that part of the roof of the building of which the demised premises are a part, as designated by Landlord's Architect, and Tenant shall provide and install all necessary piping and other necessary appurtenance.

~~Tenants whose operation produces objectional odors, such as restaurants, hair salons, pet shops and the like, shall maintain ten percent (10%) negative air pressure with respect to the hall by providing make-up air equal to ninety percent (90%) exhaust air volume.~~

To the extent any of Tenant's equipment is to be located on roof, Tenant agrees to erect roof units in accordance with the requirements of Landlord's Architect, and Tenant further agrees to repair any and all damage to the roof and structure caused by hoisting, installation and the maintenance and/or servicing of such equipment; all of which shall be at the sole cost and expense of Tenant.

Roof structural framing changes necessary due to Tenant's equipment or systems, shall be made by the Tenant with all costs at the expense of the Tenant.

Tenant to furnish and install all curbs, supports, lintels, flashings, counterflashings, pipes, ducts, vent caps, air inlets, exhaust hoods, louvers, etc., as required for any equipment requiring openings through roof and/or exterior walls. Landlord shall have the right to inspect quality of the work and approve locations and, if found unsatisfactory, reject such.

Tenant and/or Tenant's contractors shall cooperate with Landlord's General Contractor and/or its Roofing Contractor for openings required by Tenant's equipment. All cutting, patching and restoring of roofing is to be done by Landlord's Roofing Contractor at Tenant's expense. All maintenance work and repair of damages to the roof and/or building due to Tenant's installations shall be at Tenant's cost and expense.

All work shall be in accordance with National, State and Local Codes and all authorities having jurisdiction.

Notwithstanding anything contained herein to the contrary, Tenant shall be permitted to use the existing HVAC system located at the premises provided it is in good working order. The provisions of the Exhibit are informational and shall be applicable in the event Tenant replaces or repairs the existing HVAC system.

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EXHIBIT 4

UTILITY SERVICES

Utility Services shall be furnished to individual Tenants as needed. Utility Services will be billed by Landlord to Tenant on a monthly or other regular basis. Landlord may estimate such periodic billings and confirm and/or adjust same on a less frequent basis. Common Area utility services Exterior shall be billed pro rata to individual tenants on the basis of the relationship Tenant's Gross Leasable Area has to the Gross Leased Area of all tenants in the enclosed mall (excluding the department stores and theaters), but in no event shall said denominator be less than ~~eighty percent (80%)~~ for the square footage of the Gross Leasable Area of the Shopping Center (excluding department stores and theaters). Charges for Utility Services, where appropriate, shall be as follows:

eighty-five percent (85%)

1. Domestic Cold Water. If domestic cold water is supplied by Landlord to Tenant, the charge shall be based on water meter readings, meter to be furnished and installed as described under Tenant's work. Charges shall be based upon the product of the amount of water used (1,000 gallons) and the charge for water (cost per 1,000 gallons) by the water authority.

2. Sanitary Sewer. Sanitary sewer charges will be based on the amount of water Tenant uses. Tenant sewer charges will be billed at the same rate as the percentage allocated to sewer charges on the water bill.

3. Natural Gas, if provided. All natural gas services and related charges shall be directly between Tenant and the local gas company.

Unless Tenant contracts directly with the local public utility,

4. Electricity. Tenant's share of the charges for electrical services will be determined by Landlord. The cost to Tenant for such electrical services shall not exceed the amount the Tenant would reasonably expect to be billed by the public utility for such services if the same were directly and separately metered to Tenant by such utility. If Tenant is a restaurant or other food vendor or, in Landlord's sole opinion, an unusually high consumer of electricity, Tenant shall be required to install, at its sole cost and expense, a checkmeter in the mall electrical distribution room, as per Landlord's specifications, and Tenant's electric charge shall be based on the actual metered consumption.

~~5. Common Area HVAC Charge. During the Lease Term, Tenant shall pay to Landlord, as additional rent, in equal monthly installments, in advance, on the first day of each calendar month, the Common Area HVAC Charge. The Common Area HVAC Charge shall be adjusted periodically based upon changes in Landlord's costs and expenses of operating, repairing, replacing and otherwise maintaining the heating, ventilating and air conditioning system serving the enclosed mall and other enclosed portions of the Common Areas including, but not limited to, changes in such costs and expenses arising out of: (a) the number of hours the enclosed mall and/or other enclosed portions of the Common Areas are open, (b) changes in the connected load, and (c) rate changes imposed by utility companies and fuel companies (including, but not limited to, fuel adjustment factor). Any increase or decrease in such charge shall be effective as of the date of any change in Landlord's costs and expenses and shall be retroactive to such date if necessary.~~

5. Landlord agrees to maintain the water lines serving the demised premises until such time that Tenant is no longer connected to the main Shopping Mall water line.

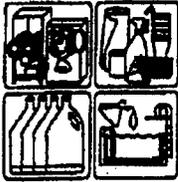
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# Clean All

838 69th Blvd. W. Syracuse, NY 13204  
PHONE (315) 478-9789 FAX (315) 478-3904

PRODUCTS INC.



March 09, 1995

Mr. Dar Dan Tiffany  
Scotch N Sirlain  
Shoppingtown Mall  
Syracuse, New York 13214

Dear Mr. Tiffany,

After reviewing the current kitchen waste water system at the Scotch and Sirlain Restaurant, Clean All has the following recommendation to offer:

- A) Installation of a High Temp Dishmachine with a trap connection.
- B) Installation of a Smith #8450 (or equivalent) grease interceptor.
- C) Installation of a Automatic <sup>Microorganisms</sup> ~~Drain-Enzyme~~ Dispensing Unit.

