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M05-71541

Klamath County, Oregon

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Pages 173 Fee: \$881.00

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into this 12th day of December, 2005, by sole owner Jefferson Square of Klamath, LLC, an Oregon Limited Liability Company ("Jefferson").

RECITALS

- A. Jefferson is the owner of that certain real property situated in the City of Klamath Falls, County of Klamath, State of Oregon, legally described on Exhibit "A" attached hereto and made a part hereof, and referred to herein as "Parcel A." Parcel "A" is outlined in bold on Exhibit "C" attached hereto and made a part hereof. Jefferson is also the owner of that certain real property situated in the City of Klamath Falls, County of Klamath, State of Oregon, legally described on Exhibit "B" attached hereto and made a part hereof, and referred to herein as "Parcel B". Parcel "B" is also outlined in bold on Exhibit "C".
- B. Jefferson intends to sell and transfer Parcel "B" and signs this Declaration to benefit and obligate all future owners of Parcel B.
- C. Jefferson has heretofore groundleased Parcel A to Safeway, Inc., a Delaware corporation and has leased a portion of Parcel B to Ross Stores, Inc. (the "Existing Major Tenants"). The Existing Major Tenants' leases are referred to as Existing Major Leases and are incorporated herein by this reference.
- D. Jefferson desires to impose certain easements upon Parcel A and Parcel B, and to establish certain covenants, conditions and restrictions with respect to said Parcels, for the mutual and reciprocal benefit and complement of Parcel A and Parcel B and the present and future owners thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, the Declarant hereto covenants and agrees as follows:

AGREEMENTS

- 1. **Definitions.** For purposes hereof:
 - (a) The term "Owner" or "Owners" shall mean Jefferson and any and all successors or assigns of Jefferson as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

2005.12.21

- (b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now subjected to this Declaration, that is, Parcel A and Parcel B, and any future subdivisions thereof.
- (c) The term "Permitees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (d) The term "Common Area" shall mean those portions of Parcel A and Parcel B that are outside of exterior walls of buildings or other structures from time to time located on the Parcels, and which are either unimproved, or are improved as parking areas, landscaped areas, driveways, roadways and/or walkways.
- (e) The term "Site Plan" shall mean the site plan attached hereto as Exhibit "C".
- (f) The term "County" shall mean Klamath County, Oregon.

2. Easements.

2.1 Grant of Cross Easements. Subject to any express conditions, limitations or reservations contained herein, each Owner of a Parcel grants to the Owner of the other Parcel and its Permitees, the following nonexclusive and perpetual easements:

An easement for common parking and reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of the Common Area on the Parcels, so as to provide for the passage of motor vehicles and pedestrians between the Common Area on the Parcels and to and from all abutting streets or rights of way furnishing access to the Common Area on the Parcels.

2.2 Grant of Sign Easements. The Owner of Parcel A hereby grants to the Owner of Parcel B the following easements regarding multi-tenant signs:

A. Subject to all rights of Safeway in the Safeway Major Lease and subject to Safeway's right to maintain its current panel and panel position in its sole discretion, an exclusive easement and right to install and maintain all sign panel positions on the existing pylon sign (or any replacement thereof) except the top panel which is reserved for the tenant(s) and Owner of Parcel A. No sign panel below the top panel shall initially (when installed) be of greater size (length or width) than the top panel.

B. Subject to all rights of Safeway in the Safeway Major Lease, an easement to install a multi-tenant monument sign on Washburn (at a location to be reasonably agreed upon by the Owners) at the sole initial cost and expense of the Owner of

Parcel B. The panel locations of such Washburn sign shall be allocated as follows: top to Owner of Parcel A and the remaining to the Owner of Parcel B.

C. A non-exclusive easement for maintenance, repair and replacement of any shopping center sign on either Owners property. However, the Owner of Parcel "B" shall maintain the all shopping center or multi-tenant signs in first class condition and be responsible for all maintenance, repair and replacement (as needed) of such signs. All costs of maintenance, repair and replacement shall be paid by the Owners in proportion to the leasable area of the improvements on their respective parcels.

2.3 Assignment of Existing Major Lease Easements. Each Owner of Parcel A and Parcel B assigns to the Owner of the other Parcel all easements, rights, and privileges in and to the Common Area owned or enjoyed by such granting Owner as landlord under an Existing Major Lease and grants an equivalent easement in the fee interest of such Owners Parcel.

2.4 Grant of Self-Help Easement. Subject to any express conditions, limitations or reservations contained herein, each Owner of a Parcel grants to the other Owner the following self help easement:

An easement to enter upon a Parcel pursuant to the self-help provisions of Paragraph 8.2 hereof for the purpose of performing any obligation which the Owner of such Parcel is required to perform under this Declaration but fails or refuses to perform within the applicable time period provided in said Paragraph 8.2.

2.5 Barriers No barriers or obstructions shall be erected to close off either Parcel from the other Parcel or reduce or modify (without the written consent of all Owners and the Existing Major Tenants) the cross access between the Parcels.

2.6 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement harmless from and against all claims, liabilities, and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from or in any manner relating to the use by the indemnifying Owner or its Permittees of any easement granted hereunder except as may result from the gross negligence or intentional misconduct of the Owner whose Parcel is subject to the easement or its Permittees.

3. Maintenance.

3.1 Buildings. Each Owner covenants to keep and maintain, at its sole cost and expense, the building(s) located from time to time on its respective Parcel in good order, condition and repair. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as

shall not conflict with this Declaration), or (b) tear down and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition.

