

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

STAGE STORES, INC *et al.*,<sup>1</sup>

Debtors.

)  
)  
)  
) Case No. 20-32564 (DRJ)  
) Chapter 11  
)  
)

**APPLICATION OF WEGMANS FOOD MARKETS' INC.  
FOR ALLOWANCE AND PAYMENT OF  
AN ADMINISTRATIVE EXPENSE CLAIM FOR POST-PETITION RENT**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU, IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY, YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

Wegmans Food Markets' Inc. ("Wegmans" or "Landlord"), by and through its attorneys Boylan Code LLP, hereby moves this Court pursuant to 11 U.S.C. §§ 365(d)(3), 503(b)(1) and 507(a)(2) for allowance of an administrative expense claim for post-petition rent (the "Application"), by stating as follows:

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The Debtors' service address is: 2425 West Loop South, Houston, Texas 77027.



### **JURISDICTION AND VENUE**

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), and jurisdiction is properly before this Court pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue of the motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein is 11 U.S.C. §§ 365(d)(3), 503(b)(1), and 507(a)(2), along with Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure.

### **FACTUAL BACKGROUND**

4. On May 10, 2020 (the "Petition Date"), Specialty Retailers, Inc. (the "Debtor") filed a voluntary petition in this Court seeking relief pursuant to Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy").
5. Following the Petition Date, Debtor continued to operate a store located at 800 W. Miller Street, Newark, New York 14513-1354, referred to in the Bankruptcy as Store Number 6463 (the "Leased Premises").
6. Debtor's authorization to access and use the Lease Premises was based on a Shopping Center Lease Agreement by and between Debtor and Landlord dated May 26, 2006, as amended thereafter, most recently by Amendment to Lease dated July 29, 2019 (the "Lease"). A true and accurate copy of the Lease is attached hereto as Exhibit A.
7. By Notice dated August 14, 2020 (Doc. No. 702, p. 66 of 72), Debtor rejected the Lease and identified the Rejection Date as September 30, 2020 (the "Rejection Date").
8. Between the Petition Date and Rejection Date, Debtor utilized the Premises for the benefit of the estate. There remain rent amounts due and owing Landlord from Debtor under the Lease for Debtor's use of the Lease Premises during that time-period.

**REQUEST FOR RELIEF**

9. Pursuant to 11 U.S.C. 503(b)(1)(A), a creditor shall be allowed an administrative expense claim for, among other things, the “actual and necessary costs and expenses of preserving the estate.”

10. “Where the creditor shows that (1) necessary and actual costs have substantially contributed to the estate or debtor in possession, and (2) that the transaction arose post-petition, that creditor shall have established a prima facie case for an administrative expense.” In re Espinosa, 542 B.R. 403, 410 (Bank. S.D. Tex. 2015).

11. Pursuant to 11 U.S.C. § 365(d)(3), a debtor “shall timely perform all the obligations... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.”

12. “Rent obligations in such leases must be performed when they arise after filing and before rejection; any reduction based on subsection 503(b)(1) would violate the specific language of § 365(d)(3).” In re Burival, 613 F.3d 810, 812 (8<sup>th</sup> Cir. 2010) (“Burival Brothers must perform the December rent obligation whether or not it preserves the estate.”).

13. Based on the foregoing, post-petition, pre-rejection rent is entitled to administrative expense priority regardless of any estate preservation. See In re Beltway Med., Inc., 358 B.R. 448, 452 (Bankr. S.D. Fla. 2006) (“[A]ny debate as to whether this Bankruptcy Code section requires post-petition rent to be paid as an administrative expense has been resolved, for the most part, in favor of administrative priority...”).

14. As set forth in Exhibit B, attached hereto, there remains \$23,090.61 due and owing Landlord from Debtor under the Lease for Debtor’s use of the Lease Premises between

the Petition Date and Rejection Date.

15. While unnecessary under section 365(d)(3) of the Code, Debtor's use of the Leased Premises were necessary and actual costs that have substantially contributed to the Debtor and the estate.

16. Accordingly, Landlord is entitled to an administrative expense claim pursuant to 11 U.S.C. §§ 365(d)(3), 503(b)(1) and 507(a)(2) in the amount of \$23,090.61.

17. Landlord files this Application without waiver of its right to file a proof of claim for -pre-petition rent and lease rejection damages. Landlord also does not waive its right to an administrative expense claim for any costs to repair damage to the Lease Premises upon its inspection of the same. Finally, Landlord reserves its right to amend or supplement its administrative claim or to file additional proofs of claim, to reflect any additional claims against Debtor or to specify additional costs, expenses or other charges or claims incurred by Landlord.

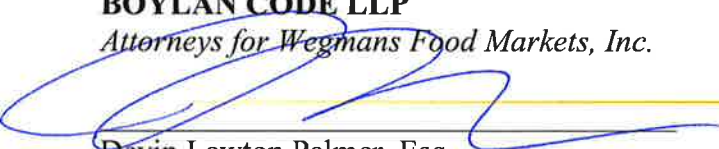
WHEREFORE, Landlord respectfully requests that its Application be granted and that the Court enter an Order allowing its administrative expense claim in an amount not less than \$23,090.61 and directs the Debtor to promptly pay the same, and grant Landlord such other and further relief that the Court deems proper and just.

Respectfully submitted,

Dated: Rochester, New York  
September 14, 2020

**BOYLAN CODE LLP**

*Attorneys for Wegmans Food Markets, Inc.*



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# **Exhibit A**

Peebles Store, Newark, New York  
(Newark Plaza Shopping Center)

## SHOPPING CENTER LEASE AGREEMENT

This Shopping Center Lease Agreement is entered into as of the 26<sup>th</sup> day of May, 2006, by and between Landlord and Tenant hereinafter named.

### ARTICLE 1 — DEFINITIONS AND BASIC LEASE PROVISIONS

- 1.1 Landlord:** Wegmans Food Markets, Inc.
- 1.2 Landlord's Address:** P.O. Box 30844  
Rochester, New York 14603-0844  
Attn: Senior Vice President of Real Estate and  
General Counsel  
  
Facsimile: (585) 783-4255  
  
All notices given to Landlord shall be sent individually to  
both of the officers above under separate cover.
- Landlord's Payment Address: P.O. Box 24470  
Rochester, New York 14624
- 1.3 Tenant:** Specialty Retailers (TX) LP, a Texas limited partnership
- 1.4 Tenant's Addresses:**
- Demised Premises: Intersection of Miller and Finch Streets  
Newark, New York 14513
- Principal Office: P.O. Box 35167  
Houston, Texas 77235-5167  
10201 South Main Street 77025  
Attn: Senior Vice President of Real Estate and  
Vice President & Senior Counsel  
  
Facsimile: (713) 663-9814  
  
All notices given to Tenant shall be sent individually to  
both of the officers above under separate cover.
- 1.5 Tenant's Trade Name:** "Peebles" or such other trade names that are used for any of  
Tenant's other stores.

- 1.6 Additional Charges:** All amounts payable under this Lease by Tenant, other than Minimum Guaranteed Rental and Percentage Rental.
- 1.7 Commencement Date:** The earlier to occur of (i) one hundred twenty (120) days after the Scheduled Delivery Date (as defined below), but in no event earlier than November 16, 2006, or (ii) the date when Tenant opens the Demised Premises for business to the public. In the event that Landlord fails to deliver the Demised Premises to Tenant in accordance with the terms of this Lease, including, without limitation, the Construction Rider, attached hereto as exhibit "C", by the Scheduled Delivery Date, the Commencement Date may be extended as provided in Section 3.2.
- Prior to the Commencement Date, Tenant shall have no obligation to pay any Rent.
- Upon or after the occurrence of the Commencement Date, the parties agree to execute, upon the request of the other, a written confirmation of the Commencement Date and the date of expiration of the initial Lease Term.
- 1.8 Delivery Date:** The date on which Landlord delivers the Demised Premises to Tenant with Landlord's Work completed in accordance with the terms of this Lease and those contained in Exhibit "C".
- Landlord shall deliver the Demised Premises to Tenant with Landlord's Work completed on or before July 19, 2006 (the "**Scheduled Delivery Date**"). Notwithstanding the foregoing, if Landlord delivers the Demised Premises to Tenant with Landlord's Work completed before July 19, 2006, the Scheduled Delivery Date shall be deemed to be July 19, 2006.
- 1.9 Permitted Delivery Dates:** December 23, 2006, and April 27, 2007.
- 1.10 Demised Premises:** Approximately 17,500 square feet of space in the Shopping Center and being the space cross-hatched on the Site Plan, which shall have a minimum of 100 feet of clear interior width between demising walls along the front of the Demised Premises.
- 1.11 G.L.A.:** For purposes of calculating Rent and Tenant's Pro Rata Share of any costs, expenses or any other item under the Lease, the G.L.A. of the Demised Premises shall be deemed to be the number of square feet of gross leasable area of the ground floor of the Demised Premises (excluding mezzanine and second floor areas, if any). The measurement standard for the Demised Premises shall be equal to the actual number of square feet of floor space

within the Demised Premises measured from the exterior faces of the unshared walls and from the centerlines of the shared walls. Tenant shall have the right, but not the obligation, to remeasure the Demised Premises within thirty (30) days after the Scheduled Delivery Date. Upon the request of either party, an addendum to this Lease shall be executed setting forth the actual G.L.A. of the Demised Premises.

**1.12 Lease:**

This Shopping Center Lease Agreement, as amended from time to time.

**1.13 Lease Term:**

The period beginning on the Commencement Date and ending at 12:00 midnight after the passage of one hundred twenty (120) full calendar months after the Commencement Date, as the same may be extended pursuant to Article 2 hereof.

**1.14 Lease Year:**

In the case of the first Lease Year, the period beginning on the Commencement Date and ending at 12:00 midnight on the first occurring June 30<sup>th</sup> after the passage of twelve (12) full calendar months after the Commencement Date. Each subsequent Lease Year shall be the period of twelve (12) full calendar months commencing with July 1<sup>st</sup> and ending on June 30<sup>th</sup> of the following year.

**1.15 Minimum Guaranteed Rental:**

Commencement Date through the end of Lease Year 10: at the rate of \$6,250.00 per month (\$75,000.00 per annum).

Minimum Guaranteed Rental for any option period extending the Lease Term shall be determined and payable in accordance with Section 2.3 of this Lease.

**1.16 Percentage Rental:**

Two percent (2.00%) of the amount, if any, by which the Gross Sales for any Lease Year exceeds the Percentage Rental Breakpoint.

**1.17 Percentage Rental Breakpoint:**

For any Lease Year, the quotient resulting from dividing .02 into the Minimum Guaranteed Rental for such Lease Year (ignoring special circumstances which may otherwise reduce the amount of Minimum Guaranteed Rental actually payable – e.g. Sections 6.2, 7.6., and including any exercised option period to the extent such option period has been exercised by Tenant in accordance with Section 2.2 of this Lease).

**1.18 Permitted Use:**

Tenant shall have the right to use the Demised Premises for the following use(s) only: the sale, distribution and

storage and/or marketing of any one or more of the following types of merchandise and/or services:

- (i) Ladies' ready-to-wear and wearing apparel;
- (ii) Men's ready-to-wear and wearing apparel;
- (iii) Children's and infants' ready-to-wear and wearing apparel and children's furniture;
- (iv) Intimate apparel;
- (v) Related accessories, including shoes;
- (vi) Jewelry and gift items incidental to the sale of other merchandise;
- (vii) Intentionally deleted.
- (viii) Sporting goods and sports apparel;
- (ix) Home furnishings (including, without limitation, linens, furniture, gifts, frames, towels, etc.); and
- (x) The incidental sale of such other types of merchandise and/or services customarily or frequently sold in the majority of Tenant's other stores then owned or operated by Tenant (provided such incidental sale does not violate subparagraph 7.6.a. below).

- 1.19 Rent or Rental:** All Minimum Guaranteed Rental, Percentage Rental and Additional Charges, if any.
- 1.20 Shopping Center:** A commercial shopping center consisting of the existing buildings, parking areas, sidewalks, service areas and other improvements now existing or hereafter erected on the land located in the Town of Newark, Wayne County, New York, as more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.
- 1.21 Site Plan:** The map outlining the Shopping Center and showing the Demised Premises in relation thereto, attached hereto as Exhibit "B" and made a part hereof for all purposes.
- 1.22 Tenant's Pro Rata Share:** A fraction having as its numerator the G.L.A. of the Demised Premises and having as its denominator the total number of square feet contained in all rentable space in all buildings in the Shopping Center (whether or not actually leased), including any storage space that is leased or is

leasable, on the first day of July for the relevant Lease Year for which any calculation of Tenant's Pro Rata Share is being made.

**1.23 G.L.A. of Shopping Center:**

Subject to the last grammatical sentence of this Section 1.23, Landlord covenants that as of the date hereof, the total G.L.A. of the Shopping Center is 159,000 square feet and in no event shall it be less during the Lease Term. Subject to the immediately following grammatical paragraph, it is further understood and agreed that the total G.L.A. of the Shopping Center for purposes of calculating Tenant's Pro Rata Share shall not be decreased by Landlord converting or expanding otherwise leased or leasable space into storage space, Common Area or space for the use of Landlord or Landlord's agents/managers. The parties agree that the total G.L.A. of the Shopping Center (159,000 square feet) does not include the approximately 71,000 square feet of G.L.A. contained in the "*Ames Space*", as shown on Exhibit "B". However, in the event a tenant(s) should lease all or any portion of the Ames Space, such space shall be added to the G.L.A. of the Shopping Center.

Notwithstanding the foregoing, Landlord may decrease the total G.L.A. of the Shopping Center; provided, however, for purposes of calculating Tenant's Pro Rata Share, the total G.L.A. of the Shopping Center shall not be decreased in the aggregate by more than five percent (5.00%) of the total G.L.A. of the Shopping Center as of the date hereof.

**1.24 Tenant's Pro Rata Share of Common Area Costs:**

An amount determined under the provisions of Section 6.4, payable in equal monthly installments, subject to the limitations in Article 18.

**1.25 Tenant's Pro Rata Share of Insurance Premiums:**

An amount determined under the provisions of Section 17.3, payable in equal monthly installments, subject to the limitations in Article 18.

**1.26 Tenant's Pro Rata Share of Taxes:**

An amount determined under the provisions of Section 17.2, payable in equal monthly installments, subject to the limitations in Article 18.

**1.27 Limitation of Tenant's Pro Rata Share of Common Area Costs, Taxes and Insurance Premiums**

A. Common Area Costs. Three percent (3.00%) as more particularly provided in Article 18. Common Area Costs actually incurred by Landlord for snow plowing shall

be excluded from the calculation of the preceding three percent (3.00%) "cap".

B. Taxes. Three percent (3.00%) as more particularly provided in Article 18.

C. Insurance Premiums. Three percent (3.00%) as more particularly provided in Article 18.

**1.28 Attachments**

Exhibit "A" – Legal Description  
Exhibit "B" – Site Plan  
Exhibit "C" – Construction Rider  
Exhibit "D" – Signs and Signage  
Exhibit "D-1" – Pylon Sign [Intentionally deleted]  
Exhibit "E" – Landlord's Exclusive Use Covenant  
Exhibit "F" – Letter of Credit [Intentionally deleted]  
Exhibit "G" – Subordination, Non-Disturbance and  
Attornment Agreement [Intentionally  
deleted]  
Exhibit "H" – Asbestos Survey

**1.29 Construction of  
Definitions:**

Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by the references thereto in the other provisions of this Lease. If there is any conflict between any of the Lease provisions in this Article 1 and any other provisions of this Lease, the latter will control.

**ARTICLE 2 — TERM**

**2.1 Quiet Enjoyment.** In consideration of the obligation of Tenant to pay Rent as herein provided and perform Tenant's other obligations under the provisions of this Lease, and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Demised Premises, TO HAVE AND TO HOLD the Demised Premises for the Lease Term all upon the terms and conditions set forth in this Lease. Landlord agrees to operate and maintain the Shopping Center as a commercial retail merchants' shopping center in substantially the same (or improved) manner in which the Shopping Center is currently being operated and maintained, and with substantially the same quality of tenants during the Lease Term. Landlord further agrees that if Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term have peaceful and quiet possession of the Demised Premises and the rights, easements and appurtenances thereto leased to Tenant hereunder. Landlord represents, warrants and covenants that: it has the right to enter into this Lease; it has good and marketable fee simple title to the Shopping Center; there is no restriction, to Landlord's knowledge, on access to the roads adjoining the Shopping Center as shown on the Site Plan; there is no pending or, to Landlord's knowledge, threatened litigation affecting Landlord's obligations and Tenant's rights hereunder; all zoning and other governmental laws and regulations permit Landlord's Work; Landlord has obtained or shall obtain all necessary approvals and permits from appropriate governmental authorities and third parties for the development of the Shopping Center in accordance with this Lease and for the construction and occupancy of the Demised Premises by

Tenant for such use; there are no leases, agreements or restrictive covenants that would prohibit or interfere with use of the Demised Premises (except as otherwise listed on Exhibit "E" attached hereto, which constitute the only restrictions on use with respect to the Demised Premises as of the date of this Lease).

**2.2 Option Periods.** Provided that (i) Tenant is not then in default under the terms of this Lease beyond any applicable cure period and (ii) this Lease has not been terminated prior to the commencement of such option period, Tenant may extend the Lease Term four (4) consecutive five (5) Lease Year periods if Tenant sends written notice to Landlord of its intention to do so no earlier than fifteen (15) months and no later than one hundred eighty (180) days prior to the end of the then existing Lease Term. During any such extended period of the Lease Term, the terms and provisions of this Lease shall remain the same except for the payment of Minimum Guaranteed Rental and Percentage Rent, which shall be determined as set forth below. In the event that Tenant fails to meet or otherwise satisfy any of the requirements under this Section 2.2 which are necessary to properly exercise the applicable option period, Tenant's rights under this Section 2.2 shall terminate and be of no further force and effect.

**2.3 Minimum Guaranteed Rental during Extended Lease Term.** During each five (5) Lease Year extension period, Tenant shall pay to Landlord Minimum Guaranteed Rental in monthly installments and at an annual rate equal to:

Option Period	Minimum Guaranteed Rental
1: five (5) Lease Year period	\$7,500.00 per month (\$90,000.00 per annum)
2: five (5) Lease Year period	\$8,125.00 per month (\$97,500.00 per annum)
3: five (5) Lease Year period	\$8,750.00 per month (\$105,000.00 per annum)
4: five (5) Lease Year period	\$9,375.00 per month (\$112,500.00 per annum)

Each installment of Minimum Guaranteed Rental shall be payable on the first day of each calendar month during the Lease Term as extended hereunder.

**2.4 Percentage Rental during Extended Lease Term.** In addition to the Minimum Guaranteed Rental payable during the extended Lease Term, Tenant shall also pay to Landlord, for each Lease Year during the Lease Term, Percentage Rental (as defined in Article 1) on or before seventy-five (75) days after the end of each Lease Year.

**2.5 Tenant's Termination Rights.** Intentionally deleted.

**2.6 Cotenancy.** If at any time during the Lease Term the Wegmans Food Markets, Inc. store (the "*Wegmans Store*") has closed or has ceased operations in the Shopping Center (the "*Closing Date*"), then commencing on the first day of the calendar month immediately following the Closing Date, Tenant shall pay to Landlord as total Rent (including, Minimum Guaranteed Rental, Tenant's Pro Rata Share of Common Area Costs, Taxes and Insurance Premiums) an amount equal to two percent (2.00%) of all Gross Sales for each calendar month (or portion thereof) during which the Wegmans Store remains closed or ceases operations and a Replacement Tenant for such vacated space has not opened its business to the public in such vacated space within the Shopping Center (the "*Closing Period*"). Such payments shall be made monthly and shall be due and payable on or before thirty (30) days after the expiration of each calendar month during the Closing Period. As used herein, a "Replacement Tenant" shall mean a tenant with a retail establishment in the Shopping Center that is a national or regional retail "chain store". For purposes of this Lease, a chain store shall mean one of a chain of at least twenty-five (25) retail stores, all of which fall under the same management and sell the same merchandise

Notwithstanding the foregoing, the total amount of Rent payable during any Lease Year in which the terms of the preceding paragraph of this Section 2.6 are applicable shall not exceed the Rent that would have

been payable by Tenant under the Lease if not for the preceding paragraph of this Section 2.6. In the event Tenant pays an amount in the aggregate in excess of the Rent that would have been payable by Tenant under the Lease if not for this Section 2.6, Tenant shall send Landlord written notice to Landlord requesting reimbursement for any such excess, and Landlord shall have thirty (30) days to completely reimburse Tenant for the same.

### ARTICLE 3 — LANDLORD'S WORK/TENANT'S WORK

**3.1 Landlord's Work in Demised Premises.** Landlord shall prior to delivering the Demised Premises to Tenant build and construct the Demised Premises in accordance with its construction obligations set forth in Exhibit "C" attached hereto and incorporated herein for all purposes ("*Landlord's Work*"). Landlord shall effect Landlord's Work at Landlord's sole cost and expense. Landlord shall commence Landlord's Work promptly after the execution of this Lease and complete Landlord's Work with due diligence. Landlord agrees to use experienced and reputable contractors and subcontractors, and good quality materials in effecting Landlord's Work. Landlord's Work shall be done in a good and workmanlike manner and shall be free of all liens, charges and other claims by contractors, subcontractors, suppliers, laborers or materialmen. Landlord shall give no less than thirty (30) days prior written notice to Tenant of the Scheduled Delivery Date.

**3.2 Landlord's Failure to Deliver Demised Premises.** If Landlord fails to deliver the Demised Premises fully completed in accordance with the terms of this Lease and those contained on Exhibit "C" by the Scheduled Delivery Date, or otherwise fails to complete any portion of Landlord's Work by any prior deadline as provided herein or on Exhibit "C", or fails to deliver timely any notice or report required in Exhibit "C", Tenant may, in addition to any other rights and remedies contained herein or provided by law, exercise one or more of the following rights:

- a. Delay taking possession of the Demised Premises up until the next occurring Permitted Delivery Date (as defined in Section 1.9).
- b. Extend the Commencement Date of the Lease (and opening of the Demised Premises to the public for business) until a date that is up to ninety (90) days after the next occurring Permitted Delivery Date.
- c. Complete all or any part of Landlord's Work that Tenant decides in its sole discretion to undertake; provided that prior to commencing such Landlord's Work, Tenant shall send written notice to Landlord of Tenant's intent to complete the same, and Landlord shall have three (3) days after receipt of such notice to complete any such Landlord's Work. If Landlord fails to complete all or any part of such Landlord's Work within such three (3) day period, Tenant shall have the right to complete the same at Landlord's expense, the costs and expenses of which shall be reimbursed by Landlord to Tenant from time to time upon demand by Tenant, along with an additional charge of ten percent (10%) of such sums as overhead. In the event Tenant completes Landlord's Work, as provided above, Tenant shall send written notice to Landlord, such notice shall include such costs and expenses incurred by Tenant in completing Landlord's Work along with the additional ten percent (10%) overhead charge, and Landlord shall have thirty (30) days to completely reimburse Tenant for such costs and expenses along with such overhead charge. If Landlord fails to completely reimburse Tenant within such thirty (30) day period, then Tenant shall send a second notice to Landlord, such notice shall include such costs and expenses incurred by Tenant in completing Landlord's Work along with such overhead charge, and Landlord shall have a fifteen (15) day period to completely reimburse Tenant for the same. If Landlord fails to completely reimburse Tenant within such fifteen (15) day period, Landlord agrees that such costs

and expenses and overhead charge may be recouped by Tenant by offsetting Rent when the same becomes due until such amounts shall be fully recovered by Tenant.