The installation of a high temperature dishmachine connected to the grease trap (interceptor) will provide a means to collect grease that is currently not being trapped within the system. With the additional volume of water entering the trap system and taking into account future projections in business, there is a need to upgrade the current grease trap system. Currently a 90lb. capacity, 30gpm trap is being used. We recommend a 150lb. capacity, 75GPM unit, this along with a monitored cleaning maintenance schedule, will ensure a very high rate of recovery. Lastly we propose that a Automatic Drain Enzyme Pump be used, this is a process that combines the setting or changing of the waste water conditions with the addition of proper, acclimated, and selective living microorganisms which fully digest the organic contaminants and converts them to by-products of water and CO2. Addressing these three issues together should eliminate any problems that currently exist within the waste water drainage system in the kitchen.

Sincerely,

*Denise Gonnella*  
Denise Gonnella  
Sales Representative

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REV. A	<b>JAY W. SMITH MFG. CO.</b> POST OFFICE BOX 1287 MONTGOMERY, ALABAMA 36108-2881 (USA) 205-877-3600      TELEFAX 9723300		LOCATION																																																																																											
DRAWING NUMBER: SB400E	<h2 style="margin: 0;">LARGE CAPACITY GREASE INTERCEPTORS</h2>																																																																																													
SCALE: NONE	<h3 style="margin: 0;">LARGE CAPACITY - FABRICATED STEEL GREASE INTERCEPTOR WITH INTEGRAL EXTENSION</h3> <p style="margin: 0;"><b>FUNCTION:</b> Used in large kitchens or institutions where there is an anticipated high rate of discharge of grease and all ledge waste from the fixtures. Large fabricated steel units available from 75 to 500 gallons per minute are most adaptable to industrial applications such as food processing and package plants. Integral extension permits a greater dimension from centerline of inlet and outlet to finished floor level to accommodate deeper roughing conditions. "X" dimension should always be specified when ordering.</p>																																																																																													
DATE: 12-11-84																																																																																														
APPROV. BY: [Signature]	<p>NOTE: X= Slab height safety extension height removed</p> <p>Fig. 8450-E Shown.</p>																																																																																													
CHECKED BY: V60	<p>TECH SPECIFIC: ENERGY HEIGHT REQUIRED FROM TOP OF INTERCEPTOR TO TOP OF EXTENSION USING SUFFIX NUMBER FOR EXTENSION HEIGHT.                  EXAMPLE: Fig. 8450-E with 6" Extension SPECIFY Fig. 8450-E6".</p>																																																																																													
DRAWN BY: NJ	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Fig. No.</th> <th rowspan="2">GPM Flow Rate</th> <th rowspan="2">Grease Cap. Lbs.</th> <th rowspan="2">Inlet and Outlet Size</th> <th colspan="4">Dimensions</th> <th rowspan="2">C.O. Plug Size</th> </tr> <tr> <th colspan="2">Roughing Dimensions</th> <th colspan="2">Body Height/Width</th> </tr> <tr> <th>A</th> <th>B</th> <th>C</th> <th>D</th> <th>E</th> <th>F</th> <th>G</th> <th>H</th> </tr> </thead> <tbody> <tr> <td>8450-E</td> <td>75</td> <td>150</td> <td>4</td> <td>21 1/2</td> <td>13 1/2</td> <td>30 1/2</td> <td>31</td> <td>30 1/2</td> <td>3</td> </tr> <tr> <td>8460-E</td> <td>100</td> <td>200</td> <td>4</td> <td>27</td> <td>16 1/2</td> <td>34 1/2</td> <td>33 1/2</td> <td>33 1/2</td> <td>3</td> </tr> <tr> <td>8480-E</td> <td>150</td> <td>300</td> <td>3</td> <td>33</td> <td>17 1/2</td> <td>40 1/2</td> <td>39 1/2</td> <td>38 1/2</td> <td>4</td> </tr> <tr> <td>8475-E</td> <td>200</td> <td>400</td> <td>3</td> <td>37</td> <td>17 1/2</td> <td>47 1/2</td> <td>34 1/2</td> <td>43 1/2</td> <td>4</td> </tr> <tr> <td>8475-E</td> <td>250</td> <td>500</td> <td>3</td> <td>40</td> <td>18</td> <td>53 1/2</td> <td>31</td> <td>47 1/2</td> <td>4</td> </tr> <tr> <td>8480-E</td> <td>350</td> <td>700</td> <td>3</td> <td>44 1/2</td> <td>18</td> <td>60 1/2</td> <td>31 1/2</td> <td>54 1/2</td> <td>4</td> </tr> <tr> <td>8490-E</td> <td>500</td> <td>1000</td> <td>6</td> <td>48</td> <td>18</td> <td>70 1/2</td> <td>34</td> <td>64 1/2</td> <td>5</td> </tr> </tbody> </table> <p style="text-align: right; margin-right: 50px;">← 8450</p>			Fig. No.	GPM Flow Rate	Grease Cap. Lbs.	Inlet and Outlet Size	Dimensions				C.O. Plug Size	Roughing Dimensions		Body Height/Width		A	B	C	D	E	F	G	H	8450-E	75	150	4	21 1/2	13 1/2	30 1/2	31	30 1/2	3	8460-E	100	200	4	27	16 1/2	34 1/2	33 1/2	33 1/2	3	8480-E	150	300	3	33	17 1/2	40 1/2	39 1/2	38 1/2	4	8475-E	200	400	3	37	17 1/2	47 1/2	34 1/2	43 1/2	4	8475-E	250	500	3	40	18	53 1/2	31	47 1/2	4	8480-E	350	700	3	44 1/2	18	60 1/2	31 1/2	54 1/2	4	8490-E	500	1000	6	48	18	70 1/2	34	64 1/2	5
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8400-E SERIES	<p>REGULARLY FURNISHED: All Steel with Grey Duo Coating Inside and Outside and Flow Control Fitting. Extension Height as Specified.</p> <p>VARIATIONS: <input type="checkbox"/> Anchor Flange (F) <input type="checkbox"/> Flange with Finishing Clamp (F-C) <input type="checkbox"/> Sediment Bucket (S) <input type="checkbox"/> No Hub Adaptor (Y) 2 Req'd</p>																																																																																													
REV. A	DATE: 2-19-88	DESCRIPTION: Revised Reg. Furn.	BY: GM	CHK. BY: [Signature]	WEIGHT POUNDS	VOLUME CUBIC FEET	FIGURE NUMBER																																																																																							
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**GENERAL SPECIFICATIONS  
FOR  
GREASE TRAP AND DRAINLINE MAINTENANCE**