- d. Intentionally deleted.
- e. If Tenant opens the Demised Premises for business to the public before Landlord's Work is fully completed, then the total Rent payable from the date of opening until the date on which Landlord's Work is substantially complete in accordance with the terms of this Lease and those contained in Exhibit "C" shall be the lesser of (i) seventy five percent (75%) of the Minimum Guaranteed Rental and one hundred percent (100%) of the Additional Charges otherwise payable or (ii) the Gross Sales for such period multiplied by one percent (1.00%), and no liquidated damages shall accrue during such period. Such alternative Rent shall be paid within fifteen (15) days after the end of each calendar month. Tenant's Pro Rata Share of Taxes, Insurance Premiums and Common Area Costs, if any, for any portion of a Lease Year not governed by the preceding two sentences shall be prorated on a per diem basis based on the number of days in the Lease Year not governed by the preceding two sentences as compared to the number of days in the Lease Year.

If Landlord fails to deliver the Demised Premises fully completed in accordance with the terms of this Lease and those contained on Exhibit "C" by April 27, 2007 (even in the event of an event of force majeure), Tenant may, in addition to a. through e. above and any other rights and remedies contained herein or provided by law, exercise the following right:

- f. Declare this Lease canceled and of no further force and effect and recover from Landlord all costs and expenses incurred by Tenant (including, without limitation, architect's fees, engineer's fees, contractor's fees, costs and expenses of plans, specifications, and other supplies and materials, and reasonable attorneys' fees).

**3.3 Tenant's Work in the Demised Premises.** Tenant, following the Scheduled Delivery Date, shall promptly commence the work to be effected by Tenant listed on Exhibit "C" ("*Tenant's Work*"). Tenant shall commence Tenant's Work promptly after the Scheduled Delivery Date and complete Tenant's Work with due diligence. Tenant agrees to use experienced and reputable contractors and subcontractors, and good quality materials in effecting Tenant's Work. Tenant shall provide Landlord with a list of Tenant's contractors and subcontractors and a copy of Tenant's permits and approvals for Tenant's Work promptly after receipt of Landlord's written request for the same. Tenant's Work shall be done in a good and workmanlike manner and shall be free of all liens, charges and other claims by contractors, subcontractors, suppliers, laborers or materialmen. Tenant may with the consent of Landlord, which consent shall not be unreasonably withheld, enter the Demised Premises while Landlord is effecting Landlord's Work for preliminary work prior to the Scheduled Delivery Date. Notwithstanding the foregoing, Landlord may reasonably withhold its consent to Tenant entering the Demised Premises while Landlord is effecting Landlord's Work for preliminary work prior to the Scheduled Delivery Date if such entry would adversely affect Landlord's completion of Landlord's Work in any manner (i.e., result in any delay in Landlord's completing Landlord's Work, disrupt Landlord's workforce, and/or increase Landlord's costs of completing Landlord's Work).

**3.4 Tenant's Construction Allowance.** Intentionally deleted.

**3.5 Memorandum of Lease.** The parties agree that, at the request of one party, such other party will execute and deliver a short form lease or memorandum of lease in recordable form containing such provisions of this Lease as reasonably requested (excepting the Rent), including the parties and their addresses, the Lease Term, Tenant's option to extend the Lease Term, the square footage of Demised Premises and any other information required by statute to constitute notice.

#### ARTICLE 4 — RENTAL

**4.1 Accrual of Rental.** Rental shall accrue hereunder from the Commencement Date and shall be payable by Tenant to Landlord at the address specified in Section 1.2 above, or at such other address as Landlord may designate from time to time by written notice to Tenant. All Minimum Guaranteed Rental for any partial month shall be prorated on a per diem basis.

**4.2 Minimum Guaranteed Rental.** Tenant shall pay without prior demand to Landlord Minimum Guaranteed Rental in equal monthly installments on the first day of each calendar month during the Lease Term.

**4.3 Percentage Rental.** In addition to Minimum Guaranteed Rental payable during the Lease Term, Tenant shall also pay to Landlord, for each Lease Year during the Lease Term, Percentage Rental (as defined in Article 1) within sixty (60) days after the end of each Lease Year.

**4.4 Partial Years** If this Lease should commence on a date other than the first day of July, Percentage Rental for such partial Lease Year following the Commencement Date shall be paid in an amount, if any, equal to the rate specified in Section 1.16 for all Gross Sales made at the Demised Premises during the twelve (12) month period commencing on the Commencement Date in excess of the Percentage Rental Breakpoint, multiplied by a fraction, the numerator of which is the number of days in such partial Lease Year and the denominator of which is three hundred sixty-five (365). If the last Lease Year consists of less than twelve (12) full calendar months, a comparable computation shall be made for the last partial Lease Year utilizing the one (1) year period ending on the last day of the Lease Term. Notwithstanding Section 4.3, Percentage Rental for partial Lease Years shall be made within sixty (60) days after the end of the applicable measurement period.

**4.5 Gross Sales.** The term "**Gross Sales**" as used herein shall be construed to include the entire amount of the sales price, whether for cash or evidenced by charge account, credit card, exchange or otherwise, of all sales of goods, merchandise (including gift and merchandise certificates) and services and other receipts whatsoever from all business conducted in or from the Demised Premises. Gross Sales shall include, without limitation, (i) sales originating in, at, from, or arising out of the use of the Demised Premises whether delivery or performance is made from the Demised Premises or from another location; (ii) sales made or performed by mail, telephone, telegraph, facsimile, e-mail, computer or internet orders received at or delivered to the Demised Premises; (iii) sales made or performed by means of mechanical or other vending devices located within the Demised Premises (except those utilized solely for the convenience of Tenant's employees); (iv) sales that Tenant or any subtenant, licensee, concessionaire or other person in the normal and customary course of its business would credit or attribute to its operations at the Demised Premises, or any part thereof; and (v) any installment or credit sale in the total amount actually received of each such item sold in the month during which such sale is made. These shall be excluded or, if otherwise included, then deducted from Gross Sales the following:

- a. Credits or refunds to customers for merchandise returned or exchanged;
- b. Transfers of merchandise from the Demised Premises to other stores or warehouses of Tenant (provided that such transfers are made solely for the benefit of Tenant's business and not for the purpose of depriving Landlord of the benefit of a sale that would otherwise be made in or at the Demised Premises);

- c. Any excise, transaction, value added or sales taxes or other taxes imposed under any laws, ordinances, orders or regulations, whether now or hereafter enforced, upon or based upon the gross receipts of Tenant or the sale or sales price of merchandise and which must be paid by Tenant, whether or not collected by Tenant from its customers;
- d. Returns of merchandise to shippers or manufacturers;
- e. The net amount of discounts allowed to any customer pursuant to any policy adopted by Tenant (provided, however, that the actual price paid by a customer for any such discounted item shall be included in Gross Sales);
- f. Free merchandise or other give-away items in connection with any sales promotion program of Tenant;
- g. Sales of tickets to charitable promotions, sporting events, theater, concerts or other entertainment events, and ad valorem or other taxes or other fees or commissions received for Tenant's function as collection or processing agent for any third party;
- h. The charge made to any customer for alteration of any garment;
- i. The uncollected balances on "lay-away" or "will-call" sales, it being intended that only the actual amount of cash collected, and not refunded to the customer, as to lay-away or will-call sales, will be included in Gross Sales, provided that Tenant may include the entirety of such sale in sales in the period in which the sale is made, and, in such event, if the sale is not consummated by actual delivery of the merchandise to the customer, Tenant will be entitled to debit sales with the uncollected balance thereof and any refund made to the customer in the period when Tenant elects to cancel such sale and restore the merchandise to stock;
- j. The charge made for gift wrapping, mailing, C.O.D., special delivery and similar services provided as accommodations to customers;
- k. Sales made to Tenant's employees and their respective families at a discount;
- l. The casual sale of furniture, fixtures or equipment belonging to Tenant and theretofore used by Tenant in the operation of its business from the Demised Premises;
- m. Refunds and adjustments from suppliers;
- n. The amount of any interest, financing or late charge added to the customer's account by reason of delay in payment or pursuant to a budget or installment payment plan;
- o. Bulk sales of goods (other than to retail customers);
- p. Sales in a canteen or cafeteria provided as a convenience to employees only;
- q. Vending machine sales made without profit to Tenant and as a convenience to Tenant's employees and customers;
- r. The amount of uncollected credit sales or other uncollected or bad debt, if written off as a loss by Tenant; and

- s. Fees or charges paid to third party credit guarantors such as credit card issuers.

**4.6 Late Charge.** If Tenant fails to pay Landlord any installment of Rent hereunder and shall not cure such failure within ten (10) days after such installment is due, Tenant shall pay to Landlord a late charge equal to five percent (5.00%) of such overdue amount, and such late charge shall be payable along with, and in addition to, such overdue installment of Rent.

## ARTICLE 5 — RECORDS AND REPORTS

**5.1 Tenant's Records.** For the purpose of ascertaining the amount, if any, payable under this Lease as Percentage Rental, Tenant shall keep at Tenant's corporate headquarters for a period of not less than three (3) years following the end of each Lease Year, complete books and records of the Gross Sales with respect to such period and all pertinent records and accounts to show inventories and receipts of merchandise at the Demised Premises and daily receipts from all sales and other transactions by Tenant and any other persons conducting any business on or from the Demised Premises during such period. Landlord's authorized representatives shall have the right once each Lease Year to examine at Tenant's office all such records during regular business hours and following at least twenty (20) business days' notice to Tenant.

**5.2 Tenant's Reports.** In addition, Tenant shall, within sixty (60) days after the end of each Lease Year during the Lease Term and within sixty (60) days after the expiration or earlier termination of this Lease, submit to Landlord an accurate statement showing the amount of Gross Sales of Tenant and any other person conducting any business on or from the Demised Premises during such Lease Year or a fractional part thereof.

**5.3 Landlord's Audit Rights.** In connection with any statements or reports submitted by Tenant to Landlord under the provisions of Sections 5.1 and 5.2 hereof, Landlord shall have the right, at any time and from time to time, but not more often than once per calendar year and subject to Section 5.1, to have a certified public accountant or other duly authorized representative examine and audit any such statement or report so submitted by Tenant and all other books and records of Tenant which the accountant or representative shall reasonably deem material to a proper determination of Percentage Rental. If, as a result of such examination, the Gross Sales shown on any statements submitted by Tenant are found to be incorrect, Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such examination, and, if any such statement reflects that the Gross Sales reported by Tenant were understated by more than five percent (5%), Tenant shall upon demand pay for the reasonable cost of such examination and audit.

**5.4 Landlord's Records.** For the purpose of ascertaining and confirming the amounts payable under this Lease as Tenant's Pro Rata Share of Taxes, Insurance Premiums and Common Area Costs, or any other sums which Landlord is entitled to charge Tenant hereunder, Landlord shall keep at the Shopping Center or at Landlord's principal office for a period of not less than three (3) years following the end of each Lease Year, complete books and records of the Taxes, Insurance Premiums, Common Area Costs and any other sums charged to Tenant, and Tenant's Pro Rata Share thereof, with respect to said period, and all pertinent bills, receipts, statements, and other information to evidence and support such amounts, and Tenant's Pro Rata Share thereof.

**5.5 Landlord's Statements, Reports, etc.** In addition, Landlord shall, within sixty (60) days after the end of each Lease Year during the Lease Term and within sixty (60) days after the expiration or earlier termination of this Lease, submit to Tenant an accurate and detailed statement (calculated in accordance with this Lease) showing the total amount of such sums incurred by Landlord in connection with Tenant's Pro Rata Share of Taxes, Insurance Premiums or Common Area Costs, or any other sums which Landlord is

entitled to charge Tenant for hereunder. Upon the written request of Tenant, Landlord shall deliver to Tenant copies of all bills, invoices, statements and other reasonably supporting documentation evidencing and supporting such charges.

**5.6 Tenant's Audit Rights.** In connection with any bills, invoices, statements or other demands submitted by Landlord to Tenant under any of the provisions of this Lease, including, without limitation, under Sections 6.4, 17.2 and 17.3 hereunder, Tenant shall have the right, at any time and from time to time, but not more often than once per calendar year, to have a certified public accountant or other duly authorized representative examine and audit any such bills, invoices, statements or other demands so submitted by Landlord and all books, records, invoices, bills, statements or other material of Landlord which the accountant or representative shall deem reasonably material to a proper determination of Tenant's Pro Rata Share of Taxes, Insurance Premiums or Common Area Costs or any other charges made by Landlord to Tenant hereunder. If, as a result of such examination, the amounts shown on any invoices, bills, statements or demands submitted by Landlord are found to be incorrect, Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such examination, and, if any such statement reflects that the amounts requested to be paid by Tenant shown thereon were overstated by more than five percent (5%), Landlord shall within thirty (30) days after Landlord's receipt of written notice from Tenant pay for the reasonable cost of such examination and audit.

## ARTICLE 6 — COMMON AREA

**6.1 Use and Regulation of Common Area.** The term "*Common Area*" is defined for all purposes of this Lease as that part of the Shopping Center intended for the common use of all tenants, including among other facilities (as such may be applicable to the Shopping Center) parking areas, private streets and alleys, landscaping, curbs, loading areas, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, Shopping Center signs, service areas, common utility lines, pipes and conduits and the like, but excluding (i) space in buildings (now or hereafter existing) designed for rental for commercial purposes, as the same may exist from time to time, (ii) Landlord's management office, utility rooms, storage spaces and out parcels located in the Shopping Center or on the Shopping Center property, (iii) the roofs of the buildings in the Shopping Center, and (iv) streets and alleys maintained by a public authority. Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have the non-exclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants of the Shopping Center and other persons permitted by Landlord to use the same. Tenant shall not solicit business or display or offer for sale merchandise within the Common Area or distribute handbills in the Common Area or take any action which would interfere with the rights of other persons to use the Common Area. Further, as it relates to the Common Areas, Tenant shall not: (A) place or maintain any merchandise, trash, refuse or other articles in any part of the Common Areas; (B) permit the parking of vehicles so as to interfere with the use of any driveway, corridor, sidewalk, parking area or other Common Areas; and (C) use the mall, corridor or other parts of the Common Area adjacent to the Demised Premises for the sale or display of any merchandise or for any other business, occupation or undertaking. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

**6.2 Restrictions on Landlord's Alterations or Additions to Common Area.** Notwithstanding anything contained to the contrary in this Lease, Landlord shall not undertake or allow the following actions or changes without the prior express written consent of Tenant:

- a. The alteration of the location or dimensions of that portion of the Common Area (both inside and outside of the Shopping Center buildings) designated as "Restricted Area" on Exhibit "B"

attached hereto and incorporated herein for all purposes (the "*Restricted Area*") and any buildings, structures or improvements, fixtures, parking areas and driveways located therein (except as required by applicable law);

- b. The construction or erection of any additional buildings, structures or improvements (including any parking garages, kiosks, pad buildings, signs, etc.) in the Restricted Area;
- c. The reduction of the parking ratio of the Shopping Center below 5.0 parking spaces for each 1,000 square feet of floor area located within the Shopping Center; or the material alteration, modification or reduction of the number, size and layout of the existing parking spaces, curb cuts, driveways, drive lanes, etc. within the Restricted Area;
- d. The addition, deletion, movement or alteration of any existing landscaping, planters or structures located within the Restricted Area;
- e. The construction of any additional stories on or over any part of the Demised Premises;
- f. The sale, lease or other grant of an exclusive or semi-exclusive license for the use of any portion of the Restricted Area to any tenant or third party;
- g. Truck trailers, whether disconnected or not, to be parked in the Restricted Area, or in any other area that might interfere with access to the loading dock(s) serving the Demised Premises. If any truck trailer is parked in any such area, Landlord shall tow same within twenty-four (24) hours after Landlord receives oral or telephonic notice thereof from Tenant;
- h. Any obstruction of the driveways that provide ingress and egress to the Shopping Center or the service/delivery areas serving the Demised Premises; or
- i. Any of the prohibited actions under Section 6.3 below.

Landlord further agrees that Landlord shall not use or permit others to use the Restricted Area for fairs, carnivals, swap meets, exhibitions, shows, sales, promotions, spectacles, circuses or other events, without the prior written consent of Tenant.

**6.3 Maintenance of Common Area.** Landlord shall be responsible for the good and safe operation, management, and maintenance of the Common Area, and Landlord shall operate, manage and maintain the Common Area in good, attractive and safe condition during the Lease Term. Notwithstanding anything to the contrary contained in this Lease, from and after the date Tenant opens for business to the public from the Demised Premises, Landlord agrees (a) to limit all construction staging to any area outside of the Restricted Area unless (i) the same is required by applicable law or (ii) such construction staging is for the benefit of Tenant, provided the same is not during any Protected Period; (b) to permit no construction of, or scaffolding upon, the front of the building in which the Demised Premises are located during any Protected Period (as defined below); and (c) to prohibit any repairs, maintenance or other obstruction of any portion of the Restricted Area within any Protected Period. Notwithstanding the foregoing, Landlord may make emergency repairs to the Shopping Center (i.e., those required to address imminent damage or destruction of property or injury or death to persons or to cure a violation of applicable laws which could result in any criminal or quasi-criminal prosecution) within the Restricted Area and during any Protected Period, and such repairs shall not be a breach of this Section 6.3. Notwithstanding the foregoing, Tenant shall give Landlord written notice of any violation under this Section 6.3 and Landlord shall commence to cure the same within three (3) business days of receipt of such notice, Landlord diligently pursuing such cure to completion.

As used herein, each of the following time periods shall be deemed to be a "**Protected Period**":

- a. Three (3) weeks prior to and on Easter Sunday;
- b. August 1 through September 10;
- c. Thanksgiving Day through January 1; and
- d. Three (3) days prior to and on any national holiday and any recognized state holiday within the state where the Demised Premises are located (e.g. President's Day, Labor Day, Memorial Day).

**6.4 Common Area Costs.** Tenant shall pay to Landlord Tenant's Pro Rata Share of Common Area Costs. The term "**Common Area Costs**", as used herein, means all costs and expenses actually incurred by Landlord during each Lease Year in operating, managing, policing, equipping, lighting, repairing, and maintaining the Common Area, including, without limitation, costs of resurfacing and restriping the parking area; repainting, cleaning, sweeping, and other janitorial services; maintenance of refuse receptacles; removal of snow, ice, trash and debris from the Common Areas (excluding, snow and ice removal from the sidewalk directly in front of and adjacent to the Demised Premises); repairing, maintaining and/or replacing the curbs and sidewalks of the Common Areas; landscaping; planting and relandscaping including the cost of installing and maintaining a sprinkler system and related equipment; directional signs and other markers; car stops; lighting (including the cost of tubes, bulbs and ballasts) and other utilities; maintenance and repair of the roof above any building of the Shopping Center; repairing and maintaining overhead canopies; repairing gutters and downspouts; extermination and pest control in and about the Shopping Center; maintenance, repair and replacement of common utility systems, including water, sanitary and storm sewer lines and other utility lines, pipes and conduits; drainage systems serving the Shopping Center; installing, operating and maintaining Shopping Center identification signs; costs of on-site maintenance personnel to implement all of the foregoing, including wages, unemployment taxes, social security taxes and workmen's compensation insurance premiums; premiums for commercial general liability insurance covering the Common Areas; personal property taxes; fees for required licenses and permits; supplies; operation of loudspeakers and any other equipment supplying music to the Common Area; costs related to maintenance, operation, and management of any mall, including all other costs of utilities used in connection with any mall; and an allowance to Landlord for Landlord's supervision of the Common Area and for accounting, bookkeeping and administration in an amount not to exceed to ten percent (10%) of the total of all Common Area Costs. The Common Area Costs for any period shall be reduced by any income received by Landlord in such period for the lease or use of all or any portion of the Common Area, including, without limitation, any parking fees, shows, carnivals, sales, displays, kiosks and advertising.

Notwithstanding the foregoing, the following shall be deducted or excluded from the calculation of Common Area Costs:

- a. the cost of Taxes and Insurance Premiums covered by Article 17 of this Lease, and any other cost otherwise reimbursable under any other tenant's lease, such as, for example, utilities;
- b. Landlord's costs and expenses incurred in connection with any financing of the Shopping Center or any ground lease payments;
- c. depreciation;

- d. rental charges for machinery and equipment not directly allocable to the care and maintenance of the Common Areas;
- e. any cost or expense incurred as a result of any casualty or condemnation, whether or not insurance proceeds or condemnation awards are received therefor;
- f. any cost or expense reimbursed under a guarantee or warranty;
- g. costs of a capital nature [except to the extent the same (i) are expended to replace or restore existing Common Area items to their original condition or utility (but not improved or enhanced condition), or (ii) are required by applicable laws, statutes, codes, regulations, rules, or court orders enacted after the date hereof, and are, in any of the foregoing cases, fully amortized (straight-line) over the useful life of such capital item];
- h. management fees;
- i. wages, unemployment taxes, social security taxes, workmen's compensation insurance premiums, fringe benefits or any other compensation or benefits to Shopping Center management personnel, except those paid or provided to maintenance personnel;
- j. any cost or expense related to or incurred in connection with Landlord's management office, utility rooms, storage areas and out parcels;
- k. any fees and expenses for attorneys and other professionals that are not directly related to the Common Area or Common Area Costs (e.g. collection expenses, eviction efforts and lease negotiations);
- l. any cost or expense related to the leasing or promotion of leasable space in the Shopping Center;
- m. any cost or expense related to the advertising of the Shopping Center or promotional events;
- n. any cost or expense incurred in connection with the correction or replacement of any construction defect in the Shopping Center, or any repairs or maintenance to remedy poor or substandard workmanship or materials;
- o. any alterations, modifications, deletions or additions to the Shopping Center that are required, mandated or encouraged by or are effected because of the Americans with Disabilities Act or any other similar law;
- p. any cost or expense incurred in connection with compliance of the Shopping Center with any applicable laws, statutes, ordinances, regulations, rules, court orders and restrictive covenants, including, without limitation, any remediation of Hazardous Materials or Hazardous Materials Contamination (as such terms are defined below);
- q. any penalties, fines, costs or expenses incurred because of any violation by Landlord or Landlord's employees, agents, contractors or attorneys of any applicable laws, statutes, ordinances, regulations, rules, court orders and restrictive covenants, including, without limitation, any remediation of Hazardous Materials or Hazardous Materials Contamination (as such terms are defined below);

- r. any cost or expense incurred to benefit directly any single tenant;
- s. any franchise, organization or income taxes or similar taxes or charges paid by Landlord;
- t. Any reserves for future expenses, repairs or maintenance; and
- u. Any cost or expense associated with or related to the operation of a food court or similar area.

Subject to the limitations imposed by Article 18, Tenant shall make such payments monthly to Landlord simultaneously with the payment of Minimum Guaranteed Rental. Such monthly payments shall be based upon Landlord's good faith estimate of the annual Common Area Costs, but are subject to adjustment after the end of the Lease Year on the basis of the actual Common Area Costs for such period. As soon as practicable after the end of each Lease Year, but in no event later than one hundred twenty (120) days after the Lease Year end, Landlord will give Tenant notice of the actual amount paid by Tenant for the relevant period together with the actual amount of Tenant's Pro Rata Share of Common Area Costs for such period. If the actual amount of Tenant's Pro Rata Share of such Common Area Costs with respect to such period exceeds the aggregate amount previously paid by Tenant with respect thereto during the period, Tenant shall pay to Landlord the deficiency within thirty (30) days following notice from Landlord. If, however, the aggregate amount previously paid by Tenant with respect thereto exceeds Tenant's Pro Rata Share of such Common Area Costs for such period, then, at Tenant's election, such surplus shall either be credited against Rent thereafter becoming due under this Lease or Landlord shall refund such surplus to Tenant within thirty (30) days following written notice from Tenant. In no event shall Tenant be deemed to have waived any and all claims for reimbursement from Landlord for Tenant's overpayment of Common Area Costs for any relevant period.

**6.5 Common Area Lighting.** Landlord shall cause the Common Area to be fully-lighted each and every day, during the period from dusk until at least one hour past the hour at which the last tenant of the Shopping Center (including Tenant) closes. Thereafter until 12:00 midnight, Landlord shall provide reduced lighting at a level consistent with employee safety requirements.

## **ARTICLE 7 — USE**

**7.1 Use of Demised Premises.** The Demised Premises may be used for the Permitted Use as provided in Section 1.18, and for no other purpose. The Demised Premises may also be used by permitted assignees or subtenants of Tenant. Tenant shall use in the transaction of business in the Demised Premises the trade name(s) specified in Section 1.5 and no other trade name without the prior written consent of Landlord. The immediately preceding sentence shall not apply to a permitted assignee of this Lease or a permitted subtenant of the Demised Premises.

**7.2 Operation of Business.** Tenant shall give Landlord a copy of any written notice that Tenant receives regarding any violation of laws and regulations of any governmental body with respect to the Demised Premises or the use or occupancy thereof. Tenant shall not use or permit the Demised Premises to be used for any purpose prohibited by any applicable law or regulation, and Tenant shall not commit waste or permit waste to be committed on or in the Demised Premises. Tenant will ensure, as reasonably determined by Tenant, that the Demised Premises contains sufficient stock of seasonally appropriate merchandise necessary and shall maintain sufficient staff in order to produce the maximum amount of sales from the Demised Premises. Tenant shall not permit the Demised Premises to be used in any way or for any purpose that will increase the rate of fire or other casualty insurance for the Shopping Center or that may render the Shopping Center uninsurable at normal rates for the similar shopping centers as the Shopping Center at normal rates by reputable insurance carriers licensed to do business in the State of New York. In the event that by reason of acts or omissions of Tenant, its agents, contractors, consultants and/or employees, there shall be an increase in the rate of insurance on the Shopping Center, then Tenant agrees to pay such increase.

Tenant shall not permit any objectionable or unpleasant odors to emanate from the Demised Premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Demised Premises or where the same can be seen or heard from outside the Demised Premises; nor take any other action which would constitute a nuisance or would unreasonably disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; nor receive the shipment of articles outside of the designated loading areas for the Demised Premises; nor place loads on any floor in the Demised Premises that exceed the maximum floor load that such floor was designed to carry; nor operate the HVAC system in such a manner as to drain heating or air conditioning from the Shopping Center or from the premises of any other tenant in the Shopping Center (to the extent foregoing is applicable and to the extent the Demised Premises does not have an HVAC system which exclusively serves the Demised Premises); nor install an alarm system or locks other than those supplied by Landlord (to the extent the same is applicable) without the prior approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; nor sell any illegal drugs or drug paraphernalia from the Demised Premises.

**7.3 Ceasing to Do Business in Demised Premises.** Provided (i) Landlord is not then in default under this Lease beyond any applicable cure period and (ii) Landlord timely delivers the Demised Premises to Tenant with Landlord's Work complete in accordance with the terms of this Lease and those contained on Exhibit "C", Tenant shall be obligated to open for business to the public in the Demised Premises fully stocked, staffed and fixtured for one (1) day, and thereafter, Tenant shall be obligated to pay Rent to Landlord in accordance with the terms of this Lease. If the Demised Premises are closed for business for a period of time that exceeds one hundred eighty (180) consecutive days (excluding, however, any days during which no business is conducted because of Landlord's default, casualty, condemnation, repairs, remodeling, environmental remediation or investigation), Landlord shall, as its sole recourse or remedy, have the option, but not the obligation, to cancel the Lease at any time thereafter by giving Tenant no less than thirty (30) days prior written notice. After termination of the Lease under this Section, neither Landlord nor Tenant shall have any further obligations, liabilities or duties under the Lease (except for any unpaid Rent due and owing hereunder and those covenants that expressly survive the termination or expiration of the Lease). Further, during the time that no business is operated in the Demised Premises (except as may otherwise be specifically provided under the Lease), Tenant shall continue to perform and be liable for the performance of all of its obligations and duties under this Lease, including, without limitation, the payment of Rent.

**7.4 Disposal of Trash.** Tenant shall keep the Demised Premises free from unreasonable accumulations of waste. Tenant shall store all trash and garbage either within the Demised Premises, or in a trash receptacle and arrange for the regular pick-up of such trash and garbage at Tenant's expense. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center.

**7.5 Compliance with Laws.** Tenant shall procure, at its expense, any permits and licenses required for the transaction of Tenant's business in the Demised Premises. Tenant covenants and agrees that at all times during the Lease Term, including any renewals thereof, to comply with all applicable laws, codes, ordinances and governmental rules, regulations and orders applicable to Tenant's Work, any alterations, additions or improvements made to the Demised Premises by Tenant, and the business conducted on the Demised Premises by Tenant, including, without limitation, all applicable federal, state and local laws, regulations and ordinances pertaining to air and water quality, Hazardous Materials (as defined in Article 22), waste disposal and other environmental matters or any direction of any public officer pursuant to law, which shall impose a duty on Tenant with respect to the Demised Premises. At all times during the Lease Term, Landlord covenants and agrees that, at Landlord's sole cost, expense and liability, Landlord shall comply with all applicable laws, codes, ordinances and governmental rules, regulations and orders relating to the Shopping Center and the Demised Premises (to the extent not required or necessitated because of Tenant's specific business being conducted therein, as distinguished from general retail, or required as an immediate and direct result of any alterations, additions or improvements made by Tenant thereto) and with all recorded covenants

and restrictions affecting the Shopping Center, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations and ordinances pertaining to air and water quality, Hazardous Material, waste disposal, and other environmental matters, all zoning and other land use matters, utility availability, and with any direction of any public officer pursuant to law, which shall impose any duty upon Landlord with respect to the Shopping Center.

**7.6 Prohibited Uses in Shopping Center.** As a material consideration for Tenant to enter into this Lease, subject to Landlord's Exclusive Use Covenants, Landlord agrees that neither Landlord nor any person or entity controlled by Landlord or another tenant shall use, lease or permit the use, leasing or subleasing of, or sell any space in, any portion of the Shopping Center for any of the following uses:

- a. a pornographic: (i) bookstore, (ii) cinema, (iii) video store, (iv) massage parlor, (v) modeling studio or (vi) tanning salon or any other business which would tend to injure the family-oriented reputation of the Shopping Center;
- b. topless/bottomless nightclub or restaurant or similar venue for adult entertainment;
- c. auction, going out of business, fire or bankruptcy sales or similar merchandise liquidators;
- d. army-navy surplus store, second-hand store, or salvage or "odd-lot" store;
- e. Roller skating rink;
- f. Video arcade, pool or gaming hall;
- g. Nightclub, bar or dance hall;
- h. Flea market, swap meet or similar enterprise;
- i. Manufacturing or processing plant;
- j. Pawn shop;
- k. Check cashing service;
- l. Bowling alley;
- m. Cinema or theater;
- n. Sports, health or fitness club (except such sports, health or fitness club that (i) occupies, in the aggregate, less than 7,500 square feet of G.L.A. of the Shopping Center or (ii) is located within the Ames Space);
- o. Auto parts sales (including tires, batteries and accessories), gas station, auto repair shop;
- p. Bingo parlor, Offtrack betting parlor;
- q. Funeral home or mortuary;
- r. Any use that is inconsistent with a family-oriented, first class shopping center, including, without limitation, any use of any medium that might constitute a nuisance such as loud

speakers, sound amplifiers, phonographs, radios, televisions or any other sound producing device which will carry sound outside of the premises (provided, however, "*Wegmans*", as shown on Exhibit "B", may use such sound producing device which would carry sound outside of its premises);

- s. Any tenant who occupies, in the aggregate, more than 5,000 square feet of the total G.L.A. of the Shopping Center and whose use or the purpose of its premises shall be similar to or competitive with Tenant's business, including, without limitation, Goody's, Belk's, Dunlap's, J. C. Penney's, Dillard's and May Co.'s; or so-called "off-price" retail store (a store selling at retail brand-name merchandise at less than full retail price on a regular basis) such as those operated by T.J. Maxx, Stein Mart, Loehman's, Kohl's, Burlington Coat Factory or as an apparel store..

In addition to any other rights or remedies provided herein, Landlord understands and agrees that in the event Landlord or any person or entity controlled by Landlord or another tenant uses, leases or permits the use, leasing or subleasing of, or sells any space in any portion of the Shopping Center in violation of the Prohibited Uses set forth in subparagraph 7.6.s., Tenant shall only pay to Landlord as total Rent an amount equal to one percent (1%) of Tenant's Gross Sales for each calendar month (or portion thereof) during which such violation persists. Such payments shall be made monthly and shall be due and payable on or before thirty (30) days after the expiration of each calendar month during which such violation persists.

Notwithstanding the foregoing, the total amount of Rent payable during any Lease Year in which the preceding paragraph of this subparagraph 7.6.s. is applicable shall not exceed the Rent that would have been payable by Tenant under the Lease if not for the preceding paragraph of this subparagraph 7.6.s. In the event Tenant pays in the aggregate an amount in excess of the Rent that would have been payable by Tenant under this Lease if not for the preceding paragraph of this subparagraph 7.6.s., Landlord agrees to reimburse Tenant promptly upon demand for any such excess. For purposes of clarification, this grammatical subparagraph and the immediately preceding grammatical subparagraph shall only apply to subparagraph 7.6.s. and any violations thereof, and the same shall not apply to subparagraphs 7.6.a. through 7.6.r.

## ARTICLE 8 — MAINTENANCE AND REPAIRS

**8.1 Landlord's Obligations.** Landlord, at its sole cost and expense, shall keep the foundation, the structural members and portions of the Demised Premises, the exterior walls (except plate glass; windows, doors, door closure devices and other exterior openings; window and door frames, molding, locks and hardware; special store fronts; lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installations, equipment and fixtures; signs, placards, decorations or advertising media of any type; damage caused by break-ins or attempted break-ins to the Demised Premises; interior painting, and as may otherwise be provided in Article 7 of this Lease), the roof (excluding, however, damage to any part of the roof or to any attachments on the roof or equipment placed on the roof, including, without limitation, damage to the rooftop air conditioning units caused by the activities of Tenant or Tenant's contractors) of the Demised Premises and any and all utility service lines under, above or outside the Demised Premises and those (wherever located) that service more than the Demised Premises in good repair and working order. Landlord shall additionally be responsible for any damages to plate glass, windows, doors, door and window frames, exterior openings, store fronts, signs, systems, etc. caused by a failure of or latent defect in the foundation, soil, roof, exterior walls or structural portions of the Demised Premises. Landlord, however, shall not be required to

make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees, and concessionaires; and the provisions of the preceding sentence are expressly agreed to be subject to the provisions of Article 14 and Article 15 of this Lease.

In the event that the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give written notice thereof to Landlord. If life, security or health of individuals is threatened or where the loss of property (including Tenant's inventory, trade fixtures and equipment) is threatened or imminent, Tenant may inform Landlord and/or Landlord's agent, orally or in writing, and Landlord shall immediately commence such repairs and proceed to complete the same with due diligence. Except in the event of an emergency, Tenant shall send written notice of any such repairs required to be made by Landlord hereunder, and Landlord shall commence to cure the same within thirty (30) days from receipt of such notice and proceed to complete the same with due diligence. Except in the event of an emergency, any failure of Landlord to commence to cure any such repairs within thirty (30) days after receipt of notice from Tenant shall be deemed to be a default by Landlord hereunder which shall not require additional notice and opportunity to cure under Section 19.7, and Landlord shall be liable to Tenant for any and all damage, liability, costs and expenses incurred or suffered by Tenant arising directly from Landlord's failure.

Alternatively, and notwithstanding anything in this Section 8.1 to the contrary, Tenant may make any emergency repairs (as determined by Tenant in its reasonable discretion) or pay any expenses required to be paid by Landlord up to the sum of Ten Thousand and no/100 Dollars (\$10,000.00), provided Tenant has used reasonable efforts to contact Landlord or Landlord's representatives or Landlord's Shopping Center manager by telephone. Such costs, expenses and disbursements incurred by Tenant in remedying such emergency situations, may be offset by Tenant against Rent until Tenant is completely reimbursed.

Landlord shall maintain the roof prior to the Commencement Date in good repair and free from leaks.

In addition to the foregoing, Landlord agrees to monitor and maintain and repair all fire sprinkler lines serving the Demised Premises.

From the Commencement Date through the end of the first Lease Year after the Commencement Date, Landlord shall refurbish or replace, if necessary, the existing HVAC system serving the Demised Premises and maintain the same in good working condition. For each Lease Year thereafter, if any HVAC unit serving the Demised Premises is in need of repair or replacement, Landlord shall reimburse Tenant for all costs and expenses for such repair or replacement which, in the aggregate, exceed Five Thousand and No/100 Dollars (\$5,000.00) per Lease Year.

**8.2 Tenant's Obligations** Tenant shall keep the Demised Premises in good, clean and habitable condition and shall at its sole cost and expense keep the Demised Premises reasonably free of insects, rodents, vermin and other pests and make all needed repairs and replacements (except for repairs and replacements required to be made by Landlord under the provisions of Section 8.1, Article 14 and Article 15): including keeping the inside and outside of all glass in the doors or windows of the Demised Premises clean; replacing any cracked or broken glass of the Demised Premises with glass of like grade and quality; keeping all mechanical apparatus free of vibration and noise that may be transmitted beyond the Demised Premises; illuminating all show windows of the Demised Premises and exterior signs during the hours of operation as agreed to by Landlord and Tenant; complying with and observing all rules and regulations established by the Landlord from time to time that apply generally to all retail tenants in the Shopping Center (provided such rules and regulations shall be provided to Tenant in writing and enforced by Landlord in a nondiscriminatory manner). Without limiting the generality of the previous sentence, it is understood that Tenant's responsibilities shall include the repair and replacement of all lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures; all utility repairs in ducts, conduits, pipes and wiring in the Demised Premises; any sewer stoppage located in, under and above the

Demised Premises caused by Tenant; and all damage caused by break-ins or attempted break-ins to the Demised Premises. Further, Tenant shall be responsible for snow and ice removal from the sidewalk directly in front of and adjacent to the Demised Premises. Tenant, however, shall not be required to make any repairs occasioned by the act or negligence of Landlord, its agents, contractors, employees, licensees, concessionaires and invitees.

**8.3 Assignment of Warranties.** Landlord hereby assigns to Tenant for the Lease Term all manufacturers' and other warranties applicable to that portion of the Demised Premises and the equipment and systems therein which Tenant is obligated to maintain. If any such warranties are not assignable to or enforceable by Tenant, then Landlord shall enforce such warranties upon request and for the benefit of Tenant.

## **ARTICLE 9 — ALTERATIONS**

**9.1 Required Approval and Renewals.** Except as otherwise provided herein (including Tenant's rights under Article 11), Tenant shall not make any alterations, additions or improvements to the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to make any alterations, improvements, modifications or replacements to the interior of the Demised Premises without the consent of Landlord if and only if Tenant shall not remove, alter or otherwise impair any structural element of the Demised Premises. Tenant shall promptly provide Tenant's "as-built" plans and specifications for any such alterations, improvements, modifications or replacements to the interior of the Demised Premises upon written request from Landlord. Tenant may remove Tenant's trade fixtures, supplies, furniture and equipment not permanently attached to the Demised Premises provided that such removal is made prior to twenty (20) days after the expiration of the Lease Term and Tenant promptly repairs all damage to and restores all surfaces of the Demised Premises caused by such removal. All other property at the Demised Premises which is permanently attached or affixed to the floor, wall or roof of the Demised Premises shall remain upon and be surrendered with the Demised Premises upon the expiration or termination of the Lease Term.

**9.2 Construction by Landlord.** All construction work done by Landlord within the Demised Premises shall be performed in accordance with Exhibit "C" (when applicable) and in a good and workmanlike manner and in compliance with all applicable governmental laws and requirements. Landlord agrees that in making any alterations, additions, repairs or maintenance to the Demised Premises or in exercising any right or complying with any duty under this Lease, Landlord shall not alter or modify the then existing ceilings, walls, floors, furr-down finishes in the Demised Premises, or install any pipe, conduit, duct, wire or column that is not entirely contained in and covered by the then existing walls, floors, ceilings or furr-down finishes within the Demised Premises.

**9.3 Liens.** Tenant's Work and all of Tenant's alterations to or within the Demised Premises shall be done in a good and workmanlike manner and Tenant shall neither permit nor suffer any lien to be filed against the Demised Premises or the Shopping Center as a result of Tenant's Work or Tenant's alterations of the Demised Premises. In the event any such lien is filed and Tenant does not cause the same to be released of record or bonded off within thirty (30) days after notice thereof, same shall constitute an Event of Default hereunder.

## **ARTICLE 10 — ACCESS**

**10.1 Entry by Landlord.** Landlord shall have the right to enter upon the Demised Premises during Tenant's regular business hours for the purpose of inspecting the same, or of making repairs to the Demised Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Demised

Premises to prospective purchasers, lessees or lenders. In no event, however, shall Landlord in any way materially interfere with or obstruct normal business operations in the Demised Premises.

**10.2 Placement of Signs** Tenant will permit Landlord to maintain "For Rent" or "For Lease" signs on the Demised Premises during the last one hundred eighty (180) days of the Lease Term, at a location acceptable to Tenant, it being understood that such signs shall in no way affect Tenant's obligations under this Lease.

## ARTICLE 11 — EXTERIOR CHANGES AND SIGNS

**11.1 Exterior Changes.** Tenant shall not, without Landlord's prior written consent, which consent shall be in Landlord's sole discretion, (a) make any changes to the store front or (b) install any exterior lighting, decorations, paintings, awnings, canopies or the like or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Demised Premises, excepting only displays in its display windows and such signs, door lettering, placards, decorations or advertising media that are being customarily and normally used in connection with Tenant's stores. All signs shall be kept in good condition and in proper operating order at all times. Tenant shall immediately remove any signs, window or door lettering, placards, decorations or advertising media of any type which are not in conformity with the above. Notwithstanding anything to the contrary contained in this Lease, Tenant's placement of any such signs or exterior changes shall be subject to Tenant obtaining the necessary permits and/or approvals from the appropriate local governmental authority, which shall be obtained at Tenant's expense. Landlord agrees that if any such signs or exterior changes are required to be installed or performed by Landlord, Landlord shall comply with any applicable laws for the same.

**11.2 Fascia Sign.** Subject to Tenant obtaining the necessary permits and/or approvals from the appropriate local governmental authority, which shall be obtained at Tenant's expense, Tenant shall have the right to erect and maintain, at Tenant's sole cost and expense, an illuminated sign or signs on the Demised Premises bearing Tenant's standard design name/logo. The size, location, materials and colors of such sign(s) shall be acceptable to both parties. Landlord agrees that Tenant's sign criteria set forth on Exhibit "D" attached hereto and incorporated herein are acceptable to Landlord. Tenant shall not change its signage without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. Tenant, at Tenant's sole cost and expense, shall maintain such sign in good condition and repair (normal wear and tear excepted) at all times during the Lease Term (including any renewals thereof).

**11.3 Pylon Sign.** Intentionally deleted.

**11.4 Temporary Signage.** Subject to Tenant obtaining the necessary permits and/or approvals from the appropriate local governmental authority, which shall be obtained at Tenant's expense, prior to the installation of Tenant's signs on the front of the Demised Premises and on the pylon sign and subject to local governmental approval, Tenant may erect and maintain on the exterior of the Demised Premises, at Tenant's cost and expense, a professionally prepared banner sign advertising the pending opening of Tenant's business. In addition, Tenant may erect and maintain on the exterior of the Demised Premises, at Tenant's cost and expense, (i) professionally prepared banner signs advertising Tenant's "grand opening" and the hiring of associates for a period not to exceed twenty-one (21) days and (ii) on the days on which Tenant may hold its periodic "one-day sales" a professionally prepared banner sign advertising such sales.

**11.5 Tenant's Identification in Shopping Center.** Tenant's trade name (or that of its permitted assignee or subtenants) shall be listed on all Shopping Center directories, if any. On any maps or diagrams, if any, where the name of any store located within the Shopping Center is shown, such trade name and location must be shown. On any billboards, if any, advertising the Shopping Center controlled by Landlord, in which

any store located within the Shopping Center is listed by name, such trade name must likewise be listed. On any directional signs at the Shopping Center (both interior and exterior), if any, upon which any store located within the Shopping Center is listed with directions indicated, such trade name shall likewise be listed by trade name with the direction indicated.

## ARTICLE 12 — UTILITIES

**12.1 Facilities.** Landlord agrees to cause to be provided by the Scheduled Delivery Date and thereafter maintained the necessary mains, conduits and other facilities necessary to supply water, gas, electricity, telephone service, sewage service and other commonly available utilities to the Demised Premises. Additionally, Landlord agrees to pay, at its sole cost and expense (not subject to inclusion in Common Area Costs), all "tap" or connection charges and all special assessments relating to the installation or availability of utilities. Tenant shall be responsible for contracting with third (3<sup>rd</sup>) party utility providers directly for such utilities serving the Demised Premises.

**12.2 Payment for Services.** Following completion and inspection of Landlord's Work and delivery of the Demised Premises to Tenant, Tenant shall promptly pay, prior to delinquency, all charges thereafter accruing for electricity, water, gas, telephone service, sewage service and other utilities furnished to the Demised Premises.