*GESLOS AW  
312-614786  
474 1089*

**INTRODUCTION**

Restaurant waste water which contains high concentrations of grease, oils, and fats that are discharged into drainlines, grease traps, septic systems, drainfields, lift stations, and county sewers are expensive, problematic, and the main cause of restaurant operational interruptions, cause offensive odors, and because of its environmental impact there is a growing and serious concern for County, State, and Federal governmental agencies.

**TECHNOLOGY**

Bioremediation is a scientifically proven process that combines the settling or changing of the waste water conditions with the additions of proper, acclimated, and selected living microorganisms which fully digest the organic contaminants and converts them to by-products of water and CO<sub>2</sub>.

It is important to understand that the purchase and dosing of off-the-shelf products such as, enzymes, solvents, surfactants, and spore-forming bacteria, does not work due to the lack of a friendly environment and does not digest the organic contaminants and just moves the problem downstream.

**SPECIFICATIONS**

**A) SYSTEM HARDWARE:**

1) metered pump:

Installed in the kitchen attached to the pot washing sink's plumbing. Dosing of bacteria should be set at the rate of 3.2 oz per hour, on a continuous 24 hour basis

\* It is important to maintain dosing while facility is closed and in between all serving hours.

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- 2) bio-incubator:  
installed in the grease traps.

\* This equipment is needed to establish retention time for the living bacteria in the trap.

- 3) locking drainscreens:  
specially designed locking floor and sink drainline screens are to be installed in all sink and floor drains.

\* These screens are needed to prohibit the removal of screens by restaurant employees, which results in food and non-food particles to flow downstream and cause backups in drainlines and cause trap corrosion.

#### B) MICROORGANISMS:

The blend of bacteria will follow the following guidelines:

- 1) all bacteria will be live, naturally occurring, acclimated, vegetative, soil bacteria, containing a maximum of 30% spore-forming bacteria.
- 2) will contain a minimum of 8 different bacterial strains
- 3) all bacteria are aerobic and or facultative.
- 4) have a minimum plate count of 2 billion per ml
- 5) be certified non-pathogenic and salmonella free.
- 6) must not contain any enzymes, solvents, surfactants, or anaerobic bacteria.

\* Each one of these specifications are vital to insure a safe, efficient process that will completely digest the organic contaminants in the waste water and convert it to water and CO<sub>2</sub>.

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**C) SERVICE:**

A program must provide a complete fourteen (14) day service cycle to include the following:

- 1) Replacement of bacteria reservoir
- 2) Bacterial treatment of all sink and floor drains.
- 3) Bacterial treatment of grease traps and or septic system.
- 4) Visual inspection of grease trap and septic system.
- 5) mechanical agitation of grease trap and septic system.
- 6) inspection and maintenance of injection system.
- 7) inspection report to restaurant and corporate management

\* Program must not require any service by restaurant personnel.

By implementing a program that includes all of the above specifications, all of the following will result:

- 1) Eliminate grease in drainlines and grease traps
- 2) Significantly reduce costly pumping.
- 3) Eliminate backups.
- 4) Eliminate odors.

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SCHEDULES

- A. SHOPPING CENTER SITE PLAN
- B. TENANT LOCATION PLAN
- C. CONSTRUCTION RULES AND REGULATIONS
- ~~D. CONSTRUCTION PERIOD CHARGES~~

EXHIBITS

- ~~1. LANDLORD'S CONSTRUCTION~~
- 2. TENANT'S CONSTRUCTION
- 3. HVAC SYSTEM CRITERIA
- 4. UTILITY SERVICES

**FIRST AMENDMENT TO LEASE**

THIS FIRST AMENDMENT TO LEASE (the "*First Amendment*") is made this 18<sup>th</sup> day of December, 2013 between SHOPPINGTOWN MALL NY LLC (as successor to Syracuse Mall Associates), having an office at 9103 Alta Drive, Suite 204, Las Vegas, Nevada 89145 ("*Landlord*") and DARTOM, LLC (successor to Scotch 'N Sirloin, Inc.), having an office at 3687 Erie Boulevard East, Shoppingtown, DeWitt, New York 13214 ("*Tenant*").