**12.3 Interruption in Service.** In the event that any utility service to the Demised Premises is interrupted because of any negligent act or willful misconduct by Landlord or Landlord's agents, employees, licensees, invitees or contractors and such utility service(s) is not restored within four (4) days of such interruption in service, Tenant shall be entitled to an abatement of Rent for each day or portion of a day thereafter during which such utility service(s) is not reinstated.

**12.4 HVAC Warranties.** Landlord agrees that it shall assign to Tenant for the Lease Term all rights and benefits under any manufacturer's or installer's warranties relating to any HVAC system to be installed by Landlord as part of Landlord's Work. Landlord also agrees to obtain a warranty of one (1) year (five (5) years on compressors) from the Commencement Date on the HVAC in the Demised Premises to be provided by Landlord.

## ARTICLE 13 — INSURANCE AND INDEMNITY

**13.1 Indemnities.** Tenant agrees to indemnify Landlord and Landlord's agents, servants, employees, attorneys, partners, managers, members, officers, directors, shareholders, property managers and their respective heirs and successors-in-interest (collectively "**Landlord's Parties**"), defend and hold Landlord's Parties harmless from any loss, liability, expense (including reasonable attorneys' fees) or claims arising from damage or injury on account of any willful act or negligent act or omission by Tenant, Tenant's agents, employees, subtenants, licensees or concessionaires; and, without limiting the generality of the foregoing, Tenant further covenants and agrees to indemnify, defend and hold Landlord's Parties harmless from and against any penalty, damage or charge incurred or imposed by reason of any violation of law or ordinance by Tenant. In the event of any action or claim against which Landlord's Parties is entitled to indemnification hereunder, Tenant shall promptly notify Landlord's Parties of the same and shall furnish Landlord's Parties with all relevant information concerning such action or claim, and Landlord's Parties shall be entitled, at Tenant's expense, to participate in, and to the extent that Landlord's Parties wishes, to assume the defense thereof.

Landlord agrees to indemnify Tenant and Tenant's agents, servants, employees, attorneys, partners, managers, members, officers, directors, shareholders, property managers and their respective heirs and successors-in-interest (collectively "**Tenant's Parties**"), defend and hold Tenant's Parties harmless from any loss, liability, expense (including reasonable attorneys' fees) or claims arising from damage or injury or on account of any willful act or negligent act or omission by Landlord, Landlord's agents, employees, licensees or concessionaires; and, without limiting the generality of the foregoing, Landlord further covenants and agrees to indemnify, defend and hold Tenant's Parties harmless from and against any penalty, damage or charge incurred or imposed by reason of any violation of law or ordinance by Landlord. In the event of any action or claim against which Tenant's Parties is entitled to indemnification hereunder, Landlord shall promptly notify Tenant's Parties of the same and shall furnish Tenant's Parties with all relevant information concerning such action or claim, and Tenant's Parties shall be entitled, at Landlord's expense, to participate in, and to the extent that Tenant's Parties wishes, to assume the defense thereof.

It is understood and agreed that in the event that both Landlord's Parties and Tenant's Parties are negligent, each party shall indemnify, defend and hold the other party harmless to the extent of such party's negligence, as may be determined by any final non-appealable judgment entered by a court of competent jurisdiction.

**13.2 Tenant's Liability Insurance.** Throughout the Lease Term (including any renewal term), Tenant shall procure and maintain, at its cost and expense, the following: (i) commercial general liability insurance (written on a per occurrence basis) including contractual liability coverage insuring the obligations assumed by Tenant under this Lease, premises and operations coverage, broad form property damage coverage and independent contractors coverage (including an endorsement for personal injury); (ii) all-risk property insurance; (iii) comprehensive automobile liability insurance coverage (covering any automobiles owned or operated by Tenant, to the extent applicable); and (iv) worker's compensation insurance (to the extent applicable and to the extent required by applicable governmental law). The limits of such commercial general liability insurance shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit (such amount to include Tenant's combined primary and excess coverage and self-insurance). Landlord and the holder of any mortgage shall be named an additional insured under such policy. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days prior to cancellation of or any material change in such policy. Such policy or a duly executed certificate of insurance shall be promptly delivered to Landlord and renewals thereof as required shall be delivered to Landlord at least ten (10) days prior to the expiration of the policy term.

Tenant represents that as of the date of this Lease, Tenant has insurance coverage with an A.M. Best's Rating of A. Notwithstanding anything to the contrary contained in this Lease, nothing shall prevent Tenant from changing its insurance coverage; provided, however, such coverage shall never have an A.M. Best's Rating of less than B.

Notwithstanding anything to the contrary contained in this Section 13.2, Tenant shall have the right, in Tenant's sole discretion, to "self-insure" (as defined below) its merchandise, trade fixtures, furnishings, equipment, plate glass and other personal property, such as signs, wall coverings and carpeting on or within the Demised Premises its fixtures, merchandise, equipment and other personal property; provided Tenant (i) notifies Landlord in writing of its intent to self-insure and provides a statement of self-insurance certifying that the insurance required to be carried by Tenant hereunder is in full force and effect and (ii) maintains a tangible net worth of Fifty Million and No/100 Dollars (\$50,000,000.00) [as used herein "tangible net worth" shall mean net worth under generally accepted accounting principles of the United States minus any and all intangible assets (such as goodwill, patents, intellectual property rights, etc.)]. As used herein, "self-insure" shall mean that (i) Tenant is itself acting as though it were the insurance company providing the insurance required under the provisions of this Lease, (ii) Tenant shall pay any amounts due in lieu of the insurance required under the provisions of this Lease, and (iii) Tenant shall pay any amounts due in lieu of insurance

proceeds which would have been payable if the applicable insurance policy had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease. All amounts that Tenant pays or is required to pay and all loss or damages resulting from risks for which Tenant has elected to self-insure shall be subject to the waiver of subrogation provisions of Section 13.6 of this Lease and shall not limit Tenant's indemnification obligations set forth in this Lease.

**13.3 Landlord's Liability Insurance.** Landlord shall procure and maintain throughout the Lease Term a policy of insurance, at its sole cost and expense, insuring Landlord against all claims, demands or actions arising out of or in connection with the Shopping Center and the Common Area, or as a result of the condition of the Shopping Center, the limits of such policy or policies to be in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00) combined single limit. Tenant shall be named an additional insured under such policy. Landlord shall promptly deliver to Tenant evidence of such insurance upon request by Tenant from time to time.

**13.4 Blanket Policies.** A party's obligation to carry the insurance required under this Article may be brought within the coverage of a so-called "blanket" policy or policies provided that the coverage afforded the other party is not reduced or diminished by the blanket policy of insurance, an endorsement to that effect is provided (if the same is required to effect such coverage), and such blanket policy otherwise conforms to the requirements set forth herein.

**13.5 Landlord's Fire Insurance.** Landlord agrees to take out and maintain at all times during the Lease Term a policy of fire and extended coverage insurance (with sprinkler leakage, vandalism and malicious mischief endorsements) on the Shopping Center improvements. Such policy shall contain a replacement cost endorsement. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the other provisions hereof.

**13.6 Waiver of Subrogation.** Landlord and Tenant each hereby releases the other and its agents, employees, partners, shareholders, officers and directors from any claims or actions for any damage to the Demised Premises or the Shopping Center that are caused by or result from risks insured under any insurance policies maintained or required to be maintained by the releasing party under the terms of this Lease or in force at the time of any such damage. Landlord and Tenant each covenants and agrees that its insurer shall not have any right of subrogation against the other with respect to any such damage or loss. Each party shall use commercially reasonable efforts to cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy. This waiver of subrogation clause shall control over any indemnification clause contained in this Lease.

#### ARTICLE 14 — DAMAGE BY FIRE AND OTHER CAUSES

**14.1 Notice of Loss.** Tenant shall give written notice to Landlord of any damage known to Tenant and caused to the Demised Premises by fire or other casualty.

**14.2 50% or Less Damage.** In the event that fifty percent (50%) or less of the floor area of the Demised Premises shall be damaged by fire or other casualty [or twenty five percent (25%) or less if there remains less than three Lease Years in the then existing Lease Term, and Tenant refuses to exercise any available extension option in accordance with Article 2 hereof], to the extent of Landlord's insurance proceeds, Landlord shall cause such damage to be repaired (provided such damage was not caused by the negligent or willful misconduct of Tenant or Tenant Parties), and the Demised Premises to be restored to substantially the same condition in which the Demised Premises were in immediately preceding such casualty (including Landlord's Work, but not Tenant's leasehold improvements, furniture, trade fixtures and other removable

items). Landlord shall commence such repair, restoration and reconstruction within sixty (60) days after the receipt of insurance proceeds for such fire or other casualty, and Landlord shall complete the same as soon as possible thereafter (but in no event later than one hundred eighty (180) days from the date of the commencement of such repairs, restoration and reconstruction), Landlord diligently pursuing such repairs, restoration and reconstruction to completion. If Landlord fails to commence such restoration within the sixty (60) day period, or to faithfully perform its obligations hereunder, the same shall be an Event of Default and Tenant shall have the right to terminate this Lease by giving notice of termination to Landlord, and the Lease shall terminate sixty (60) days from the date of such notice. Upon termination, both parties shall be released from all further liabilities and obligations accruing after the effective date of termination (unless expressly provided otherwise in this Lease).

**14.3 More Than 50% Damage.** In the event that more than fifty percent (50%) of the floor area of the Demised Premises shall be damaged by fire or other casualty [or more than twenty five percent (25%) if there remains less than three Lease Years in the then existing Lease Term, and Tenant refuses to exercise any available extension option in accordance with Article 2 hereof], then Landlord or Tenant may elect to terminate this Lease. If either party elects to terminate this Lease, such party shall so notify the other within sixty (60) days after the occurrence of such damage or destruction, and if notice of such termination is not given within said sixty (60) day period, Landlord shall be obligated to repair, restore and reconstruct the Demised Premises (including Landlord's Work, but not Tenant's leasehold improvements, furniture, trade fixtures and other removable items) and the Shopping Center to substantially the same condition in which they existed immediately prior to such damage or destruction. Landlord shall commence such repair, restoration and reconstruction within sixty (60) days after the receipt of insurance proceeds for such fire or other casualty, and Landlord shall complete the same (to the extent of Landlord's insurance proceeds) as soon as possible thereafter (but in no event later than two hundred seventy (270) days from the date of the commencement of such repairs, restoration and reconstruction), Landlord diligently pursuing such repairs, restoration and reconstruction to completion. If Landlord fails to commence such restoration within the sixty (60) day period, or to faithfully perform its obligations hereunder, the same shall be an Event of Default and Tenant shall have the right to terminate this Lease by giving notice of termination to Landlord, and the Lease shall terminate sixty (60) days from the date of such notice. Upon termination, both parties shall be released from all further liabilities and obligations accruing after the effective date of termination (unless expressly provided otherwise in this Lease).

**14.4 Damage to Shopping Center.** In the event that fifty percent (50%) or more of floor area of all buildings in the Shopping Center shall be damaged or destroyed by fire or other casualty [or twenty five percent (25%) or more if there remains less than three Lease Years in the then existing Lease Term, and Tenant refuses to exercise any available extension option in accordance with Article 2 hereof], either Landlord or Tenant may elect to terminate this Lease by giving the other party written notice of termination within sixty (60) days following the date of such damage or destruction. If notice of such termination is not given within said sixty (60) day period, or if neither party has the right to terminate this Lease, Landlord shall be obligated to repair, restore and reconstruct the Shopping Center to substantially the same condition in which it existed immediately prior to such damage or destruction. Landlord shall commence such repair, restoration and reconstruction within sixty (60) days after the receipt of insurance proceeds for such fire or other casualty, and Landlord shall complete the same (to the extent of Landlord's insurance proceeds) as soon as possible thereafter (but in no event later than two hundred seventy (270) days from the date of the commencement of such repairs, restoration and reconstruction), Landlord diligently pursuing such repairs, restoration and reconstruction to completion. If Landlord fails to commence such restoration within the sixty (60) day period, or to faithfully perform its obligations hereunder, the same shall be an Event of Default and Tenant shall have the right to terminate this Lease by giving notice of termination to Landlord, and the Lease shall terminate sixty (60) days from the date of such notice. Upon termination, both parties shall be released from all further liabilities and obligations accruing after the effective date of termination (unless expressly provided otherwise in this Lease).

**14.5 Abatement of Rental.** All Rent, except Percentage Rent (to the extent that Tenant remains open for business), shall be abated from the date of such casualty through the date that is the earlier to occur of (i) sixty (60) days after the date that Landlord notifies Tenant that the Demised Premises (including Landlord's Work and that portion of Tenant's Work that is to be restored) have been repaired, restored and reconstructed and Landlord's architect has certified the same in writing to Tenant, or (ii) the date when Tenant opens the Demised Premises for business to the public.

**14.6 Tenant's Right to Extend Lease Term.** In the event that any fire or other casualty occurs during the last three (3) Lease Years of the Lease Term which would otherwise give Landlord the right to terminate this Lease, Tenant shall have sixty (60) days after receipt of notice of Landlord's intention to terminate in which to exercise its option to extend the Lease Term in accordance with Article 2 hereof.

#### **ARTICLE 15 — EMINENT DOMAIN**

**15.1 Taking of Demised Premises.** If the whole or any portion of the floor area of the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall, unless Landlord and Tenant agree otherwise in writing, terminate effective on the date physical possession is taken by the condemning authority. If this Lease is not terminated in accordance with the immediately preceding sentence, then Landlord shall make such repairs and alterations as may be necessary in order to restore the portion of the Demised Premises to a useful condition and all Rent (other than Additional Rent due to Landlord by reason of Tenant's failure to perform any of its obligations hereunder) shall be proportionately reduced to reflect such taking.

**15.2 Taking of Common Area.** If twenty-five percent (25%) or more of the Common Area, or twenty-five percent (25%) or more of the Restricted Area, should be taken as aforesaid, this Lease shall terminate unless Landlord and Tenant agree otherwise. If this Lease is not or cannot be terminated by Landlord or Tenant hereunder following such partial taking, Landlord shall make all necessary repairs or alterations to the remaining Common Area required to make the remaining portions of the Common Area an architectural whole within one hundred eighty (180) days from the date on which physical possession is taken by the condemning authority.

**15.3 Award.** All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Demised Premises or Common Area shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided however, that nothing contained herein shall prevent Tenant from seeking an award for Tenant's moving and relocation expenses or for the loss of Tenant's fixtures, leasehold improvements installed at Tenant's expense and other tangible personal property installed by Tenant, but only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord.

#### **ARTICLE 16 — ASSIGNMENT AND SUBLETTING**

**16.1 Prohibition** Except as permitted in this Article 16, Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Demised Premises or any part thereof, or grant any license, concession or other right of occupancy of any portion of the Demised Premises or mortgage, pledge or otherwise encumber its interest in this Lease or in the Demised Premises, without the prior written consent of Landlord which shall not be unreasonably withheld or delayed, and any attempt to do any of the foregoing without the prior express written consent of Landlord shall be void and of no effect. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any

proposed subsequent assignments and sublettings. In no event shall any assignment or sublease hereunder release Tenant from any of its obligations or liabilities under this Lease, unless Landlord expressly releases Tenant therefrom by written agreement. This prohibition shall include, without limitation, (i) an assignment or subletting to a receiver or trustee in any federal or state bankruptcy or insolvency proceeding; (ii) the sale or assignment or transfer of all or substantially all of the assets of Tenant with or without a specific assignment of the Leases (except as provided under Sections 16.3 or 16.4); and (iii) the cumulative sale or transfer of more than (x) 50% of Tenant's ownership interests (except where the Tenant continues to exist in its then present form and continues to own and hold substantially the same assets as before such transfer), or (y) 50% of Tenant's then existing assets; all subject to Section 16.3 and 16.4 of the Lease.

**16.2 Transfers by Operation of Law.** Except as may otherwise be set forth herein, no transfer of any partnership interest or other ownership interest in Tenant shall be deemed to be an assignment under this Lease nor shall any entity conversion of Tenant be deemed to be an assignment hereunder.

**16.3 Transfer to Parent or Subsidiary.** Notwithstanding anything contained in this Article 16 to the contrary, Tenant shall have the unrestricted right to assign this Lease or to sublet the Demised Premises to its parent corporation or to any subsidiary or affiliated corporation provided that, in the case of an assignment, Tenant delivers to Landlord an executed copy of the assignment wherein such parent corporation, subsidiary or affiliated corporation assumes for the benefit of Landlord all of the obligations of Tenant under this Lease existing on and after the effective date of the assignment and agrees to be bound by the terms, conditions and covenants of this Lease, and further provided that any such assignment or subletting shall not relieve the initial Tenant from liability from the payment of Rent or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease.

**16.4 Mergers, Consolidations, etc.** Notwithstanding anything contained in this Article 16 to the contrary, Tenant shall have the right to assign this Lease or to sublet the Demised Premises to any corporation or entity into which Tenant may merge or to any corporation or entity arising out of a consolidation of Tenant with another corporation or to a corporation or other entity acquiring all or substantially all of the assets of Tenant or all of the partnership interest in Tenant. Such right to assign the Lease or to sublet the Demised Premises shall be expressly conditioned upon Tenant delivering to Landlord evidence that the corporation or entity into which Tenant may merge, or the corporation or entity arising out of a consolidation of Tenant with another corporation or entity or such acquiring corporation or entity, as the case may be, has a net worth and financial condition equal to or greater than the net worth and financial condition of Tenant as of the date of this Lease, and Tenant delivering to Landlord an executed copy of the assignment wherein the corporation or entity into which Tenant may merge or the corporation or entity arising out of a consolidation of Tenant with another corporation or entity or such acquiring corporation or entity, as the case may be, assumes for the benefit of Landlord all of the terms, conditions and covenants set forth in this Lease to be observed and performed by Tenant existing on and after the effective date of the assignment and agrees to be bound by the terms, conditions and covenants of this Lease. Any such assignment or subletting shall not relieve Tenant from liability for the payment of Rent or other sums herein provided or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease.

**16.5 De Minimis Concessions and Subleases.** Intentionally deleted.

## ARTICLE 17 — TAXES

**17.1 Taxes on Tenant's Property.** Tenant shall be liable for all taxes levied against Tenant's personal property and trade fixtures placed by Tenant in the Demised Premises.

**17.2 Tenant's Pro Rata Share of Taxes.** Landlord shall pay or caused to be paid all general real estate taxes and special assessments and governmental charges (hereinafter collectively referred to as "**Taxes**") levied or assessed against the Shopping Center for each real estate tax year. The term "**Taxes**" shall include (A) ad valorem taxes and other impositions on real property; (B) any present or future taxes or governmental charges imposed upon Landlord or assessed against the Shopping Center or the land of the Shopping Center, including, without limitation, any tax a levied on or measured by the rents payable by tenants of the Shopping Center which are in the nature of, or in substitution for real estate taxes, (C) all taxes imposed upon Landlord that are assessed against the value of any improvements to the Demised Premises made by Tenant; and (D) reasonable expenses (including attorneys' fees) incurred in reviewing, protesting or seeking a reduction of Taxes; provided, however, if a tax refund is actually collected by Landlord as a result of such tax protest, such expenses shall be deducted from such tax refund and shall not be included in Taxes. Subject to the limitations imposed by Article 18, Tenant shall pay to Landlord in monthly installments, on the same dates as and in addition to the monthly installment of Minimum Guaranteed Rental, an amount (subject to the limitations imposed by Article 18) equal to one-twelfth (1/12th) of Tenant's Pro Rata Share of Taxes, as estimated by Landlord in good faith from time to time. As soon as practicable after the close of each real estate tax year, but in no event later than ninety (90) days after the real estate tax year end Landlord shall furnish a statement in writing to Tenant, and if requested copies shall be provided of tax bills and evidence of payment made by Landlord thereof, specifying the actual amount due by Tenant in respect of Tenant's Pro Rata Share of Taxes. In the event the total of the monthly payments theretofore made by Tenant under this Section 17.2 for such period exceeds the actual amount due, then the excess shall, at Tenant's election, either be (i) applied as a credit against any Rent thereafter becoming due by Tenant to Landlord or (ii) refunded to Tenant within thirty (30) days after written demand by Tenant to Landlord. In the event the total of the monthly payments theretofore made by Tenant under this Section 17.2 for such period is less than the actual amount due, any such deficiency shall be due and payable by Tenant to Landlord within thirty (30) days after Tenant's receipt of such statement. If the Demised Premises shall be separately assessed, then Tenant's Pro Rata Share of the Taxes shall be the amount of such separate assessment. If the Lease Term is not in effect for an entire real estate tax year, Tenant's Pro Rata Share of Taxes shall be prorated on a daily basis between the parties to the end that Tenant shall only pay for Taxes attributable to the portion of the real estate tax year occurring within the Lease Term.

In the event that Landlord appeals or protests Taxes and obtains a refund for any real estate tax year in which Tenant paid Tenant's Pro Rata Share of Taxes to Landlord pursuant to this Lease, Landlord shall pay to Tenant within thirty (30) days after receipt of such refund Tenant's Pro Rata Share of such refund as reasonably calculated by Landlord (after deducting the reasonable costs and expenses incurred by Landlord in obtaining such refund to the extent not otherwise included in Taxes); provided, however, that in no event shall the amount of Tenant's Pro Rata Share of such refund be greater than the total amounts paid to Landlord by Tenant pursuant to this Section 17.2 for such applicable real estate tax year. Further, Landlord and Tenant agree that if the refund is for a real estate tax year in which Tenant did not pay Tenant's Pro Rata Share of Taxes, then Tenant shall not be entitled to any share of such refund.

**17.3 Insurance Premiums** For purposes of this Lease, the term "**Insurance Premiums**" shall mean and include the total annual insurance premiums and other charges for fire and extended coverage insurance policies, all-risk property insurance, commercial general liability insurance, Landlord's liability risk retention in lieu of premium and any other insurance insuring the Shopping Center (provided such other insurance does not insure Landlord's business operations) maintained by Landlord, from time to time, for or with respect to the Shopping Center and the buildings thereon. Subject to the limitations imposed by Article 18, Tenant shall pay to Landlord in monthly installments, on the same dates as and in addition to the Minimum Guaranteed Rental, an amount equal to one-twelfth (1/12th) of Tenant's Pro Rata Share of Insurance Premiums, as estimated by Landlord in good faith from time to time. As soon as practicable after the close of each Lease Year, but in no event later than ninety (90) days after the Lease Year end, Landlord shall furnish a statement in writing to Tenant specifying the actual amount due by Tenant with respect to Tenant's Pro Rata Share of Insurance Premiums. In the event the total of the monthly payments theretofore made by Tenant

under this Section 17.3 for such period exceeds the actual amount due, then the excess shall, at Tenant's election, either be (i) applied as a credit against any Rent thereafter becoming due by Tenant to Landlord or (ii) refunded to Tenant within thirty (30) days after written demand by Tenant to Landlord. In the event the total of the monthly payments theretofore made by Tenant under this Section 17.3 for such period is less than the actual amount due, any such deficiency shall be due and payable by Tenant to Landlord within thirty (30) days after Tenant's receipt of such statement. For purposes hereof, premiums paid for insurance policies having policy years which do not coincide with the Lease Term shall be prorated on a per diem basis for each Lease Year affected, and total premiums for policies issued for more than one year will be prorated equally over the number of years of the term of such policies, regardless of differences in premium amounts actually paid during any particular year or years of such term. During any part of the Lease Term which shall be less than a full policy year, Tenant's Pro Rata Share of Insurance Premiums shall be prorated on a daily basis between the parties to the end that Tenant shall only pay for Insurance Premiums attributable to the portion of the policy year occurring within the Lease Term.

#### **ARTICLE 18 — LIMITATION OF TENANT'S PRO RATA SHARE OF COMMON AREA COSTS, TAXES AND INSURANCE PREMIUMS**

**18.1 Limitation of Common Area Costs.** Notwithstanding anything to the contrary contained in this Lease, for the period commencing with the Commencement Date through the end of the first Lease Year after the Commencement Date, Tenant shall pay Tenant's Pro Rata Share of Common Area Costs, such costs estimated to equal Zero and 50/100 Dollars (\$0.50) per square foot of G.L.A. of the Demised Premises for such period. For the second full Lease Year after the Commencement Date and for each Lease Year thereafter, Tenant's Pro Rata Share of Common Area Costs may not increase annually by more than three percent (3.00%) of such amounts paid by Tenant to Landlord for the immediately previous Lease Year, on a non-cumulative basis. The parties agree that in calculating the foregoing three percent (3.00%) annual "cap", if Tenant's Pro Rata Share of Common Area Costs does not increase by three percent (3.00%), the difference between three percent (3.00%) and the actual percentage of increase shall not be cumulated or carried forward to future years. In no event shall Tenant's estimated payments of Common Area Costs pursuant to Section 6.4 be required to exceed any applicable limit. The foregoing limit shall be prorated on a per diem basis for any Lease Year of less than 365 days and, in the case of the first Lease Year, the per square foot limitation shall be multiplied by a fraction, the numerator of which is the number of days in the first Lease Year and the denominator of which is 365 days.

Notwithstanding anything to the contrary contained in this Lease, Common Area Costs actually incurred by Landlord for snow plowing shall be excluded from the calculation of the preceding three percent (3.00%) annual "cap".

**18.2 Limitation of Taxes.** Notwithstanding anything to the contrary contained in this Lease, for the period commencing with the Commencement Date through the end of the first Lease Year after the Commencement Date, Tenant shall pay Tenant's Pro Rata Share of Taxes, such taxes estimated to equal One and 24/100 Dollars (\$1.24) per square foot of G.L.A. of the Demised Premises for such period. For the second full Lease Year after the Commencement Date and for each Lease Year thereafter, Tenant's Pro Rata Share of Taxes may not increase annually by more than three percent (3.00%) of such amounts paid by Tenant to Landlord for the immediately previous Lease Year, on a non-cumulative basis. The parties agree that in calculating the foregoing three percent (3.00%) annual "cap", if Tenant's Pro Rata Share of Taxes does not increase by three percent (3.00%), the difference between three percent (3.00%) and the actual percentage of increase shall not be cumulated or carried forward to future years. In no event shall Tenant's estimated payments of Taxes pursuant to Section 17.2 be required to exceed any applicable limit. The foregoing limit shall be prorated on a per diem basis for any Lease Year of less than 365 days and, in the case of the first Lease

Year, the per square foot limitation shall be multiplied by a fraction, the numerator of which is the number of days in the first Lease Year and the denominator of which is 365 days.

**18.3 Limitation of Insurance Premiums.** Notwithstanding anything to the contrary contained in this Lease, for the period commencing with the Commencement Date through the end of the first Lease Year after the Commencement Date, Tenant shall pay Tenant's Pro Rata Share of Insurance Premiums, such insurance premiums estimated to equal Zero and 17/100 Dollars (\$0.17) per square foot of G.L.A. of the Demised Premises for such period. For the second full Lease Year after the Commencement Date and for each Lease Year thereafter, Tenant's Pro Rata Share of Insurance Premiums may not increase annually by more than three percent (3.00%) of such amounts paid by Tenant to Landlord for the immediately previous Lease Year. The parties agree that in calculating the foregoing three percent (3.00%) annual "cap", if Tenant's Pro Rata Share of Insurance Premiums does not increase by three percent (3.00%), the difference between three percent (3.00%) and the actual percentage of increase shall not be cumulated or carried forward to future years. In no event shall Tenant's estimated payments of Insurance Premiums pursuant to Section 17.3 be required to exceed any applicable limit. The foregoing limit shall be prorated on a per diem basis for any Lease Year of less than 365 days and, in the case of the first Lease Year, the per square foot limitation shall be multiplied by a fraction, the numerator of which is the number of days in the first Lease Year and the denominator of which is 365 days.

## ARTICLE 19 — DEFAULT

**19.1 Events of Default.** Each of the following events shall be deemed to be an Event of Default by Tenant under this Lease:

- 19.1.1** Tenant shall fail to pay any installment of Rent or any other obligation hereunder involving the payment of money when due hereunder and shall not cure such failure within ten (10) days after written notice thereof to Tenant, provided Landlord shall not be required to provide more than two (2) notices per Lease Year;
- 19.1.2** Except as otherwise expressly provided herein, including, without limitation, Section 9.3 and Section 19.1.1, Tenant shall fail to comply with any term, provision or covenant of this Lease, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant; provided that if such failure cannot be reasonably cured within such 30-day period, Tenant shall not be in default if Tenant commences to cure within the 30-day period and completes the same with due diligence;
- 19.1.3** Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make a general assignment for the benefit of creditors;
- 19.1.4** Tenant shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant; or
- 19.1.5** A receiver or Trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Tenant and the same is not dismissed within sixty (60) days after such appointment.
- 19.1.6** The dissolution of Tenant whether voluntary or involuntary, under the laws of the state in which it was formed, or the revocation of Tenant's right to transact business in the state in which the Demised Premises is located.

**19.1.7** Subject to Section 7.3, if Tenant shall abandon the Demised Premises and fail to pay any installment of Rent (unless specifically provided otherwise under this Lease).

**19.2 Remedies.** Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:

**19.2.1** Terminate this Lease, in which event Tenant shall immediately surrender possession of the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in Rent, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying the Demised Premises or any part thereof, by force if necessary, without being liable for prosecution of any claim for damages therefor; and/or

**19.2.2** Enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying the Demised Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, with or without having terminated the Lease.

Exercise by Landlord of the remedy in Section 19.2.2 shall not be deemed to be an acceptance of surrender of the Demised Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant.

**19.3 Landlord's Right to Cure Defaults** If Tenant should fail to cure any default hereunder within the time herein permitted, Landlord, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account of Tenant (and enter the Demised Premises for such purpose), and thereupon Tenant shall be obligated, and hereby agrees, to pay Landlord, upon demand, all costs and expenses (including reasonable attorneys' fees) incurred by Landlord in taking such remedial actions.

**19.4 Termination by Landlord** In the event Landlord elects to terminate this Lease by reason of an Event of Default, then notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord the sum of all Rent accrued to the date of such termination.

**19.5 Termination of Tenant's Right to Possession** In the event Landlord elects to repossess the Demised Premises without terminating this Lease, Tenant shall be liable for and shall pay to Landlord all Rent accrued to the date of such repossession, plus all Rent, as it becomes due and payable, required to be paid by Tenant to Landlord during the remainder of the Lease Term, diminished by any net sums thereafter received by Landlord through reletting the Demised Premises during said period. In no event shall Tenant be entitled to any excess rental obtained by reletting over and above the Rent herein reserved. Actions to collect amounts due by Tenant as provided in this Section 19.5 may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until the expiration of the Lease Term. Notwithstanding the foregoing, Landlord shall not be responsible or liable for the failure to relet all or any portion of the Demised Premises or for the failure to collect any rent. The reentry or taking of possession of the Demised Premises shall not be construed as an election by Landlord to terminate this Lease unless a written notice of termination is sent to Tenant.

**19.6 Injunctive Relief** In the event of the breach or the attempted or threatened breach of any covenant or provision contained in this Lease by either party, the other shall have, in addition to all other remedies provided to it hereunder or by law or in equity, the right to seek an injunction prohibiting such breach or attempted breach.

**19.7 Default by Landlord** In the event of any default by Landlord hereunder, except as otherwise provided herein, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure such default or to commence to cure such default; if any such default cannot be reasonably cured within such 30-day period, Landlord shall commence to cure within such 30-day period and prosecute such cure with diligence to a conclusion. Unless and until Landlord fails to so cure or proceed with diligence to cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof.

If Landlord is in default hereunder, and fails to cure the same timely, in addition to any and all other rights, remedies and recourses available to Tenant, Tenant may (i) undertake to cure such default on behalf of Landlord, and thereupon Landlord agrees to pay Tenant, upon demand, all costs and expenses (including reasonable attorneys' fees) incurred by Tenant in taking such remedial actions or, in the alternative, Tenant may offset the same against Rent and/or (ii) send notice to Landlord of Tenant's election to terminate and the Lease shall terminate sixty (60) days from the date of such notice.

## **ARTICLE 20 — HOLDING OVER**

In the event Tenant remains in possession of the Demised Premises after the expiration of this Lease, and without Landlord's consent, it shall be deemed to be occupying the Demised Premises as a tenant at will at a rental equal to the Rent herein provided plus fifty percent (50%) of the Minimum Guaranteed Rental and Percentage Rental and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a tenancy at will. Additionally, if Tenant fails to vacate the Demised Premises within thirty (30) days after the expiration of the Lease Term, and such failure causes Landlord to be unable to deliver possession of the Demised Premises to a new tenant or to perform improvements for a new tenant as a result of such failure, then Tenant shall be liable to Landlord for the reasonable costs and expenses incurred by Landlord as a result of such failure of Tenant.

## **ARTICLE 21 — NOTICES**

Wherever any notice is required or permitted hereunder such notice shall be in writing except as otherwise expressly provided. Any notice required or permitted to be delivered hereunder shall be delivered by hand or overnight express service or sent by United States Registered or Certified Mail, adequate postage prepaid and, for purposes of the calculation of the various time periods referred to herein, shall be deemed received when delivered to the place for giving notice to a party referred to herein in the case of delivery by hand or overnight express service or upon the earlier to occur of (i) actual receipt as indicated on the signed receipt, or (ii) three (3) days after posting as herein provided, in the case of delivery by mail in the manner provided above. All notices given hereunder shall be addressed to the party at its address set out in Section 1.2 or Section 1.4 and, in the case of notice to Tenant, with a copy to Tenant at the Demised Premises, or at such other address as the party to receive such notice may have theretofore specified by written notice to the other. It is further agreed that no notice to Tenant shall be effective unless separate written notices are sent to both the Senior Vice President of Real Estate and the Vice President / Senior Counsel, as set forth in Section 1.4. Additionally, it is agreed that no notice to Landlord shall be effective unless separate written notices are sent to both the Senior Vice President of Real Estate and General Counsel, as set forth in Section 1.2.

## **ARTICLE 22 — ENVIRONMENTAL REGULATIONS**

**22.1 Environmental Definitions** For purposes of this Article, the following terms shall have the following meanings:

**22.1.1 "Hazardous Materials"** shall mean any substance the presence of which in the Shopping Center is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to (i) any "*hazardous waste*" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and any regulations promulgated thereunder; (ii) any "*hazardous substance*" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*) ("*CERCLA*" or "*SuperFund*"), as amended from time to time, and any regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

**22.1.2 "Governmental Requirements"** shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city or any other political subdivision in which the Demised Premises is located and any other political subdivision, agency or instrumentality exercising jurisdiction over the Shopping Center.

**22.1.3 "Hazardous Materials Contamination"** shall mean the contamination of the improvements, facilities, soil, ground water, air, or other elements on, over or under the Shopping Center by Hazardous Materials, or the contamination of the improvements, facilities, ground water, air or other elements on, over or under any other property as a result of Hazardous Materials.

**22.2 Landlord's Environmental Protection.** Landlord agrees that Landlord shall not receive, store, dispose or release any Hazardous Materials on or in the Shopping Center, transport any Hazardous Materials to or from the Shopping Center or permit the existence of any Hazardous Materials Contamination (unless caused by Tenant) or allow or permit any other person or tenant to do so, except in the context permitted by the second sentence of Section 22.3. If Landlord acquires knowledge of Hazardous Materials Contamination on, under or in the Shopping Center or of the transportation of any Hazardous Materials in violation of law, Landlord shall promptly give written notice to Tenant with a full description thereof. Landlord agrees to comply with any and all Governmental Requirements requiring the removal, treatment or disposal of Hazardous Materials or Hazardous Materials Contamination caused directly or indirectly by Landlord, its owners, directors, officers, licensees, invitees and assignees, all at Landlord's sole cost and expense, and provide Tenant with satisfactory evidence of any such compliance. If Landlord causes (directly or indirectly) or knowingly or negligently permits the receipt, storage, disposal or release of any Hazardous Materials or Hazardous Materials Contamination on, under, over or in the Demised Premises or Shopping Center (except where caused by Tenant), Landlord shall promptly remove, treat and dispose of such Hazardous Materials or Hazardous Materials Contamination and clean up the affected property and provide Tenant with evidence satisfactory to Tenant of such removal, treatment, disposal and/or clean up.

**22.3 Tenant's Environmental Protection.** Tenant agrees that Tenant shall not receive, store, dispose or release any Hazardous Materials on or in the Demised Premises or Shopping Center, transport any Hazardous Materials to or from the Demised Premises or Shopping Center or cause any Hazardous Materials Contamination. Notwithstanding the foregoing, Tenant shall not be in default under this Section if Tenant receives, stores, disposes or releases any substances that are technically Hazardous Materials but that are commonly found in retail operations (e.g. copier toner, cleaning supplies, pest control chemicals), provided that (i) the quantities of such substances are normal and customary for Tenant's operations and (ii) such materials are handled, stored, disposed and released in accordance with all Governmental Requirements. If Tenant

acquires knowledge of the presence of any Hazardous Materials or Contamination on, under or in the Shopping Center or of the transportation of any Hazardous Materials to or from the Demised Premises or Shopping Center in violation of law, Tenant shall promptly give written notice to Landlord with a full description thereof.

Tenant agrees to comply with any and all Governmental Requirements requiring the removal, treatment or disposal of Hazardous Materials or Hazardous Materials Contamination by Tenant, its owners, directors, officers, licensees, invitees and assignees, all at Tenant's sole cost and expense, and provide Landlord with satisfactory evidence of any such compliance. If Tenant causes (directly or indirectly) or knowingly or negligently permits the receipt, storage, disposal or release of any Hazardous Materials or Hazardous Materials Contamination on, under, over or in the Demised Premises or Shopping Center (except where caused by Landlord), Tenant shall promptly remove, treat and dispose of such Hazardous Materials or Hazardous Materials Contamination and clean up the affected property and provide Landlord with evidence satisfactory to Landlord of such removal, treatment, disposal and/or clean up.

**22.4 Environmental Indemnity.** Tenant hereby indemnifies, defends and saves harmless Landlord from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fees, fines, penalties, losses, damages, expenses or costs, including interest, court costs and attorneys' fees (collectively the "**Claims**") incurred or suffered by Landlord (a) that is incurred or imposed based upon any Governmental Requirement and that arises out of any act of Tenant, its agents, subtenants or licensees or (b) that otherwise arises by the breach by Tenant of any representation, warranty or covenant in this Article 22. Landlord hereby indemnifies, defends and saves harmless Tenant from and against any Claims incurred or suffered by Tenant (a) that is incurred or imposed based upon any Governmental Requirement and that arises out of any act or omission of Landlord, its agents, tenants (other than Tenant) or licensees or (b) that otherwise arises by the breach by Landlord of any representation, warranty or covenant in this Article 22. These indemnifications shall survive the termination or expiration of this Lease. Notwithstanding anything in this Lease to the contrary, the indemnities provided in this Article 22 shall not relieve a party which is seeking indemnification to the extent Claims result from the negligence or willful misconduct of such party seeking indemnification.

## ARTICLE 23 — WAIVER OF LANDLORD'S LIEN

Landlord hereby waives any and all constitutional, statutory and common law liens and security interests, and any rights of distraint, with respect to Tenant's property. This Lease does not grant a contractual lien or any other express or implied security interest to Landlord with respect to Tenant's property.

## ARTICLE 24 -- MISCELLANEOUS

**24.1 Relationship Between Parties.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**24.2 Consent of Parties.** Except as may be otherwise herein provided, in all circumstances under this Lease where prior consent or permission of one party ("**first party**"), whether it be Landlord or Tenant, is required before the other party ("**second party**") is authorized to take any action, the matter of whether to grant such consent or permission shall be within the sole and exclusive judgment and discretion of the first party; and it shall not constitute a breach by the first party or any defense to the performance of any covenant, duty or obligation of the second party hereunder that the first party delayed or withheld the granting of such consent or

permission, whether or not the delay or withholding of such consent or permission was prudent or reasonable or based on good cause.

**24.3 No Waivers.** One or more waivers of a breach of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**24.4 Force Majeure.** Except for Sections 1.8, 1.9, 3.1 and 3.2, and Articles 14 and 15, whenever a period of time is herein prescribed for action to be taken by either Landlord or Tenant, Landlord and Tenant shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes (not caused by such party), riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of a similar kind which are beyond the reasonable control of Landlord and/or Tenant, except that adverse financial or economic conditions shall not be included.

**24.5 Estoppels/Subordination Non-Disturbance Agreements.** Each party, within ten (10) business days after receipt of a written request of the other party, shall execute and deliver to the requesting party an estoppel certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of Minimum Guaranteed Rental, the Percentage Rental Rate and the dates to which Rent has been paid in advance, if any. The certificate shall also state whether or not, to the actual knowledge of the signer of such certificate, the other party is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specify each such default of which the signer may have knowledge. Notwithstanding anything to the contrary herein, neither party shall be obligated to execute more than three (3) such certificates in any Lease Year.

Landlord agrees to use its commercially reasonable efforts to obtain a Subordination, Nondisturbance and Attornment Agreement(s) ("**SNDA**") from future Mortgagees. Such SNDA shall be mutually agreed upon between Landlord, Mortgagee and Tenant and contain a non-disturbance agreement (such agreement to be commercially reasonable to Tenant). As used in this Section 24.5, "Mortgage" shall mean any mortgage, deed to secure the debt, deed of trust, trust deed or other collateral conveyance of, or lien or encumbrance against, the Shopping Center or any portion thereof.

**24.6 Governing Law.** The laws of the state where the Demised Premises is located shall govern the interpretation, validity, performance and enforcement of this Lease.

**24.7 Attorneys' Fees.** In the event of a dispute hereunder and either party institutes an action or proceeding against the other, the prevailing party in such action or proceeding shall recover reasonable attorneys' fees and court costs from the other.

**24.8 Captions.** The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

**24.9 Genders.** Whenever herein the singular number is used, the same shall include the plural and words of any gender shall include each other gender.

**24.10 Successors.** The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, assigns (when permitted under the terms of this Lease) and legal representatives, except as otherwise herein expressly provided.

**24.11 Entire Agreement.** This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. Landlord and Tenant hereby acknowledge that they are not relying on any representation or promise of the other, except as may be expressly set forth in this Lease.

**24.12 Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance is to any extent invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforceable to the extent permitted by law.

**24.13 Time of the Essence.** In all instances where Landlord or Tenant is required hereunder to pay any sum or perform any act at a particular indicated time or within an indicated period, it is understood and agreed that, subject to Section 24.4, time is of the essence.

**24.14 Brokerage.** Landlord covenants and agrees to pay, hold harmless and indemnify Tenant from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof. It is understood and agreed that Landlord shall pay NAI Pyramid Brokerage Co., Inc., as Broker, a commission equal to the amounts set forth by separate agreement between such Broker and Landlord.

**24.15 Confidentiality.** The parties covenant and agree to keep the provisions of this Lease and any audit information hereunder confidential, and not to disclose said terms, provisions or audit information to any person or entity whatsoever (except as provided below or any memorandum of lease). Landlord and Tenant acknowledge that either party may have made special concessions to the other to induce the other to execute this Lease and which, if known, could damage the other party's future business and/or bargaining power. Further, the parties agree not to in any way publicize, disclose or discuss the terms of this agreement to or with persons other than those named herein, and shall use their best efforts to cause such parties to whom they are permitted to disclose such information to maintain the confidentiality of such information in accordance with the terms hereof. Notwithstanding the foregoing, disclosure of the foregoing confidential information to the following parties shall not be a default of this Section (i) to any party's accountants, auditors or business professionals or consultants (including brokers, insurance and marketing consultants), (ii) to any party's attorneys or other professionals for purposes of review and advice and for use in any litigation or potential litigation against any party, (iii) in connection with litigation or in response to any subpoena or other legal process requiring the production or disclosure hereof, (iv) to the IRS or any applicable regulatory authority, (v) to any relatives, officers, directors, agents, or employees of the party or of the party's parent corporation, subsidiary, or other related entity, (vi) to any existing or proposed lender, purchaser, investor, assignee, subtenant, or licensee, or (vii) otherwise as required of any party by applicable law or order.

**24.16 Waiver.** Landlord understands and agrees that any and all liquidated damages as set forth in the Lease (including, without limitation, Section 3.2 and Section 6.3) are compensation for actual damages to Tenant and not a penalty to Landlord. Landlord hereby waives any defense as to the validity of any liquidated damages as set forth in the Lease on the grounds that they are penalties or are not reasonably related to actual damages.

**24.17 No Operating Covenant.** Nothing herein contained, including the payment of Percentage Rent, shall be construed as an express or implied operating covenant by Tenant.

**24.18 Multiple Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed to be an original, and together which shall constitute one and the same instrument.

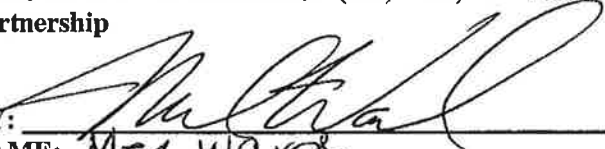
SIGNATURE PAGE OF SHOPPING CENTER LEASE AGREEMENT  
BETWEEN WEGMANS FOOD MARKETS, INC., AS LANDLORD,  
AND SPECIALTY RETAILERS (TX) LP, AS TENANT,  
RELATING TO THE DEMISED PREMISES IN  
NEWARK PLAZA SHOPPING CENTER,  
NEWARK, NEW YORK

EXECUTED as of the date hereinabove stated.

WEGMANS FOOD MARKETS, INC., a New York  
corporation

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

SPECIALTY RETAILERS (TX) LP, a Texas limited  
partnership

BY:   
NAME: Mei Ward  
TITLE: Sr. Vice President

SIGNATURE PAGE OF SHOPPING CENTER LEASE AGREEMENT  
BETWEEN WEGMANS FOOD MARKETS, INC., AS LANDLORD,  
AND SPECIALTY RETAILERS (TX) LP, AS TENANT,  
RELATING TO THE DEMISED PREMISES IN  
NEWARK PLAZA SHOPPING CENTER,  
NEWARK, NEW YORK

EXECUTED as of the date hereinabove stated.