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Standard Lease Agreement (undated) made effective January 1, 1997 (the "*Lease*") concerning the property located at Shoppingtown Mall, Pad 3 consisting of  $\pm$  6,675 sq. ft. (as more particularly described in the Lease, the "*Premises*") (capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Lease); and

WHEREAS, Landlord and Tenant desire to amend the Lease as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements as set forth below and of other good and valuable consideration, the payment, receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, intending legally to be bound, hereby agrees as follows:

1. Term Extension. The term of the Lease is hereby extended for a period of eighteen (18) months beginning January 1, 2014 until the expiration of the Lease on June 30, 2015.

2. Rent. The fixed minimum monthly rent payable under the Lease will continue to be Twelve Thousand Seven Hundred Ninety-Three and 75/100 Dollars (\$12,793.75); provided, however, that Landlord shall provide Tenant a period of free rent/rent abatement in the amount of Twelve Thousand Seven Hundred Ninety-Three and 75/100 Dollars (\$12,793.75) for the period between January 1, 2014 and January 31, 2014.

3. Notices. The address to which notices, certificates and other communications hereunder shall be delivered to the Lessor are as follows:

Shoppingtown Mall  
9103 Alta Drive, Suite 204  
Las Vegas, Nevada 89145

With a copy to:

Moonbeam Capital Investments  
c/o Management Office

2100 Pleasant Hill Road  
Duluth, Georgia 30096

4. Ratification; Counterpart Execution. Any provision of the Lease not expressly amended or modified herein shall remain the same and of full force and effect. This First Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first above written.

SHOPPINGTOWN MALL NY LLC  
(as successor to Syracuse Mall Associates)

By: Shawn L Pryor  
Name: Shawn Pryor  
Title: Senior Vice President

DARTOM, LLC (as successor to Scotch 'N Sirloin, Inc.)

By: SL Tiffany Jr  
Name: Thomas L. Tiffany, Jr.  
Title: Sole Member

**SECOND AMENDMENT OF LEASE**

THIS **SECOND AMENDMENT OF LEASE** ("Amendment") is made as of December 5, 2014, by and between **SHOPPINGTOWN MALL NY LLC**, a New York limited liability company ("Landlord") and **DARTOM, LLC**, a New York limited liability company and successor to Scotch 'N Sirloin, Inc. ("Tenant").

**WITNESSETH:**

**WHEREAS**, Syracuse Malls Associates ("Original Landlord") and Tenant entered into that certain Standard Lease Agreement dated June 5, 1995 (said lease and all subsequent amendments thereto being hereinafter collectively referred to as the "Lease"), for the lease of approximately 6,675 square feet of space commonly referred to as Pad 3 ("Premises") located in Shoppingtown Mall, Town of Dewitt, County of Onondaga, State of New York, as more fully described therein; and

**WHEREAS**, Landlord succeeded the interests of Original Landlord; and

**WHEREAS**, Landlord and Tenant now desire to extend, amend and modify the Lease in certain respects.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and in the Lease as amended and modified hereby, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is hereby mutually agreed as follows:

1. **Term.** The term of the Lease is hereby extended for a period of nine (9) years and five (5) months, commencing on July 1, 2015 and expiring on November 30, 2024 ("Extended Term"). Further, all terms, covenants and conditions applicable to the term will be equally applicable to the Extended Term except as hereinafter modified. The phrase "term" wherever it appears in the Lease shall be deemed to include the original term and the Extended Term.

2. **Rent.**

(i) The minimum guaranteed rental as set forth in Paragraph 2 of the First Amendment to Lease dated December 18, 2013 for the period of December 1, 2014 through June 30, 2015 is hereby deleted and of no further force or effect, and the following is substituted in its place:

"The monthly minimum guaranteed rental payable under the Lease during the period of December 1, 2014 through June 30, 2015 shall be Ten Thousand and Twelve and 50/100 Dollars (\$10,012.50)."

(ii) During the Extended Term, the monthly minimum guaranteed rental payable in accordance with Paragraph 3 (a) of the Lease shall be Ten Thousand and Twelve and 50/100 Dollars (\$10,012.50).

(iii) During the Extended Term, Tenant shall continue to pay, as additional rental and in accordance with Paragraph 3 (a) of the Lease, 5% of Gross Sales (as such is defined in Paragraph 4 (a) of the Lease) in excess of Two Million Four Hundred Three Thousand and 00/100 Dollars (\$2,403,000.00) per calendar year.

(iv) During the Extended Term, Tenant shall continue to pay its share of costs and expenses with respect to Taxes [Paragraph 33 (a)], Common Area [Paragraph 31 (a)], Payment of Water, Heat, Etc. [Paragraph 12 (a)], Utility Services [Exhibit 4], and all other additional rental and charges as set forth in the Lease.