WEGMANS FOOD MARKETS, INC., a New York  
corporation

BY: Ralph A. Uttaro  
NAME: Ralph A. Uttaro  
TITLE: Senior Vice President

SPECIALTY RETAILERS (TX) LP, a Texas limited  
partnership

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**EXHIBIT A**

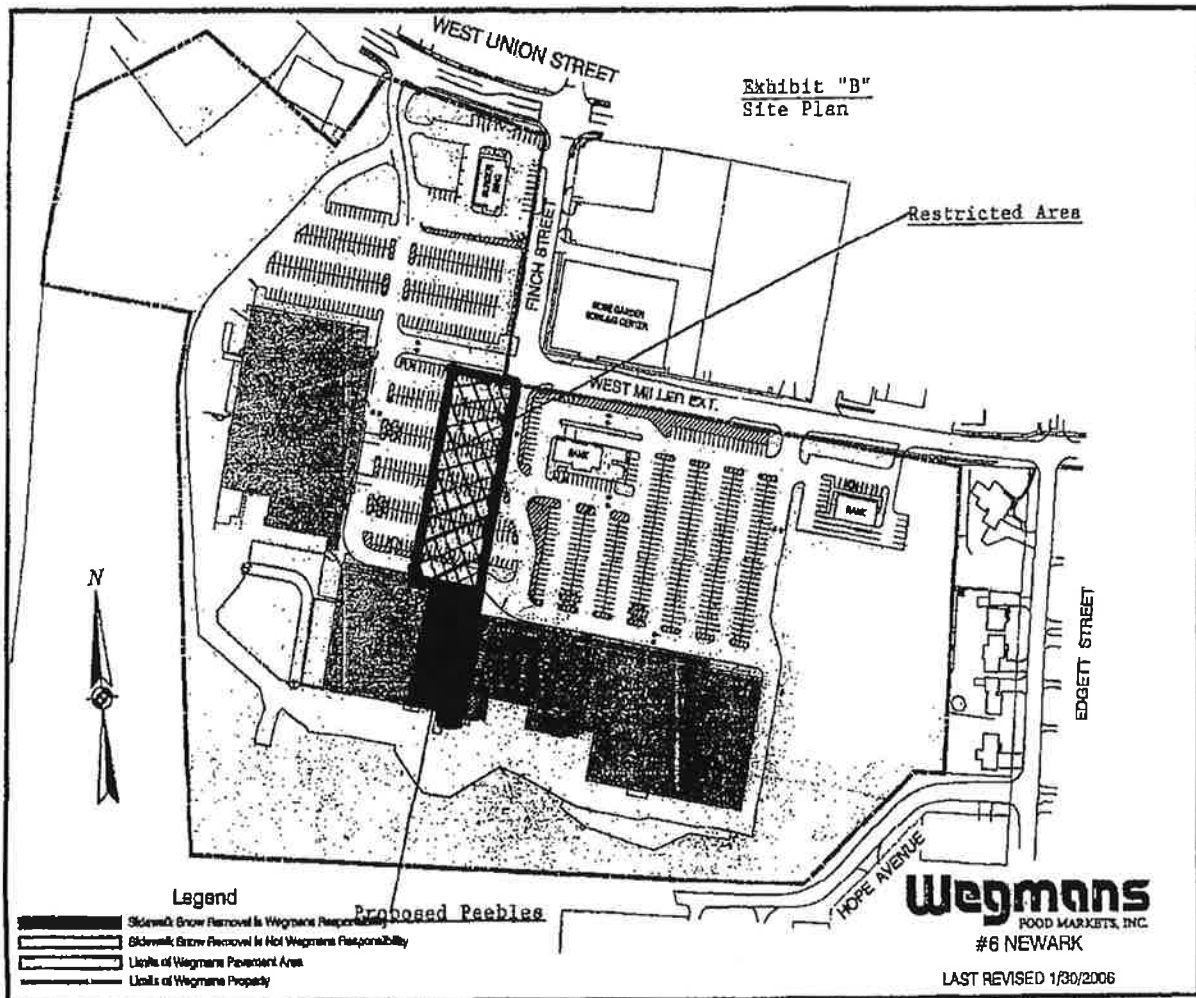
**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Newark, Town of Arcadia, County of Wayne and State of New York, bounded and described as follows: Beginning at a point in the south line of West Miller Street Extension and the west line of Finch Street and running thence S76° 13' E along the south line of said West Miller Street Extension 505.65 feet to a point; thence S76°19'30"E along said south line of West Miller Street Extension 349.14 feet to the northwest corner of lands now or formerly owned by Vernon M. Gridley and wife; thence S7°2'W, 208.65 feet to a point; thence S6°40'40"W, 314.52 feet; thence N83°39'W, 56.27 feet to a point; thence S49°56'W, 276.10 feet to a point; thence N83°39'W, 1124.74 feet to a point at the southwest corner of a sixty (60) foot right-of-way; thence N20'E along the west line of said 60 foot right-of-way 201.11 feet to a point; thence continuing along the west line of said 60 foot right-of-way N2°E, 596.06 feet and N13°24'E, 131.45 feet; thence S46°37'53"W, 386.59 feet to a point; thence N42°18'00"E, 144.20 feet to a point in the south line of State Highway Route No. 31, thence S68°32'00"E a distance of 306.63 feet to a point at the south line of State Highway Route 31 and Finch Street; thence S 13°24'00"W a distance of 426.21 feet to the point and place of beginning.

Being and intending to describe a portion of the premises conveyed to Landlord by Anthony DeJohn by Warranty Deed dated April 11, 1956 and recorded in the Wayne County Clerk's Office on April 25, 1956 in Liber 440 of Deeds, Page 225, and to Landlord by C.H. Stuart Co., Inc. by Warranty Deed dated April 11, 1956 and recorded in the Wayne County Clerk's Office on April 25, 1956 in Liber 440 of Deeds, Page 230.

EXHIBIT B

SITE PLAN



**EXHIBIT C****CONSTRUCTION RIDER****LANDLORD'S AND TENANT'S WORK****I. LANDLORD'S WORK.**

1. **Landlord's Work.** Landlord agrees, as a material consideration to Tenant for entering into the Lease, to perform the following Landlord's Work on and in the Demised Premises. Landlord's Work shall be completed in accordance with this Exhibit "C" and the Lease. Landlord's Work shall be completed in a good and workmanlike manner utilizing first rate materials and labor and shall be completed strictly in accordance with the final plans and specifications for the Shopping Center and/or the Demised Premises, as the case may be, previously prepared by Tenant, at Tenant's cost, and approved and initialed by Landlord and/or Landlord's architect (the "**Landlord's Plans and Specifications**"). Landlord shall, at its sole cost and expense, perform Landlord's Work as set forth below, including all demolition, materials, labor, permit fees in accordance with all federal laws, rules and regulations, (including the Americans with Disabilities Act of 1990 as amended), and all state, county and municipal or other local codes, regulations, requirements and ordinances applicable to the Demised Premises, including any requirements of the local fire marshal and/or building inspector. Landlord's Work shall only be deemed to be completed when Landlord's and Tenant's contractor, architect or engineer (as the case may be) certify to Tenant that all of Landlord's Work described in or reasonably inferable from Landlord's Plans and Specifications has been substantially completed as defined herein in accordance therewith and with this Lease, regardless of whether Tenant is in possession. For purposes of Exhibit "C", substantially completed shall mean full completion of all of Landlord's Work except minor punch-list items which do not affect the use, operation or appearance of the Demised Premises in any material way and which can be completed within fifteen (15) days.

Landlord's Work shall consist of all work, improvements and fixtures as set forth in or reasonably inferable from Landlord's Plans and Specifications and shall include, without limitation, the following items:

**White Box – Scope of Work**

1. Landlord shall, at its sole cost and expense, perform the work as set forth below, including all demolition, materials, labor, permit fees and utility meter installation fees and assessments, in accordance with all federal laws, rules and regulations (including the Americans with Disabilities Act of 1990, as amended), and all state, county and municipal or other local codes, regulations, requirements and ordinances applicable to the Demised Premises, including any requirements of the local fire marshal and/or building inspector. All work shall be done using new materials and equipment, and shall be performed in a first-class workmanlike manner and shall be in a good and usable condition.
2. Provide parking lot and public access from parking lot into Demised Premises (including ramps and signage), rear exit door(s) and any required landings, ramps and handrails, and "white box" shell which comply with all federal, state and local codes which apply to the Americans with Disabilities Act. Copies of a Site Plan, which depicts public access to the Demised Premises, shall be provided to the Tenant.
3. Provide smooth and level parking lot in good condition (striping clearly visible) with light poles in good condition and a light level of 2-1/2 foot candles (measured at ground level). Also, provide wall pack lights on sides and back of building, as required, to maintain 2-1/2 foot candles (measured at ground level).

4. Repair truck well (if one exists) and make sure all retaining walls, handrails, and sump pumps are in good working condition. Provide a metal canopy at the door opening if one does not exist. If a truck well does not exist, provide a metal canopy at the door opening for weather protection, and two concrete pads (one for truck loading and one for dumpsters).
5. Conduct an asbestos survey of the Demised Premises and provide a copy of the report to Tenant. Demised Premises shall have no materials that are considered hazardous; if such materials exist, they shall be properly removed by Landlord and a copy of the abatement report shall be given to Tenant.
6. Demolish and remove all previously installed partitions: floor coverings; fixtures and equipment including, but not limited to, exhaust hoods, sinks, counters, booths, vaults, floor safes, abandoned electrical equipment, abandoned ductwork, grease traps and floor drains; ceilings, light fixtures, electrical outlets, and structural mezzanines; provided same are not included as work. Also, remove all abandoned antennas, A/C units and other equipment on roof and infill any roof penetrations.
7. Sidewalk in front of Demised Premises shall have no cracks or wide separations. Sidewalk shall have proper grading to comply with ADA requirements.
8. Provide a continuous, smooth, clean, level, watertight floor slab. Fumigate and infill any open voids and/or conduits or chases below the slab.
9. Provide and install all demising walls to the underside of the roof with concrete masonry units (properly sealed) furred out with 2-1/2" metal studs and (1) layer 5/8" gypsum board on Tenant's side, taped, sealed, floated and ready for paint or 6" metal studs (minimum 20 gauge) with (1) or (2) layers of 5/8" gypsum board (per code) on each side taped, sealed floated and ready for paint, which complies with all fire codes. This wall shall be insulated as required to comply with all energy codes. Modify or remove all conduits, ducts and sprinkler lines, which may penetrate these walls to maintain the proper fire rating.
10. Existing perimeter walls are to be furred out (per Tenant's plans) with metal studs and (1) layer of 5/8" gypsum board on Tenant's side, taped, sealed, floated and ready for paint. Equipment or doors that are to be removed shall be infilled with similar wall construction type (i.e. - CMU properly sealed and painted in a rear concrete wall).
11. Provide and install all furred-out feature walls, furred-out columns, and fin walls on perimeter sales walls (as indicated on Tenant's plans) which consist of 3-5/8" metal studs (25 gauge) and (1) layer of 5/8" gypsum board.
12. Provide and install recessed wall standards in perimeter walls of sales area (as located in Tenant's plans). These standards shall not compromise the fire rating of any demising walls. Add metal studs and an additional layer of 5/8" gypsum board, for installation of recessed standards on demising walls, as required.
13. Provide and install a new wall consisting of 6" metal studs (minimum 20 gauge) with (1) layer of 5/8" gypsum board on each side taped, sealed, floated, and ready for paint to the underside of roof deck (if required by code) which separates the general sales area from the back non-sales area (in a location specified by Tenant). This wall shall comply with all fire code requirements. Also provide walls which separate dressing rooms from main sales area using 3-5/8" metal studs (20 gauge) with (1) layer of 5/8" gypsum board on each side, taped, sealed, floated, and ready for paint (in a location specified by Tenant). Provide and install recessed wall standards (as located in Tenant's plans) in both of these walls. Maintain any required fire rating for wall separating sales area from back non-sales area.
14. Provide and install dressing room walls and rough openings for doors (as shown in Tenant's plans).

15. Interior walls that are to remain shall be free of holes, cracks, blemishes and mold, and be ready for paint.
16. Provide and install storefront entry system which consists of an entry vestibule (as indicated in Tenant's plans), (4) pairs of 3' 0" x 7' 0" aluminum and glass doors with transoms (with standard weather seals, all hardware and mechanisms), maximum of 4' 0" wide by 10' 0" tall storefront glass on each side of the vestibule doors, 1' 0" to 3' 0" wide by 10' 0" tall storefront between the doors, and maximum 7' 0" wide by 10' 0" tall storefront glass on each side of the vestibule (per Tenant's specifications). All storefront systems (vestibule, vestibule doors and exterior storefront) to have 1" thermal tempered safety glass on components exposed to the exterior and 1/4" tempered safety glass on doors and windows and interior vestibule components not exposed to the exterior. At storefronts facing north or east, use clear glass (Sungate 100 (3) low "E" coated). At storefronts facing south or west, use tinted glass (Sungate 100 (2) "E" coated). (Note: If a vestibule is not indicated in Tenant's plans, use the same specifications to provide and install a flat single plane storefront entry system.)

Doors shall be Kawneer #350 style: top, bottom and standard intermediate pivot hinge with offset pivot thresholds, Adams Rite M I 850 A deadlock with 5 pin cylinders on right side, outside pair of doors and blank on left side, outside pair of doors. All inside of doors to have thumb turns CP - 11 push, and CP - 9 pulls. Finish #14 (clear) with LCN 4040 closer with flush bolt for double doors with #38-560 door sweep. Door frame system #450-502 and #451-502 with Sealair weathering system. All framing to be #18 champagne finish. All framing to be manufactured by Kawneer. Push and pull to be #14 clear anodized finish. Paint closures and hinges to match #18 champagne storefront doors (with standard weather seals, all hardware and closure mechanisms).

Also provide and install side walls of vestibule (with 5/8" gypsum board and on interior and material to match storefront on exterior), smooth and level concrete floor, and 5/8" gypsum board ceiling, and all associated light fixtures, HVAC equipment, ducts and grilles, and sprinkler heads (per Tenant's plans).

17. Refurbish or rebuild exiting façade to reflect new storefront image per Tenant's sketch; provided, however, the canopy shall remain "as-is". Tenant to provide all associated architectural and engineering drawings required for this work.
18. Provide and install (1) or (2) rear public exit doors (as required by code) 3' 0" x 7' 0" (with appropriate ADA clearances and access) and a pair of 3' 0" x 7' 0" receiving doors. Doors are to be fire-rated hollow core, self closing metal door and frame, including detex panic bar, threshold, weather stripping, non-removable pin hinges, and security peep hole for receiving room door. Non-activated doors shall have slide bolts and astragal. Receiving doors to have a metal canopy for weather protection.
19. Provide and install a minimum of R19 insulation to the underside of the roof deck (if existing roof is not insulated per energy code) and R19 insulation in all demising walls (as required by code) that are 6" wide or greater, and R11 insulation in demising walls that are 4" wide or smaller.
20. Provide and install new 2' x 4' T-bar construction ceiling per tenant provided plan with new white USG - "Square Edge Radar" #2310 ceiling tile positioned at 11'-6" throughout the sales area.
21. Provide an install a perimeter gypsum board furr-down and double bulb fluorescent strip lighting around the per miter of the sales area (per Tenant's plans and specifications).
22. Provide and install a new 2' x 4' T-Bar construction ceiling per Tenant provided plan with new white USG "Square Edge Radar" #2310 ceiling tile positioned at 10'-0" throughout the public restrooms, associated corridor, office and employee break room, receiving room, shoe/stock room and main stock room.
23. Provide and install a new electrical service to the Demised Premises, or existing service may remain (if

approved by Tenant). Provide individual electric meter, copper service wire(s), and rigid metal conduit sized appropriately. Electrical contractor shall coordinate exact requirements with local utility company. Provide 277/480 3-phase MDP with 400 amperage capacity based on 20,000 square feet or 600 amperage capacity if gas heat is not available (electrical requirements may vary according to square footage). Provide gas heat if available and dedicated gas meter to the Demised Premises. MDP is to power 277 volt 42 circuit lighting panel. Provide necessary step down transformer and 120/208 3-phase panels as needed. Typically two (2) 42 circuit panels for power circuits are required. Power for rooftop units shall be from main switchboard or separate panel. Remove all electric gear serving other tenants from the Demised Premises. Disconnect any security lights, parking lot lights, or signs servicing main Shopping Center from equipment that may be reused. Reusing any existing equipment requires Tenant's approval.

24. Provide and install two (2) 20 amp 120 volt circuits, electrical conduit, access panels and/or chases, and junction boxes termination on the sign fascia wall at the center point of each of Tenant's exterior signs and 120 volt copper wires (with an earth ground wire for each junction box connected through the junction box to the electrical panel) to connect to Tenant's storefront and other exterior signs, if any, including Tenant's pylon signs(s), if any. Sign contractor hired by Tenant to install individual storefront letters and stub out with liquid tight for each letter. Electrical contractor (hired by Tenant) shall make all final connections of sign.
25. Provide and install emergency lights to achieve NFPA code requirements of an average of one-foot (1') candle along the path of egress, exit light for each exit door with battery backup, egress light fixtures shall be connected to an unswitched circuit for continuous after-hours illumination (night light), and 2'x4' recessed fluorescent light fixtures throughout Demised Premises with parabolic lens as specified by Tenant, electrical ballast, (3) 3000 Kelvin T-8 lamps per fixture with (85) CRI or higher, one (1) light fixture per 96 square feet (as specified by Tenant), positioned per Tenant provided reflected ceiling plan. Fixtures shall be installed with a maximum six-foot (6') flexible metal conduit. Provide battery backup ballasts for certain fixtures as indicated on Tenant provided reflected ceiling plan. All lights to be wired through a junction box of adequate size to accommodate extended lighting circuit conductors for future installation of new Tenant supplied and installed lighting control system. This junction box is to be located adjacent to the lighting source panel.
26. Box-out columns (on sales floor) with metal studs and 5/8" gypsum board and install (1) electrical duplex outlet per column on back side at 24" above finished floor. Also, install outlets around perimeter walls (per Tenant's sketch). Also install outlets in ceiling of sales area per Tenant's reflected ceiling plan.
27. Repair or replace exiting HVAC system per recommendations of Tenant's independent HVAC consultant. If HVAC is not reusable, provide a complete new HVAC system with gas (or electrical if gas is not available) heat, including duct board and flex duct, or exterior insulated metal supply and return ductwork, symmetrically spaced metal-air type diffusers and returns. Provide at least (1) ton of cooling capacity per 400 square feet of the Demised Premises. NOTE: Use Virginia as a base for calculation HVAC requirements and adjust according to store location. New rooftop units are to have minimum efficiency ratings as required by the 2000 International Energy Conservation Code. Furnish programmable thermostats per Tenant's specifications. Cap all previously installed roof penetrations and vent lines that are abandoned. Provide all utility connections to RTU's.
28. Bring sanitary sewer line from sanitary main to a point in the Demised Premises as located in Tenant's plans. Sanitary sewer line must be scoped and fully operational with no blockage. Remove any grease traps or other equipment connected to this line. Provide and install a 1-1/2" or 2" water line properly insulated from water main to a point in the Demised Premises as located in Tenant's plans. Water line shall have a minimum pressure of 30 psig in the vicinity of the Tenant's plumbing fixtures. Upsize the water line if required to maintain the 30 psig requirement. Also provide and install associated water meter.

29. Provide new electric water heater (20 gallon) to provide hot water to lounge and janitor's sink and restrooms.
30. Landlord shall provide from a telephone room or utility source a two-inch (2") round metal conduit with a pull string capable of carrying at least twenty-five (25) telephone cable service lines to the rear interior demising wall of the Demised Premises as located in Tenant's plans.
31. Sprinkler system shall be properly designed by licensed contractor, at Landlord's cost and expense. Plans shall be submitted to Tenant for approval. If a sprinkler system exists, it shall be in good operating order and in compliance with all city, state, and federal codes. New sprinkler system shall be needed, only if required by building officials and local code. Landlord to provide and install complete sprinkler system including all sprinkler heads installed in the ceilings provided by Landlord (semi-recessed heads in gypsum board ceilings). Tenant will monitor the sprinkler riser that is located within the Demised Premises and exclusively serves Demised Premises. If the riser does not exclusively serve the Demised Premises of Tenant, then Landlord shall monitor the riser and provide Tenant with information regarding the alarm company.
32. Based upon an inspection of the roof by Tenant's independent roofing consultant, Landlord shall make necessary repairs to the existing roof before delivering the Demised Premises to Tenant. If existing roof needs to be replace, Landlord shall install a new roof (with minimum 15 year warranty) before delivering the Demised Premises to Tenant. Landlord is to provide the Tenant with a warranty.

#### Shopping Center Improvements

On or before thirty (30) days prior to the Commencement Date, Landlord shall make the following improvements to the Shopping Center in a good and workmanlike manner using appropriate contractors:

- A. Repaint any painted bollards, sidewalk edges, exterior back and sidewalls of the Demised Premises.
- B. Steam or water blast clean all sidewalks in front of the Demised Premises.
- C. Repair all parking lot holes, as needed, as reasonably determined by Landlord.
- D. Re-stripe parking lot, as needed, as reasonably determined by Landlord..

#### 2. APPROVAL OF LANDLORD'S PLANS AND SPECIFICATIONS.

Within twenty (20) days from the date of this Lease, Tenant shall deliver to Landlord proposed Landlord's Plans and Specifications for Landlord's Work for Landlord's review and approval. Landlord shall have ten (10) days to review such proposed plans and specifications. If Tenant submits such Landlord's Plans and Specifications to Landlord for approval, and Landlord fails to object to the same within such ten (10) day period, the same shall be deemed approval of such plans and specifications. If Landlord objects to such proposed plans and specifications, Tenant shall deliver revised Landlord's Plans and Specifications to Landlord within five (5) days of such objection, and such procedure will be repeated, if necessary, until a final plans and specifications are approved. Landlord shall not object to any architectural element or design feature suggested by Tenant that is consistent with any of Tenant's "prototype" stores. If such final plans and specifications are not agreed to by Landlord within thirty (30) days after the date of initial submission of such plans to Landlord, Tenant shall have the right to terminate this Lease at any time thereafter by delivering written notice of such election to Landlord, after which both parties shall be released from any further obligations or liabilities hereunder.

3. ENVIRONMENTAL REPORT(S).

Within thirty (30) days from the date of this Lease, Landlord shall have (i) had one or more reputable, licensed environmental engineering/testing firms perform all inspections and tests necessary to ensure that there are no Hazardous Materials or Hazardous Materials Contamination existing within the Demised Premises and (ii) delivered copies of such reports to Tenant. In this regard, Landlord shall have caused an asbestos survey of the Demised Premises (the "Asbestos Survey") to be performed by a reputable, licensed environmental engineering/testing firm, which included the taking and testing of samples from surfaces throughout the Demised Premises (i.e., walls, joint compound, floors, tile, tile mastic, ceiling, etc), to determine whether there are any asbestos containing materials ("ACM") existing within the Demised Premises.