3. Option Periods. Tenant shall have the right to renew the term of this Lease for two (2) additional five (5) year periods upon the same terms and conditions as set forth in the Lease, with the exception of Rent, which is indicated in the schedule below and shall be payable in the manner set forth in the Lease. Tenant shall deliver written notice to Landlord of Tenant's intent to exercise its renewal option no later than the one hundred and eightieth (180th) calendar day preceding the date of expiration of the original or extended term hereof, as the case may be, and so long as (a) Tenant is not in default hereunder beyond applicable cure periods as of the date of delivery of such written notice and (b) Tenant is not in default hereunder beyond applicable notice and cure periods as of the date of commencement of such renewal term. In the event of Tenant exercising either option, the terms and provisions set forth herein shall remain in full force and effect in accordance with their terms, including the payment of all other costs, expenses, additional rental and other charges due under the Lease.

OPTION PERIOD:	MONTHLY MINIMUM GUARANTEED RENTAL:	PERCENTAGE OF GROSS SALES:	GROSS SALES IN EXCESS OF:
Option Period 1	\$11,013.75	5%	\$2,643,300.00
Option Period 2	\$12,115.13	5%	\$2,907,630.00

4. Exclusive Use. Landlord agrees not to sell or lease any land or building owned by Landlord outside of Shoppingtown Mall (as depicted in the cross-hatched area of Exhibit "A" attached hereto and made a part hereof), now or at any time during the period of this Lease or any extension thereof, to any entity whose primary business is the operation of a premium, upscale, fine dining restaurant specializing in steaks and prime rib, such as Ruth Chris Steakhouse, Morton's The Steakhouse, and similar establishments.
5. Landlord's Work. Within a reasonable period of time after full execution of this Amendment, weather permitting, and subject to unavoidable delays outside of Landlord's control as more particularly described in Paragraph 28 of the Lease, Landlord agrees to (i) seal coat the parking lot and loading dock surrounding the store premises; (ii) provide and install a commercial grade fence around a portion of the loading dock and rubbish removal area as agreed upon by Landlord and Tenant; and (iii) construct a sidewalk to provide access to Tenant's business for customers parking in the lot located in the rear of the store premises (collectively, "Landlord's Work"). Landlord's Work is strictly contingent upon acquiring the appropriate local governmental approvals prior to commencement of same; without such approvals Landlord shall not be obligated to perform Landlord's Work as described herein. Landlord hereby agrees to make commercially reasonable efforts to obtain such approvals.
6. Representation. As a material inducement to Landlord to execute and deliver this Amendment, Tenant hereby represents and warrants to Landlord that no default by Landlord or Tenant exists under the Lease, that no circumstance, condition or event exists which with the passage of time or the giving of notice or both would constitute a default by Landlord or Tenant, and that no sums, refunds, rebates, offsets, credits, deductions or abatements are due to Tenant from Landlord for any reason whatsoever, excepting Tenant's rights with respect to

rebates, refunds or credits from Taxes owed under the Lease. Tenant agrees that the foregoing representation and warranty by Tenant may be relied upon by any prospective purchaser of and/or mortgagee or prospective holder of a mortgage or other security interest in, the property of which the Premises are a part.

7. No Offer. Landlord's submission of this Amendment to Tenant shall not constitute an offer to amend the Lease. This Amendment shall be effective only, and is expressly conditioned, upon the execution of this Amendment by Landlord and Tenant.
8. Confidentiality. The parties shall maintain all of the terms and conditions of this Amendment in strict confidence and shall not disclose the same to any other person except for their employees, accounting and legal personnel to the extent reasonably necessary, and otherwise as required by a court of competent jurisdiction.
9. No Brokers. Landlord and Tenant warrant that they have had no dealings with any real estate brokers or agents in connection with the negotiation of this Amendment and they know of no other real estate broker or agent who is entitled to a commission in connection with this Amendment. Landlord and Tenant shall indemnify, defend and hold harmless from any claim, loss, cost, liability or demand (including reasonable third party attorney's fees and costs) arising out of any claim for commission due to any broker or agent.
10. Ratification. Except as modified by this Amendment, the Lease is ratified and confirmed by the parties.
11. Capitalized Terms. Any capitalized term used in the Amendment shall have the same meaning given such terms in the Lease unless otherwise specifically provided or unless the context indicates otherwise.
12. Conflicts. In the event of any conflict or ambiguity between the terms of the Amendment and the terms of the Lease, this Amendment shall control to the extent of such conflict or ambiguity.
13. Signatures. If Tenant is a corporation, the person or persons executing this Amendment on behalf of Tenant represent, covenant and warrant to Landlord, as of the date Tenant executes and delivers this Amendment, that the signatories signing on behalf of Tenant have the requisite authority to bind Tenant pursuant to Tenant's by-laws or a certified copy of a resolution authorizing the same by Tenant's board of directors. If Landlord is a corporation, the person or persons executing this Amendment on behalf of Landlord represent, covenant and warrant to Tenant, as of the date Landlord executes and delivers this Amendment, that the signatories signing on behalf of Landlord have the requisite authority to bind Landlord pursuant to Landlord's by-laws or a certified copy of a resolution authorizing the same by Landlord's board of directors.
14. Counterparts. This Amendment may be executed in any number of counterparts, which together shall constitute a single, fully executed Amendment.
15. Digital Signatures. This Amendment may be executed by electronic and/or facsimile and such fully executed electronic and/or facsimile copy of this Amendment shall be deemed to be an original Amendment for the purposes hereof.

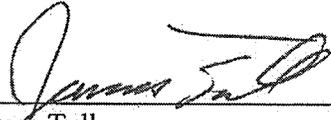
IN WITNESS WHEREOF, the undersigned have signed this Amendment as of this day first above written.

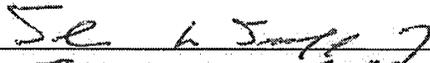
**LANDLORD:**

**TENANT:**

**SHOPPING MALL NY LLC,**  
a New York limited liability company

**DARTOM, LLC,**  
a New York limited liability company,  
successor to Scotch 'N Sirloin, Inc.

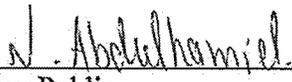
By:   
Name: James Tull  
Title: Director of Management and  
Development  
Date: 12-5-14

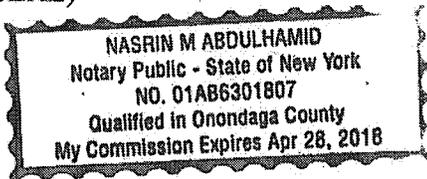
By:   
Name: Thomas L. Tiffney Jr.  
Title: Sole Member  
Date: 12/5/14

STATE OF Ny  
COUNTY OF Onondaga

PERSONALLY APPEARED BEFORE ME, a Notary Public in and for said State and County, the above named Dartom, LLC, a N.Y. L.L.C., by Thomas L. Tiffney Jr. its Sole Member, who acknowledges that they did sign the foregoing instrument and that the same is a free act and deed this 5<sup>th</sup> day of December, 2014.

(NOTARY SEAL)

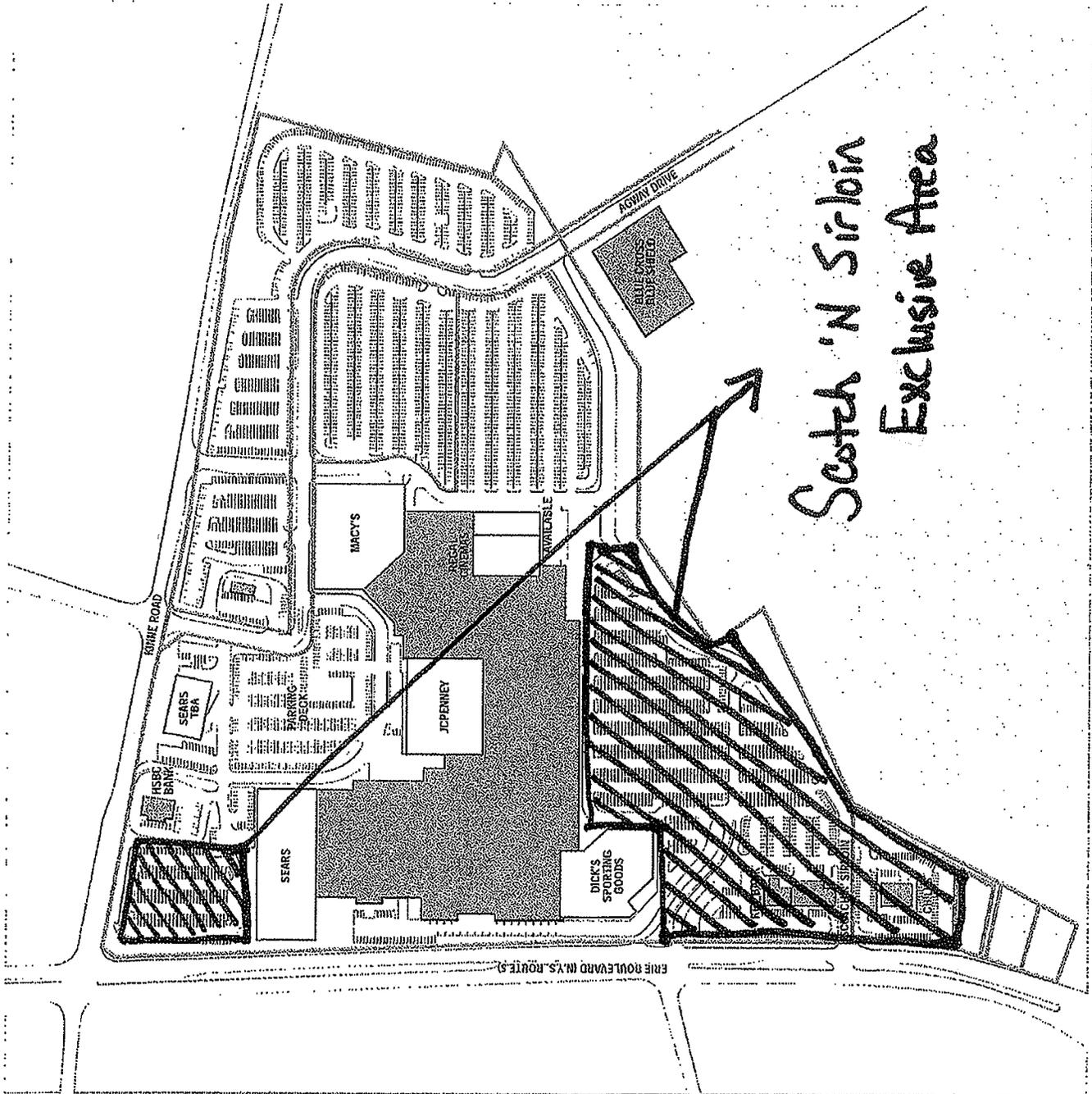
  
Notary Public  
Commission Expiration Date: Apr. 28, 2018



Shoppingtown Mall

3649 Erie Boulevard East  
Syracuse, New York 13214

Site Plan



### THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE ("Amendment"), made and effective as of the latter date this Amendment is executed by Landlord and Tenant ("Effective Date"), is by and between **ONONDAGA COUNTY**, a municipal corporation ("Landlord") and the **DARTOM, LLC**, a New York limited liability company ("Tenant").