A copy of the Asbestos Survey is attached hereto as Exhibit "H". If the Asbestos Survey indicates that the Demised Premises contain ACM, Landlord shall, on or before the Scheduled Delivery Date, (i) cause all such ACM to be removed from the Demised Premises in compliance with all applicable federal, state and local laws, regulations and ordinances, and (ii) provide Tenant with an abatement report indicating that all ACM have been removed from the Demised Premises in compliance with all applicable federal, state and local laws, regulations and ordinances. Notwithstanding the foregoing, if such report(s) are incorrect or Tenant in any event discovers any Hazardous Materials or Hazardous Materials Contamination (including, without limitation, ACM) within the Demised Premises, then Tenant shall have the right to remove and abate such Hazardous Materials and Hazardous Materials Contamination (including, without limitation, ACM), at Landlord's expense, such sums payable from time to time (upon demand) by Landlord to Tenant, along with an additional charge of ten percent (10.00%) of such sums as overhead; in addition, Landlord agrees that such amounts may be recouped by Tenant by withholding the payment of all Rent when the same becomes due until such amount shall be fully recovered by Tenant. If any of the report(s) referenced herein are not timely delivered, then Tenant shall have the rights and remedies set forth in Section 3.2 of the Lease.

4. MISCELLANEOUS PROVISIONS APPLICABLE TO LANDLORD'S WORK:

- a. All permits, including health, fees, licenses, architectural drawings, engineering, consulting services, testing services, and the like necessary for the foregoing shall be provided by Landlord at its sole cost and expense.
- b. Landlord shall, at its sole cost and expense, secure from city or local governing body a substantial completion document or the local equivalent for Landlord's Work. The substantial completion document shall be provided to Tenant's on-site representative or as specified by Tenant under the Lease.
- c. Landlord shall remove trash and unused construction materials upon completion of Landlord's Work.
- d. The foregoing description of Landlord's Work does not supersede any local code requirements. Landlord is responsible for delivering a building that meets all local code requirements. If there is a conflict between local code and this Exhibit "C", the more stringent requirements will apply.
- e. Landlord shall give no less than thirty (30) days prior written notice to Tenant of the date on which Landlord's Work shall be complete and on which Landlord shall tender exclusive possession of the Demised Premises. Upon Landlord's delivery of possession of the Demised Premises to Tenant, Tenant agrees to inspect Landlord's Work promptly and inform Landlord of any deficiencies in Landlord's Work and any remaining "punch list" items (being cosmetic and inconsequential to Tenant's commencement of Tenant's Work) within five (5) business days of such delivery.

## **II TENANT'S WORK.**

Tenant shall after the completion of Landlord's Work and delivery of the Demised Premises to Tenant promptly commence Tenant's Work as may be set forth on Tenant's Plans and Specifications, at Tenant's expense. Tenant's Plans and Specifications shall be stamped as "approved" by Tenant's architect. Landlord shall have the right to approve Tenant's plans and specifications only with respect to (i) the storefront or exterior elevations of the Demised Premises and (ii) that portion that materially affect the structural portions of the Shopping Center building and Demised Premises, otherwise Tenant's plans and specifications shall be those that Tenant may determine in its sole discretion. If Tenant submits such Tenant's plans and specifications to Landlord for approval, and Landlord fails to object to the same within ten (10) days from submission, the same shall be deemed to be an approval of the same. If Landlord objects timely to such proposed plans or specifications or any revisions thereof, within five (5) days after receiving such written objection from Landlord, Tenant shall deliver revised Tenant's Plans and Specifications to Landlord and such procedure will be repeated, if necessary, until such final plans and specifications are approved. Landlord shall not object to any architectural element or design feature that is consistent with any of Tenant's "prototype" stores. If such final plans and specifications are not agreed to by Landlord within thirty (30) days after Tenant's first submission thereof to Landlord, Tenant shall have the right to terminate this Lease at any time thereafter by delivering written notice of such election to Landlord, after which both parties shall be released from any further obligations or liabilities hereunder. Tenant shall, at its sole cost and expense, perform Tenant's Work as set forth herein, including all materials, labor, permit fees in accordance with all federal laws, rules and regulations, (including the Americans with Disabilities Act of 1990 as amended), and all state, county and municipal or other local codes, regulations, requirements and ordinances applicable to the Demised Premises, including any requirements of the local fire marshal and/or building inspector. Tenant's Work shall consist of all work, improvements and fixtures as Tenant may deem necessary and reasonable to complete and fixture the Demised Premises for the Permitted Use hereunder.

## **III WORK.**

Landlord shall complete Landlord's Work in accordance with the terms and conditions set forth in this Lease. Except as provided in the Lease, the improvements constructed as a part of Landlord's Work shall be the property of Landlord and shall remain upon and part of and be surrendered with the Demised Premises upon the expiration or termination of the Lease Term. Landlord's Work shall only be deemed to completed when Landlord's and Tenant's contractor, architect or engineer (as the case may be) certify to Tenant that all of Landlord's Work described in or reasonably inferable from Landlord's Plans and Specifications has been substantially completed as defined herein in accordance therewith and with this Lease, regardless of whether Tenant is in possession.

## **IV CHANGES.**

There shall be no changes to Landlord's Plans and Specifications unless and until both parties and Tenant's architect agree to such change in writing. Any such changes shall keep the quality and quantity and cost of Landlord's Work substantially the same as the work provided in Landlord's Plans and Specifications as originally approved. Any delay caused by Tenant's request for any change or the construction of any change shall not, in any event, count against Landlord in completing and delivering the Demised Premises to Tenant by the deadline set forth on Paragraph 3 above.

## **V INSPECTIONS.**

Tenant and Tenant's architects, engineers, contractors, employees and agents shall have the right from time to time during the performance of Landlord's Work to enter upon and inspect the Demised Premises and Landlord's Work to ensure that the same is being performed in accordance with the terms of the Lease, this

Exhibit "C" and Landlord's Plans and Specifications. Tenant's Construction Manager assigned to this project shall have the authority to reasonably accept and/or reject any or all of Landlord's Work.

**VI CONFLICTS AND CONFORMITY WITH LEASE.**

Any rights and obligations of Landlord and Tenant relative to any matter not stated in this Exhibit "C" shall be governed by the Lease. If there shall be any conflict between this Exhibit "C" and the Lease, the provisions of this Exhibit "C" shall prevail in the event of such conflict. As used herein, each term not defined herein shall have the same meaning given to such term in the Lease.

The terms and conditions of Section 7.5 of the Lease are hereby incorporated herein and apply to this Exhibit "C".

890349.20060210/251241.v5

50

26'-1 1/4"

72" Peebles 50 1/2"

21'-9 1/4"

60" Peebles 42 1/4"

EXHIBIT D  
SIGNS AND SIGNAGE

<b>HERITAGE</b> <b>NEON</b> PH# 469-3233 FAX# 469-4201 <small>This design is the original and unpublished work of our company and may not be reproduced, copied, or withheld in any manner without written consent from an authorized officer of the company.</small>	CUSTOMER	Peebles	SCALE	1/4" = 1'	DATE	04/28/2004	APPROVAL SIGNATURE
	LOCATION		NOTES	72" and 60" Neon channel letters.		SIGNATURE	
	SALESMAN	Bill Moore	DATE				
	DRAWN BY	P.M.					
	FILE NAME	peebles					

**EXHIBIT D-1**

**PYLON SIGN**

[INTENTIONALLY DELETED]

**EXHIBIT E**

**LANDLORD'S EXCLUSIVE USE COVENANT**

**Tenant: Rent-A-Center, Inc.**

Landlord shall not lease space in the Shopping Center to the competitors of Tenant who are in the rental business presently engaged in by Tenant.

**Tenant: Tanning Bed, Ltd.**

So long as Tenant is not in default of this Lease Agreement, Landlord agrees, exclusive of Wegmans Food Markets, Inc., and its subsidiaries, not to lease any additional space in the shopping center to another business whose use is the operation of a tanning salon and/or sale of related products.

**Tenant: TLC Collectibles, Ltd.**

"Restricted Items" shall mean and include any of the following products: Christmas ornaments, greeting cards and/or gift wrap. "Temporary Store" shall mean any store or business in the Shopping Center operated by a tenant, licensee or occupant under a lease, license or agreement (oral or written) having a term of less than one (1) year or any store or business which is not expected or required to remain open to the public for business for twelve (12) or more consecutive months. A "Use Restriction Violation" shall be deemed to exist upon the occurrence of either or both of the following events: (1) any tenant or occupant in the Shopping Center carries any Restricted Item; or (2) the Shopping Center contains a Temporary Store that sells any Restricted Item. For the purpose of this provision, the term "Shopping Center" shall include and consist of any contiguous land owned, leased or otherwise controlled or managed, either directly or indirectly, by Landlord or any affiliate of Landlord.

The Use Restriction shall not apply to the following tenants: (a) Wegmans or its successor, (b) any future anchor tenant greater than thirty thousand (30,000) square feet of gross leasable area, or (c) any existing or future tenant that carries, in the aggregate, less than twenty (20) lineal feet of Restricted Items (each spinner rack containing any Restricted Item shall be equal to six (6) lineal feet).

**Tenant: Carrols Corporation**

The Landlord covenants that for so long as the Tenant is in possession of the premises demised and is not in default with respect to any of the terms and provisions of this agreement, the Landlord will not lease or use any other lands on West Union Street within one (1) mile of the demised premises for the purpose of operating or conducting a restaurant principally selling hamburgers or hot dogs.

**EXHIBIT F**

**LETTER OF CREDIT**

[INTENTIONALLY DELETED]

**EXHIBIT G**

**SUBORDINATION, NONDISTURBANCE AND  
ATTORNMENMENT AGREEMENT**

[INTENTIONALLY DELETED]

**EXHIBIT H**

**ASBESTOS SURVEY**

[TO BE PROVIDED FROM LANDLORD TO TENANT WITHIN THIRTY (30) DAYS FROM THE  
DATE OF THIS LEASE]

**THIRD AMENDMENT TO LEASE**

THIS THIRD AMENDMENT TO LEASE (this "Third Amendment") is made and entered into effective as of July 29, 2019 (the "Effective Date"), by and between WEGMANS FOOD MARKETS, INC., a New York corporation ("Landlord"), and SPECIALTY RETAILERS, INC., a Texas corporation ("Tenant"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Lease (as hereinafter defined).

**WITNESSETH:**

WHEREAS, Landlord and Tenant's predecessor-in-interest, Specialty Retailers (TX), LP, entered into that certain Shopping Center Lease dated May 26, 2006, as amended by Letter Agreement dated May 26, 2006, and Amendment to Lease dated May 15, 2015 (as amended, the "Lease"), relating to the Demised Premises located in the Newark Plaza Shopping Center in the Town of Newark, Wayne County, New York, all as more particularly described therein, to which reference is here made for all purposes;

WHEREAS, Landlord and Tenant have agreed to amend the Lease as provided below; and

WHEREAS, Landlord and Tenant desire to execute this Third Amendment to reflect such amendment to the Lease.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual promises and agreements set forth herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree that the Lease is hereby amended in the following respects:

- (a) To the extent necessary under the Lease, Landlord consents and agrees that Tenant may: (i) operate the Demised Premises under the trade name of "Gordmans" and/or as an "off-price" retail store and/or "off price" department store (the "Permitted Use"), (ii) make interior, non-structural additions, alterations, improvements, modifications, or replacements to the Demised Premises necessary or desirable, in Tenant's discretion, to install elements of the standard trade dress of a Gordmans or otherwise convert the Demised Premises to a Gordmans, (iii) replace its existing signage at the Demised Premises and the Shopping Center, whether exterior front or fascia signage, pylon signage, monument signage, or otherwise, with signage bearing the standard trade dress, trade name, and/or logo of "Gordmans" and, without limitation of the foregoing, Landlord hereby consents to the construction and installation of signage substantially similar to the signage shown on Exhibit A attached hereto, and (iv) close the Demised Premises for business for a commercially reasonable period of time to complete the conversion of the Demised Premises to a Gordmans as described herein, and that such closure shall not be an Event of Default nor trigger any remedy Landlord may have in connection with the closure of the Demised Premises for business. Landlord represents and warrants that Tenant's operation of the Demised Premises for the Permitted Use does not violate any exclusive use covenants or other exclusive rights affecting the Demised Premises or the Shopping Center, and Landlord agrees to indemnify, defend, and hold Tenant harmless from any damages, losses, and expenses resulting from a breach of the foregoing representation and warranty. Landlord shall reasonably cooperate with Tenant to obtain any and all approvals and/or consents necessary for Tenant to operate the Demised Premises for the Permitted Use.

The Lease, as amended hereby, is ratified and confirmed to be in full force and effect and that all rights, powers and duties created thereunder or existing thereby are ratified and confirmed in all respects. In the event of any conflict between the Lease and this Third Amendment, this Third Amendment shall control and govern the rights and obligations of the parties.

As of the Effective Date, no default or Event of Default, nor any other event, act, or omission which, with the giving of notice or passage of time, or both, would constitute a default or Event of Default, by either party has occurred and is continuing under the Lease.

This Third Amendment embodies the entire understanding between Landlord and Tenant with respect to the subject matter hereof and can be changed only by an instrument in writing executed by both Landlord and Tenant.

Each party hereto warrants to the other that no agent, finder, or broker had been involved with the negotiation, execution, and delivery of this Third Amendment. In the event of a breach of the foregoing warranty, the breaching party agrees to indemnify the other party from and against any claims resulting therefrom.

This Third Amendment may be executed in one or more counterparts, each such counterpart being an original hereof and all such counterparts taken together constituting but one and the same instrument and agreement, effective as of the Effective Date. For purposes of this Third Amendment, an electronic PDF or facsimile copy will be considered valid and binding as if an original.

Each party hereto hereby represents and warrants to the other that the signatories of this Third Amendment have the full power, authority, and legal right to execute this Third Amendment without obtaining the joinder, consent, or approval of, or otherwise notifying, any other party. Without limitation of the foregoing, Landlord represents and warrants that it does not need the consent or approval of any lender, mortgagee or ground lessor to effect this Third Amendment.

*[Signature page follows.]*

EXECUTED in multiple copies on the dates indicated next to the signatures hereto, to be effective for all purposes, however, as of the Effective Date.

**LANDLORD:**

WEGMANS FOOD MARKETS, INC., a New York corporation

By: *Ralph A. Uttaro*  
Name: \_\_\_\_\_  
Title: Ralph A. Uttaro  
Senior Vice President  
Real Estate Development

Executed by Landlord this 29<sup>th</sup> day of  
July, 2019

THE STATE OF New York §  
§  
COUNTY OF Monroe §

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 29<sup>th</sup> day of  
July, 2019, by Ralph A. Uttaro, as SVP - Real Estate of  
WEGMANS FOOD MARKETS, INC., a New York corporation, on behalf of the corporation.

SEAL:

**DIANE AMEDEO**  
Notary Public, State of New York  
Qualified in Monroe County  
No. 01AM4945670  
Commission Expires January 27, 2023

*Diane Amedeo*  
Notary Public in and for the State of New York  
My commission expires: 1/27/2023

**TENANT:**

**SPECIALTY RETAILERS, INC.,**  
a Texas corporation

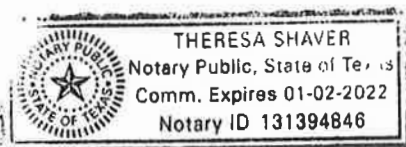
By: *Kent Williams*  
Name: Kent Williams  
Title: SVP - Real Estate / Construction

Executed by Tenant this 29<sup>th</sup> day of  
July, 2019

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 29<sup>th</sup> day of  
July, 2019, by Kent Williams, as SVP - Real Estate and Construction of SPECIALTY RETAILERS, INC., a Texas corporation, on behalf of the corporation.

SEAL:



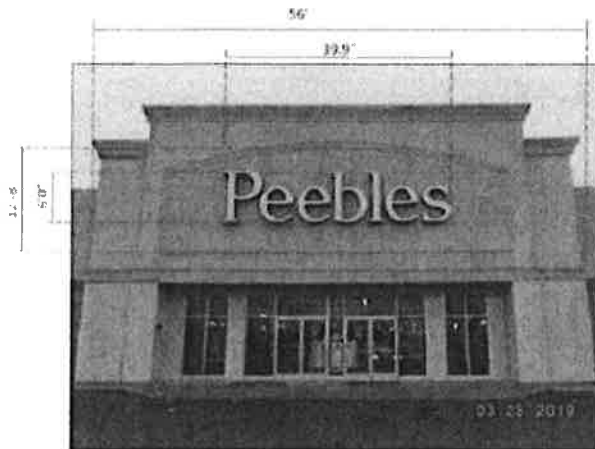
*Theresa Shaver*  
Notary Public in and for the State of Texas  
My commission expires: 01/02/2022

[Signature Page to Third Amendment to Lease]

**EXHIBIT A**

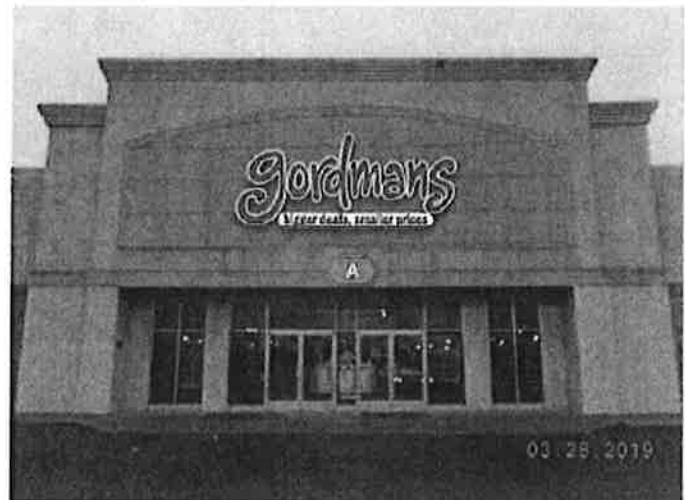
[Attached.]

Remove existing sign - patch and paint recessed area to match SW TBD



EXISTING FRONT ELEVATION

SCALE: NOT TO SCALE



PROPOSED FRONT ELEVATION

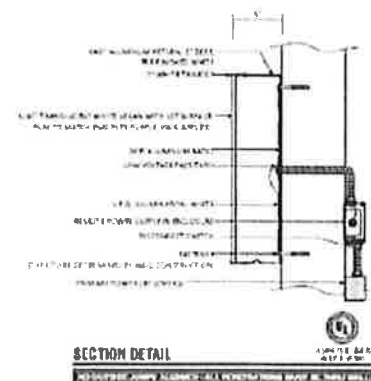
SCALE: NOT TO SCALE



COLOR CHART	
<input checked="" type="checkbox"/>	FILM TO MATCH #145 7579 PURPLE VINYL
<input checked="" type="checkbox"/>	3/8" WHITE ACRYLIC SHADOW FACES

FASTENER SCHEDULE	
<b>Flange Bolt Mounting</b>	1/2" THREADED ROD 1/2" LOCK WASHERS 1/2" NUTS
<b>Flange Bolt Mounting</b>	1/2" LOCK WASHERS 1/2" NUTS
<b>Flange Bolt Mounting</b>	1/2" LOCK WASHERS 1/2" NUTS

\*NOTE: EXACT ANCHORS PER SITE WALL CONSTRUCTION



**THIRD AMENDMENT TO LEASE**

THIS THIRD AMENDMENT TO LEASE (this "Third Amendment") is made and entered into effective as of July 29, 2019 (the "Effective Date"), by and between WEGMANS FOOD MARKETS, INC., a New York corporation ("Landlord"), and SPECIALTY RETAILERS, INC., a Texas corporation ("Tenant"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Lease (as hereinafter defined).

**WITNESSETH:**

WHEREAS, Landlord and Tenant's predecessor-in-interest, Specialty Retailers (TX), LP, entered into that certain Shopping Center Lease dated May 26, 2006, as amended by Letter Agreement dated May 26, 2006, and Amendment to Lease dated May 15, 2015 (as amended, the "Lease"), relating to the Demised Premises located in the Newark Plaza Shopping Center in the Town of Newark, Wayne County, New York, all as more particularly described therein, to which reference is here made for all purposes;

WHEREAS, Landlord and Tenant have agreed to amend the Lease as provided below; and

WHEREAS, Landlord and Tenant desire to execute this Third Amendment to reflect such amendment to the Lease.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual promises and agreements set forth herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree that the Lease is hereby amended in the following respects:

- (a) To the extent necessary under the Lease, Landlord consents and agrees that Tenant may: (i) operate the Demised Premises under the trade name of "Gordmans" and/or as an "off-price" retail store and/or "off price" department store (the "Permitted Use"), (ii) make interior, non-structural additions, alterations, improvements, modifications, or replacements to the Demised Premises necessary or desirable, in Tenant's discretion, to install elements of the standard trade dress of a Gordmans or otherwise convert the Demised Premises to a Gordmans, (iii) replace its existing signage at the Demised Premises and the Shopping Center, whether exterior front or fascia signage, pylon signage, monument signage, or otherwise, with signage bearing the standard trade dress, trade name, and/or logo of "Gordmans" and, without limitation of the foregoing, Landlord hereby consents to the construction and installation of signage substantially similar to the signage shown on Exhibit A attached hereto, and (iv) close the Demised Premises for business for a commercially reasonable period of time to complete the conversion of the Demised Premises to a Gordmans as described herein, and that such closure shall not be an Event of Default nor trigger any remedy Landlord may have in connection with the closure of the Demised Premises for business. Landlord represents and warrants that Tenant's operation of the Demised Premises for the Permitted Use does not violate any exclusive use covenants or other exclusive rights affecting the Demised Premises or the Shopping Center, and Landlord agrees to indemnify, defend, and hold Tenant harmless from any damages, losses, and expenses resulting from a breach of the foregoing representation and warranty. Landlord shall reasonably cooperate with Tenant to obtain any and all approvals and/or consents necessary for Tenant to operate the Demised Premises for the Permitted Use.

The Lease, as amended hereby, is ratified and confirmed to be in full force and effect and that all rights, powers and duties created thereunder or existing thereby are ratified and confirmed in all respects. In the event of any conflict between the Lease and this Third Amendment, this Third Amendment shall control and govern the rights and obligations of the parties.

As of the Effective Date, no default or Event of Default, nor any other event, act, or omission which, with the giving of notice or passage of time, or both, would constitute a default or Event of Default, by either party has occurred and is continuing under the Lease.

This Third Amendment embodies the entire understanding between Landlord and Tenant with respect to the subject matter hereof and can be changed only by an instrument in writing executed by both Landlord and Tenant.

Each party hereto warrants to the other that no agent, finder, or broker had been involved with the negotiation, execution, and delivery of this Third Amendment. In the event of a breach of the foregoing warranty, the breaching party agrees to indemnify the other party from and against any claims resulting therefrom.