WHEREAS, Syracuse Malls Associates and Scotch 'n Sirloin, Inc entered into that certain Standard Lease Agreement dated June 5, 1995 ("Lease") with respect to the lease a certain premises measuring 6,675 square feet at the Shoppingtown Mall located in Dewitt, NY ("Premises");

WHEREAS, Shoppingtown Mall NY LLC (as successor to Syracuse Malls Associates) and Tenant (as successor to Scotch 'n Sirloin, Inc.) entered into that certain First Amendment to Lease dated December 18, 2013 ("First Amendment") and entered into that Second Amendment to Lease dated December 5, 2014 ("Second Amendment");

WHEREAS, the Lease, the First Amendment, and the Second Amendment shall collectively be referred to as the Lease, unless otherwise specified herein;

WHEREAS, Landlord and Tenant wish to amend certain terms and conditions of the Lease;

NOW THEREFORE, based on the mutual exchange of consideration between Landlord and Tenant, the sufficiency of which is hereby acknowledged by the parties, the Landlord and Tenant hereby agree as follows:

1. **RENT.** Pursuant to the Second Amendment, during the remainder of the Extended Term, the Tenant is obligated to pay Landlord a monthly minimum guaranteed rent in the amount of Ten Thousand Twelve and 50/100 Dollars (\$10,012.50) per month. Landlord and Tenant hereby agree that for the Period of March 1, 2022 through February 28, 2023, the monthly minimum guaranteed rent payable by Tenant to Landlord shall be reduced to Seven Thousand Nine Hundred Twenty-Nine and 17/100 Dollars (\$7,929.17) per month. Commencing on March 1, 2023 and continuing for the remainder of the Extended Term, the monthly minimum guaranteed rent shall revert back to the amount of Ten Thousand Twelve and 50/100 Dollars (\$10,012.50) per month.
2. **LANDLORD NOTICE.** Any notices to be sent to the Landlord shall be sent to the following address:

If to Landlord: County of Onondaga  
Office of the County Executive  
421 Montgomery St.  
Syracuse, New York 13202

With copy to: County of Onondaga  
Office of the County Attorney  
421 Montgomery St.  
Syracuse, NY 13202

3. MISCELLANEOUS. Except as otherwise specifically amended herein, all other terms and conditions of the Lease are ratified, confirmed, and shall remain unmodified and in full force and effect. To the extent of any inconsistency between the Lease and this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Amendment effective as of the Effective Date.

LANDLORD: COUNTY OF ONONDAGA

Signature: [Signature]  
Print Name: J. Ryan McMahon, II  
Title: County Executive  
Date: 2/17/2022

TENANT: DARTOM, LLC

Signature: [Signature]  
Print Name: Thomas L. Tiffany  
Title: Member  
Date: 2/17/22

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS:

On the 17 day of Feb, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas L. Tiffany, to me known, who, being by me duly sworn, did depose and say that he/she resides in 6963 Colonel Dr. Fayetteville, NY, 13066 of [redacted] personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public  
HIMA ARNOLD  
Notary Public, State of New York  
Qualified in Onondaga County  
Reg. No. 01AR6335745  
My Commission Expires 1/19/2024

STATE OF NY )  
COUNTY OF Onondaga ) SS:

On the 17th day of February, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared J. Ryan McMahon, II, to me known, who, being by me duly sworn, did depose and say that he/she resides in Onondaga County, County Executive of Onondaga County personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

MARGARET M. DOHERTY  
Notary Public, State of New York  
Registration #01DO6278230  
Qualified in Onondaga County  
Commission Expires March 18, 2025

#### FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE ("Amendment"), made and effective as of the latter date this Amendment is executed by Landlord and Tenant ("Effective Date"), is by and between **ONONDAGA COUNTY**, a municipal corporation ("Landlord") and the **DARTOM, LLC**, a New York limited liability company ("Tenant").

WHEREAS, Syracuse Malls Associates and Scotch 'n Sirloin, Inc entered into that certain Standard Lease Agreement dated June 5, 1995 ("Lease") with respect to the lease a certain premises measuring 6,675 square feet at the Shoppingtown Mall located in Dewitt, NY ("Premises");

WHEREAS, Shoppingtown Mall NY LLC (as successor to Syracuse Malls Associates) and Tenant (as successor to Scotch 'n Sirloin, Inc.) entered into that certain First Amendment to Lease dated December 18, 2013 ("First Amendment") and entered into that Second Amendment to Lease dated December 5, 2014 ("Second Amendment");

WHEREAS, the County of Onondaga, as Landlord, entered into a Third Amendment to Lease with Tenant effective as of February 17, 2022;

WHEREAS, the Lease, the First Amendment, the Second Amendment, and the Third Amendment shall collectively be referred to as the Lease, unless otherwise specified herein;

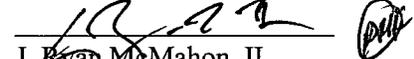
WHEREAS, Landlord and Tenant wish to amend certain terms and conditions of the Lease;

NOW THEREFORE, based on the mutual exchange of consideration between Landlord and Tenant, the sufficiency of which is hereby acknowledged by the parties, the Landlord and Tenant hereby agree as follows:

1. **RENT.** Pursuant to the Third Amendment, Landlord and Tenant had agreed to a modified monthly minimum guaranteed rent to be paid by the Tenant to the Landlord through February 28, 2023. Landlord and Tenant hereby agree to modify that prior amount of minimum guaranteed minimum rent. As such, commencing on March 1, 2023 and continuing for the remainder of the Extended Term (through November 30, 2024), the monthly minimum guaranteed rent paid by Tenant to Landlord shall be in the amount of Eight Thousand Five Hundred Twelve Dollars and 50/100 Dollars (\$8,512.50) per month.
2. **MISCELLANEOUS.** Except as otherwise specifically amended herein, all other terms and conditions of the Lease are ratified, confirmed, and shall remain unmodified and in full force and effect. To the extent of any inconsistency between the Lease and this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Amendment effective as of the Effective Date.

**LANDLORD: COUNTY OF ONONDAGA**

Signature:   
Print Name: J. Ryan McMahon, II  
Title: County Executive  
Date: 5-12-2023

**TENANT: DARTOM, LLC**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Amendment effective as of the Effective Date.

LANDLORD: COUNTY OF ONONDAGA

Signature: \_\_\_\_\_  
Print Name: J Ryan McMahon, II  
Title: County Executive  
Date: \_\_\_\_\_

TENANT: DARTOM, LLC

Signature: sl LSAJ  
Print Name: Thomas L. Tiffney Jr.  
Title: Member  
Date: 5/2/23

## FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE ("Amendment"), made and effective as of the latter date this Amendment is executed by Landlord and Tenant ("Effective Date"), is by and between **ONONDAGA COUNTY**, a municipal corporation ("Landlord") and the **DARTOM, LLC**, a New York limited liability company ("Tenant").

WHEREAS, Syracuse Malls Associates and Scotch 'n Sirloin, Inc entered into that certain Standard Lease Agreement dated June 5, 1995 ("Lease") with respect to the lease a certain premises measuring 6,675 square feet at the Shoppingtown Mall located in Dewitt, NY ("Premises");

WHEREAS, Shoppingtown Mall NY LLC (as successor to Syracuse Malls Associates) and Tenant (as successor to Scotch 'n Sirloin, Inc.) entered into that certain First Amendment to Lease dated December 18, 2013 ("First Amendment") and entered into that Second Amendment to Lease dated December 5, 2014 ("Second Amendment");

WHEREAS, the County of Onondaga, as Landlord, entered into a Third Amendment to Lease with Tenant effective as of February 17, 2022, and entered into that Fourth Amendment to Lease dated as of May 12, 2023;

WHEREAS, the Lease, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment shall collectively be referred to as the Lease, unless otherwise specified herein;

WHEREAS, Landlord and Tenant wish to amend certain terms and conditions of the Lease;

NOW THEREFORE, based on the mutual exchange of consideration between Landlord and Tenant, the sufficiency of which is hereby acknowledged by the parties, the Landlord and Tenant hereby agree as follows:

1. **EXTENSION OF LEASE TERM.** Pursuant to Section 3 of the Second Amendment to Lease, the parties hereby acknowledge and agree that the Tenant has exercised its first option to extend the term of the Lease for an additional five (5) year term, commencing December 1, 2024 and expiring on November 30, 2029.
2. **RENT.** Pursuant to the Fourth Amendment, Landlord and Tenant had previously agreed to modify the amount of monthly minimum guaranteed rent payable by Tenant to Landlord from March 1, 2023 through November 30, 2024 to Eight Thousand Five Hundred Twelve Dollars and 50/100 (\$8,512.50) per month. Pursuant to this Fifth Amendment to Lease, the parties now hereby agree that the monthly minimum guaranteed rent payable by Tenant to Landlord during the first option period (December 1, 2024 through November 30, 2029) shall be Eight Thousand Five Hundred Twelve Dollars and 50/100 (\$8,512.50) per month.
3. **MISCELLANEOUS.** Except as otherwise specifically amended herein, all other terms and conditions of the Lease are ratified, confirmed, and shall remain unmodified and in full force and effect. To the extent of any inconsistency between the Lease and this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Amendment effective as of the Effective Date.

**LANDLORD: COUNTY OF ONONDAGA**

Signature: JRM  
Print Name: J. Ryan McMahon, II  
Title: County Executive  
Date: 6-20-2024 

**TENANT: DARTOM, LLC**

Signature: TLT  
Print Name: Thomas L. Tiffany, Jr.  
Title: Member  
Date: 6/18/24

CQ#

Attorney/Client Privileged  
Communication

### CONTRACT SUMMARY FORM

New  Renewal  Amendment/Change Order

Service  Product  Revenue  Public Work

**Explain:**

Fifth Amendment to Lease to extend the term of the tenant lease and set a new rental rate for Scotch & Sirloin at their tenant space at Shoppingtown.

Bid  RFP  Other

Contractor:

Department:

Amount:

Start Date:

End Date:

Remarks:

Approving Atty  



CONFIDENTIALITY NOTICE: This document is intended only for the use of the individual or entity to which it is addressed and may contain confidential information which is protected by the attorney-client privilege, caseworker-client privilege or other statutory prohibition against disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this document in error, please immediately notify us by telephone to arrange for the return of the document.

Current Date