This Third Amendment may be executed in one or more counterparts, each such counterpart being an original hereof and all such counterparts taken together constituting but one and the same instrument and agreement, effective as of the Effective Date. For purposes of this Third Amendment, an electronic PDF or facsimile copy will be considered valid and binding as if an original.

Each party hereto hereby represents and warrants to the other that the signatories of this Third Amendment have the full power, authority, and legal right to execute this Third Amendment without obtaining the joinder, consent, or approval of, or otherwise notifying, any other party. Without limitation of the foregoing, Landlord represents and warrants that it does not need the consent or approval of any lender, mortgagee or ground lessor to effect this Third Amendment.

*[Signature page follows.]*

EXECUTED in multiple copies on the dates indicated next to the signatures hereto, to be effective for all purposes, however, as of the Effective Date.

**LANDLORD:**

WEGMANS FOOD MARKETS, INC., a New York corporation

By: *Ralph A. Uttaro*  
Name: Ralph A. Uttaro  
Title: Senior Vice President  
Real Estate Development

Executed by Landlord this 29<sup>th</sup> day of  
July, 2019

THE STATE OF New York §  
§  
COUNTY OF Monroe §

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 29<sup>th</sup> day of  
July, 2019, by Ralph A. Uttaro, as SVP - Real Estate of  
WEGMANS FOOD MARKETS, INC., a New York corporation, on behalf of the corporation.

SEAL:

**DIANE AMEDEO**  
Notary Public, State of New York  
Qualified in Monroe County  
No. 01AM4945670  
Commission Expires January 27, 2023

*Diane Amedeo*  
Notary Public in and for the State of New York  
My commission expires: 1/27/2023

**TENANT:**

**SPECIALTY RETAILERS, INC.,**  
a Texas corporation

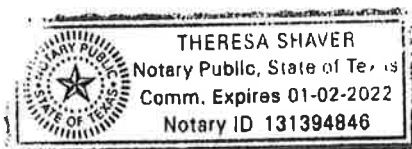
By: *Kent Williams*  
Name: Kent Williams  
Title: SVP - Real Estate / Construction

Executed by Tenant this 29<sup>th</sup> day of  
July, 2019

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 29<sup>th</sup> day of  
July, 2019, by Kent Williams, as SVP - Real Estate and Construction of SPECIALTY  
RETAILERS, INC., a Texas corporation, on behalf of the corporation.

SEAL:



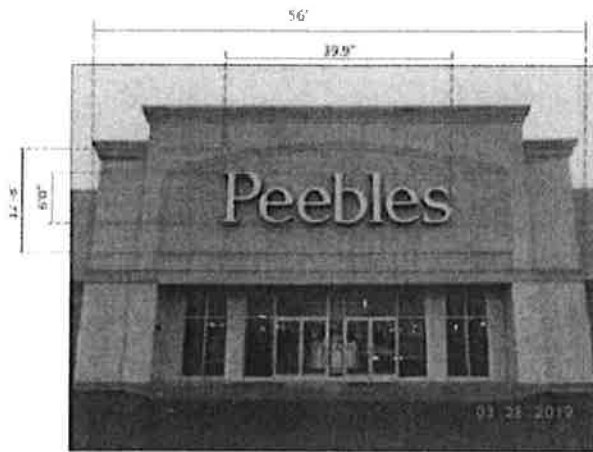
*Theresa Shaver*  
Notary Public in and for the State of Texas  
My commission expires: 01/02/2022

[Signature Page to Third Amendment to Lease]

**EXHIBIT A**

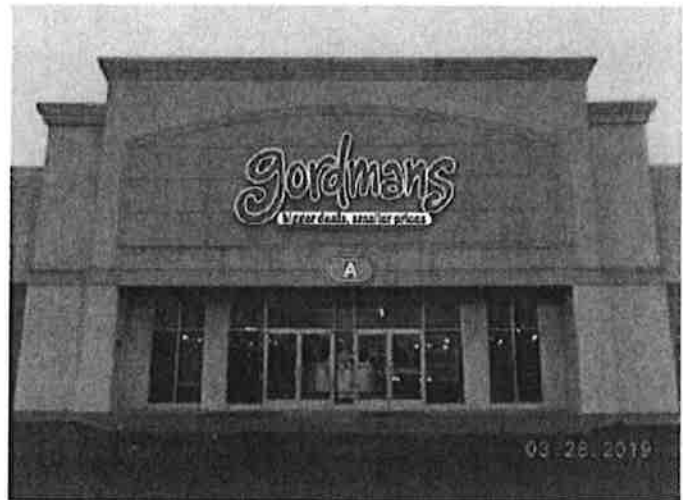
[Attached.]

Remove existing sign - patch and paint recessed area to match SW TBD



EXISTING FRONT ELEVATION

SCALE: 1/8" = 1'-0"



PROPOSED FRONT ELEVATION

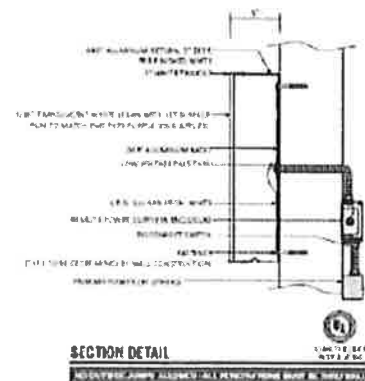
SCALE: 1/8" = 1'-0"



COLOR CHART	
<input checked="" type="checkbox"/> FILM TO MATCH PMS 7679 PURPLE VINYL	
<input type="checkbox"/> 3/16" WHITE ACRYLIC SIGN FINISHES	

FASTENER SCHEDULE	
<b>Two-Part Fastening</b>	3/8" SHARP POINT ANCHOR NOT USED IN THIN WALL APPLICATIONS
<b>Single Bolt</b>	1/2" LONG BOLTS TOP BOLT AS SHOWN IN DETAIL BOTTOM BOLT AS SHOWN IN DETAIL
<b>Heavy Duty Bolt Fastening</b>	ANCHOR BOLT AS SHOWN IN DETAIL ANCHOR BOLT AS SHOWN IN DETAIL

\*NOTE: EXACT ANCHORS PER SITE WALL CONSTRUCTION



**AMENDMENT TO LEASE**

THIS AMENDMENT TO LEASE (this "Amendment") is made and entered into effective as of MAY 15, 2015 (the "Effective Date"), by and between WEGMANS FOOD MARKETS, INC., a New York corporation ("Landlord"), and SPECIALTY RETAILERS, INC., a Texas corporation ("Tenant"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Lease (as hereinafter defined).

**WITNESSETH:**

WHEREAS, Landlord and Tenant's predecessor-in-interest, Specialty Retailers (TX) LP, entered into that certain Shopping Center Lease Agreement dated May 26, 2006 (as amended, the "Lease"), relating to the Demised Premises located in the Newark Plaza Shopping Center in the Town of Newark, Wayne County, New York, all as more particularly described therein, to which reference is here made for all purposes; and

WHEREAS, Landlord and Tenant have agreed to amend the Lease as provided below; and

WHEREAS, Landlord and Tenant desire to execute this Amendment to reflect such amendment to the Lease;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual promises and agreements set forth herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree that the Lease is hereby amended in the following respects:

- (a) Landlord and Tenant acknowledge and agree that the current Lease Term is scheduled to expire on November 30, 2016. The Lease Term, as hereby amended, is extended for a period of ten (10) years and two (2) months, commencing on December 1, 2016, and expiring on January 31, 2027 (the "Extension Term").
- (b) In lieu of the Minimum Guaranteed Rental set forth in the Lease for the time period beginning on December 1, 2016 and continuing through the end of the Extension Term, Tenant shall pay to Landlord Minimum Guaranteed Rental in the amount of Eighty-Nine Thousand Nine Hundred Fifty and 00/100 Dollars (\$89,950.00) per annum, payable in equal monthly installments of Seven Thousand Four Hundred Ninety-Five and 83/100 Dollars (\$7,495.83) in advance on the first day of each month.
- (c) Section 2.2 of the Lease shall be amended and restated in its entirety to be and read as follows

**2.2 Option Periods.** Provided that (i) Tenant is not then in default under the terms of this Lease beyond any applicable cure period and (ii) this Lease has not been terminated prior to the commencement of such option period, Tenant may extend the Lease Term two (2) consecutive five (5) year periods if Tenant sends written notice to Landlord of its intention to do so no earlier than fifteen (15) months and no later than one hundred eighty (180) days prior to the end of the then existing Lease Term. During any such extended period of the Lease Term,

the terms and provisions of this Lease shall remain the same except for the payment of Minimum Guaranteed Rental and Percentage Rent, which shall be determined as set forth below. In the event that Tenant fails to meet or otherwise satisfy any of the requirements under this Section 2.2 which are necessary to properly exercise the applicable option period, Tenant's rights under this Section 2.2 shall terminate and be of no further force and effect.

- (d) Section 2.3 of the Lease shall be amended and restated in its entirety to be and read as follows

**2.3 Minimum Guaranteed Rental during Extended Lease Term.** During each five (5) year extension period, Tenant shall pay to Landlord Minimum Guaranteed Rental in monthly installments and at an annual rate equal to:

Option Period	Minimum Guaranteed Rental
1: five (5) year period	\$8,750.00 per month (\$105,000.00 per annum)
2: five (5) year period	\$9,375.00 per month (\$112,500.00 per annum)

Each installment of Minimum Guaranteed Rental shall be payable on the first day of each calendar month during the Lease Term as extended hereunder.

- (e) Notwithstanding anything contained herein or in the Lease to the contrary, Tenant shall have no obligation to pay any Rental during the months of October, November, and December of the 2015 calendar year.

Landlord and Tenant acknowledge that the Lease, as amended hereby, is ratified and confirmed to be in full force and effect and that all rights, powers and duties created thereunder or existing thereby are ratified and confirmed in all respects. In the event of any conflict between the Lease, as amended hereby, and this Amendment, this Amendment shall control and govern the rights and obligations of the parties. Except as herein expressly modified, all terms and provisions of the Lease are and shall remain in full force and effect and are binding on Landlord and Tenant.

This Amendment embodies the entire understanding between Landlord and Tenant with respect to the subject matter hereof and can be changed only by an instrument in writing executed by both Landlord and Tenant.

Each party hereto hereby represents and warrants to the other that the signatories of this Amendment have the full power, authority, and legal right to execute this Amendment without the joinder of any other party. Specifically, Landlord represents and warrants that Landlord does not need the consent or approval of any lender, mortgagee or ground lessor to effect this Amendment and such Amendment shall be binding on any such lender, mortgagee or ground lessor.

This Amendment may be executed in one or more counterparts, each such counterpart being an original hereof and all such counterparts taken together constituting but one and the same instrument and agreement, effective as of the Effective Date. Facsimile and .pdf signatures to this Amendment shall be acceptable and binding.


*[Signature pages follow.]*

EXECUTED in multiple copies on the dates indicated next to the signatures hereto, to be effective for all purposes, however, as of the Effective Date.

**LANDLORD:**

**WEGMANS FOOD MARKETS, INC.,**  
a New York corporation

Executed by Landlord this 15th  
day of May, 2015.

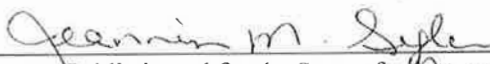
By   
Name: \_\_\_\_\_  
Title: Ralph A. Uttaro  
Senior Vice President  
Real Estate Development

THE STATE OF New York §  
§  
COUNTY OF Monroe §

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 15 day of May, 2015, by Ralph A. Uttaro Sr. V.P. of WEGMANS FOOD MARKETS, INC., a New York corporation, on behalf of the corporation.

SEAL:

**JEANNIN M. SIGLER**  
Notary Public, State of New York  
Qualified in Monroe County  
Reg. No. 01SI5059360  
Commission Expires April 22, 2018

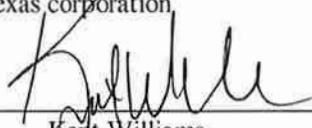
  
Notary Public in and for the State of New York  
My commission expires: 4/22/18

TENANT:

**SPECIALTY RETAILERS, INC.,**

a Texas corporation

Executed by Tenant this 28<sup>th</sup>  
day of April, 2015.

By   
Kent Williams  
Senior Vice President – Real Estate /  
Construction

THE STATE OF TEXAS

§

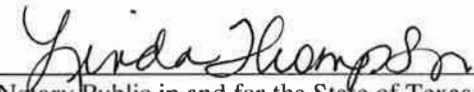
COUNTY OF HARRIS

§

§

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME on this 28<sup>th</sup> day of April, 2015,  
by Kent Williams as Senior Vice President – Real Estate / Construction of SPECIALTY RETAILERS,  
INC., a Texas corporation, on behalf of the corporation.

SEAL:

  
Notary Public in and for the State of Texas  
My commission expires: 7-5-16



# STAGE STORES

BEALLS

PALAIS ROYAL

PEEBLES

STAGE

May 26, 2006

Wegmans Food Markets, Inc.  
P.O. Box 30844  
Rochester, New York, 14603-0844  
Attn: Senior Vice President of Real Estate and  
General Counsel

Re: Shopping Center Lease Agreement (the "Lease") dated the 26<sup>th</sup> day of May, 2006, by and between Wegmans Food Markets, Inc. (as "Landlord"), and Specialty Retailers (TX) LP (as "Tenant"), relating to that certain demised premises constituting approximately 17,500 square feet of space located in the Town of Newark, Wayne County, New York ("Demised Premises"), and being a part of the Newark Plaza Shopping Center (the "Shopping Center")

Ladies and Gentlemen:

This letter shall amend the Lease and set forth the agreement by and between Landlord and Tenant with regard to the following:

1. Notwithstanding anything in the Lease to the contrary, including, without limitation, subparagraph I.1.17 of Exhibit "C" of the Lease, Landlord shall rebuild the existing façade of the Demised Premises (the "Façade") to reflect the new storefront image in substantial accordance with the "Prototype Storefront Elevation", attached hereto as Exhibit "1". Tenant agrees that Tenant shall deliver a site specific storefront elevation to Landlord, and such site specific storefront elevation shall not substantially differ from the scope of work and type and quality of materials provided in the Prototype Storefront Elevation attached hereto.
2. On or before thirty (30) days prior to the Commencement Date, Landlord shall complete the Façade in a good and workmanlike manner using appropriate contractors.
3. Tenant shall reimburse to Landlord one-half (1/2) of the costs and expenses actually incurred by Landlord in building the Façade within thirty (30) days after (a) the completion of such Façade and (b) Tenant receives invoices from Landlord for the same; provided, however, that Tenant's share of such costs and expenses shall not exceed, in the aggregate, Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

Wegmans Food Markets, Inc.  
Letter Agreement  
May 26, 2006  
Page 2

4. Notwithstanding anything in the Lease to the contrary, the parties agree that Landlord shall complete the storefront entry system (as provided in subparagraph I.1.16. of Exhibit "C" to the Lease) on or prior to the Scheduled Delivery Date.
5. All capitalized terms used herein but not otherwise defined shall have the same meaning as ascribed in the Lease. To the extent that any of the terms and conditions contained herein conflict with any other provision contained in the Lease, this letter shall control.
6. A facsimile copy of this letter may be executed by the parties and shall be considered valid, binding and effective for all purposes. Further, this letter may be executed in multiple counterparts, each of which shall be deemed to be an original, and together which shall constitute one and the same instrument.

If this correctly set forth the terms of our agreement, please acknowledge the same by signing this letter in the space provided below.

Very truly yours,

SPECIALTY RETAILERS (TX) LP, a  
Texas limited partnership

By: 

Name: Mai Maro

Title: Sr. Vice President - Real Estate

AGREED TO AND ACCEPTED BY:

WEGMANS FOOD MARKETS, INC., a New  
York corporation

By: 

Name: Ralph A. Uttaro

Title: Senior Vice President

This architectural drawing is a detailed section of a building, likely a bridge or a large industrial structure, showing the internal structural components and their dimensions. The drawing is oriented vertically, with the top of the structure at the top of the page.

**Key Features and Dimensions:**

- Top Section:** The top of the drawing shows a horizontal section with various structural elements. Dimensions include 12'-0" (top left), 12'-0" (top center), and 12'-0" (top right). There are also smaller dimensions like 1'-0", 2'-0", and 3'-0" indicating specific structural details.
- Central Section:** The central part of the drawing shows a vertical section with a large, central opening. Dimensions include 12'-0" (center left), 12'-0" (center right), and 12'-0" (center bottom). There are also smaller dimensions like 1'-0", 2'-0", and 3'-0" indicating specific structural details.
- Bottom Section:** The bottom of the drawing shows a horizontal section with various structural elements. Dimensions include 12'-0" (bottom left), 12'-0" (bottom center), and 12'-0" (bottom right). There are also smaller dimensions like 1'-0", 2'-0", and 3'-0" indicating specific structural details.
- Annotations:** The drawing includes several annotations, including "FLOOR ABOVE" (top left), "SHEAR WALL WITH" (center bottom), and "FLOOR ABOVE" (bottom right). There are also various symbols and letters (A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) used to identify specific structural elements.

The drawing is a technical representation of a building's internal structure, showing the relationship between different components and their dimensions. It is a valuable tool for architects and engineers in the design and construction of buildings.

**STOREFRONT PLAN VIEW**

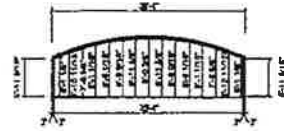
**6 3 4 4**

**██████████**

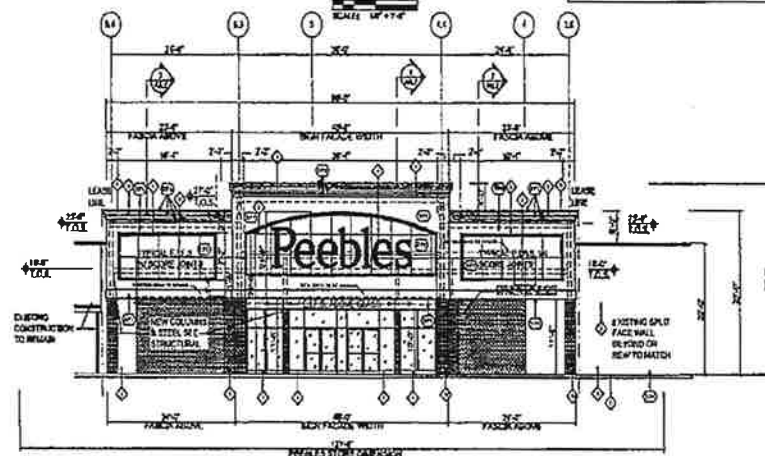
**██████████**

**██████████**

LAY-OUT MUST  
SMOOTH AND CONTAIN NO FLIPS OR  
FOLDERS, NO PEARLS AND/OR "WALL EYE"  
SHALL BE ALLOWED, PROVIDE EXTENSION  
OF 1000 PLYWOOD BOARD 1000 AREA TYPICAL



ELLIPSE DIMENSIONS AT STOREFRONT



STOREFRONT ELEVATION

678

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END ELEVATION

SCALE: 1"=1'-0"

PROJECT: **Peebles**  
DEPARTMENT STORES  
SHEET TITLE: **STOREFRONT EXTERIOR**  
SHEET NUMBER: **A9.1**

# **Exhibit B**

Due Date	Description	Debit	Total Charges	Outstanding Amount
			5/1/20-9/30/2020	5/10/20 to 9/30/20
5/1/2020	Rent From 05-01-2020 to 05-31-2020	7,495.83	7,495.83	5,319.62
5/1/2020	Insurance From 05-01-2020 to 05-31-2020	260.31	260.31	184.74
5/1/2020	Management Fee From 05-01-2020 to 05-31-2020	109.82	109.82	77.94
5/1/2020	All STX but 901996 From 05-01-2020 to 05-31-2020	1,922.85	1,922.85	1,364.60
5/1/2020	All CTX taxes but 901996 From 05-01-2020 to 05-31-2020	596.75	596.75	423.50
5/1/2020	CAM From 05-01-2020 to 05-31-2020	1,098.20	1,098.20	779.37
6/1/2020	Rent From 06-01-2020 to 06-30-2020	7,495.83	7,495.83	7,495.83
6/1/2020	Insurance From 06-01-2020 to 06-30-2020	260.31	260.31	260.31
6/1/2020	Management Fee From 06-01-2020 to 06-30-2020	109.82	109.82	109.82
6/1/2020	All STX but 901996 From 06-01-2020 to 06-30-2020	1,922.85	1,922.85	1,922.85
6/1/2020	All CTX taxes but 901996 From 06-01-2020 to 06-30-2020	596.75	596.75	596.75
6/1/2020	CAM From 06-01-2020 to 06-30-2020	1,098.20	1,098.20	1,098.20
7/1/2020	Rent From 07-01-2020 to 07-31-2020	7,495.83	953.76	953.76
8/1/2020	Rent From 08-01-2020 to 08-31-2020	7,495.83	953.76	953.76
9/1/2020	Rent From 09-01-2020 to 09-30-2020	7,495.83	953.76	953.76
9/30/2020	19/20 Recon	4,182.06	4,182.06	595.80
			30,010.86	23,090.61
			Total outstanding	23,090.61

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

STAGE STORES, INC *et al.*,<sup>1</sup>

Debtors.

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)  
)  
)  
)  
)  
)  
)

Case No. 20-32564 (DRJ)  
Chapter 11

**ORDER GRANTING APPLICATION OF WEGMANS FOOD MARKETS' INC.  
FOR ALLOWANCE AND PAYMENT OF  
AN ADMINISTRATIVE EXPENSE CLAIM FOR POST-PETITION RENT**

This matter comes before the Court on the Application for Allowance of Administrative Expense Claim for Post-Petition Rent (the "Application") filed by Wegmans Food Markets' Inc. The Court finds that: (i) the Court has jurisdiction to consider the application pursuant to 28 U.S.C. §§ 157 and 1334; (ii) consideration of the Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); (iii) venue is proper pursuant to 28 U.S.C. § §§ 1408 and 1409157(b)(2)(B); and (iv) proper and adequate notice of the Application has been given and no other or further notice is necessary. Upon review of the Application and upon consideration of the evidence, statements and legal arguments made in support of the Application, the Court finds that the Application should be granted to the extent set forth below in this Order. Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Application is **GRANTED**.
2. Wegmans Food Markets' Inc. is awarded an administrative expense claims pursuant to 11 U.S.C. §§ 365(d)(3), 503(b)(1)(A), and 507(a)(2) in the amount of \$23,090.61.

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The Debtors' service address is: 2425 West Loop South, Houston, Texas 77027.

3. The Administrative Claim shall be equal in priority to any other administrative expense claim allowed by this Court under 11 U.S.C. § 503(b)(1)(A) and shall be paid pursuant to the terms of the confirmed Chapter 11 Plan in the Bankruptcy.
4. The terms of this Order shall be binding on the Debtors, their estates, successors, agents, assigns, including bankruptcy trustees and estate representatives, including without limitation, the Plan Administrator.
5. The Court shall retain jurisdiction with respect to all matters airings from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2020

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**HONORABLE DAVID R. JONES**  
**UNITED STATES BANRUPTCY JUDGE**