3.3 Common Area. Each Owner of a Parcel covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained at its expense all Common Area located on its Parcel in good order, condition and repair and in accordance with all laws. Maintenance of Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe, orderly and legal condition. In the event of any damage to or destruction of all or a portion of the Common Area on any Parcel the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild the Common Area of its Parcel to its condition prior to such damage or destruction. Each Parcel shall comply with applicable governmental parking ratio requirements without regard to the parking, building area and/or use of the other Owner's Parcel. No Owner shall modify the Common Area or any portion of the improvements, change the parking and/or traffic flow or its Parcel without the express written consent of the other Owner.

4. Restrictions.

4.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of Parcel A shall be used, directly or indirectly, for purposes of a cocktail lounge, bar, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, children's play or party facility, blood bank, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, automobile, truck, trailer or other vehicle repairs or sales, sleeping quarters or lodging, the outdoor housing or raising of animals, any industrial or manufacturing use, or any use which creates a nuisance.

4.2 Co-tenancy requirements. The Owner of Parcel A acknowledges that the existence of Safeway on Parcel A is a material draw for the tenants of Parcel B and that the Ross Lease imposes a Safeway "Co-tenancy requirement" as a condition of the Ross tenancy on Parcel B. Therefore, for so long as Safeway (or its successor) is

operating a retail business on Parcel A, the Owner of Parcel A shall not, without the written consent of the Owner of Parcel B, accept or agree to a termination of the Safeway lease or tenancy on Parcel A. The term "operating" shall exclude temporary closures and indefinite closures that continue for less than six (6) months.

4.3 Additional Restrictions. The Major Leases are incorporated herein and attached hereto as Exhibits D and E. They shall be interpreted as if each lease referred to Parcels A and B combined as one integrated shopping center and the "Landlord" therein included both the Owner of Parcel A and the Owner of Parcel B. Throughout the term of this Declaration, it is expressly agreed that, without the written consent of the Existing Major Tenants, no portion of either Parcel shall be:

- a. used, directly or indirectly, for any one or more of any purposes prohibited, restricted or "expected" (as an Existing Major Tenant's exclusive right) in the Existing Major Leases;
- b. improved, modified or changed with any building, structure, parking and traffic arrangement or layout prohibited or restricted in the Existing Major Leases;
- c. altered so as to violate the parking requirements in the Existing Major Leases;
- d. improved with signage that violates an Existing Major Lease unless the right to object is waived by the leaseholder of such Major Lease;
- e. restricted by imposition of any charge or cost for use of the Common Area parking spaces for customer parking; and
- f. physically cordoned off or otherwise restricted for use as outside merchandising area, except as permitted in the Safeway Lease.

4.4 Environmental Covenants. Each Owner shall comply with all Environmental Laws (as defined in either Existing Major Lease) with respect to its Parcel and, if required by any governmental agency, shall remove any Hazardous Substances (as defined in either Existing Major Lease) existing on its Parcel at its sole cost and expense. Each Owner shall keep its Parcel free and clear of all Hazardous Substances that interfere with the operation of the Shopping Center.

4.5 Indemnification. Each Owner shall indemnify and hold the other Owner harmless from and against all loss, cost, claims, liabilities, and expenses (including reasonable attorneys' fees) relating to any breach by the indemnifying Owner or its Permittees of the provisions of this Section 4 – Restrictions.

5. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain comprehensive public liability and property damage insurance against claims for personal injury, death, and property damage (including claims for contractual indemnification of the foregoing risks) occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million

Dollars (\$2,000,000.00) including umbrella coverage, if any, or such greater amount as may from time to time be required by the Existing Major Leases, and naming each other Owner and the Existing Major Tenants (provided the Owner obtaining such insurance has been supplied with the appropriate names) as an additional insured. Notwithstanding the foregoing, the obligations of the Owner of Parcel "A" hereunder may be satisfied by Safeway's insurance policy if it otherwise complies with the requirements hereof. This insurance is to insure against potential liability for losses or damages that might occur on or to any Parcel, including, without limitation, the easement areas thereof.

6. Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.
7. No Rights in Public. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B.
8. Remedies and Enforcement.

8.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

8.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate of Bank of America, plus two percent (2%) (not to exceed the maximum rate of interest allowed by law).

8.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien priority with respect thereto in the Office of the County Recorder of the County; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens

recorded in the Office of the County Recorder prior to the date of recordation of said notice of lien priority, (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien priority, and (iv) the lien of a first mortgage or deed of trust made in good faith for value to an institutional mortgagee or trustee (such as by way of example and not limitation, a bank, pension, savings and loan, insurance company, or like institution). All liens recorded subsequent to the recordation of the notice of lien priority described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien priority was recorded, the party recording same shall record an appropriate release of such notice of lien priority and Assessment Lien.

8.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

8.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9. Term. The Restrictions contained Article 4 of this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the County Recorder and shall remain in full force and effect for a period of eighty (80) years from and after said date of recordation, or as may be extended and/or substantiated, whichever is the later to occur, and the easements granted herein shall continue in perpetuity, unless this Declaration is modified, amended, cancelled or terminated by the written consent of all then record Owners of Parcel A and Parcel B in accordance with Paragraph 10.3 hereof.

10. Miscellaneous.

10.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

10.2 Amendment. Subject to subparagraph (b) below, Declarant agrees that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder.

10.3 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Except as otherwise provided herein, if any person having the right of consent or approval hereunder fails to give such consent or approval, or specific grounds for disapproval, within the applicable time period (or if no time period is provided, with fifteen (15) days of receipt of the request therefor), the person shall be deemed to have given its approval or consent. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; (c) clearly and conspicuously state that the failure to respond to the notice or request within the stated time period shall be deemed the equivalent of the recipient's approval or consent to the subject matter of the notice or request for approval or consent; and (d) be accompanied by such background data as is reasonably necessary to make an informed decision thereon.

10.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

10.5 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint ventures or of any other association between the parties.

10.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

10.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

10.8 Separability. Each provision of this Declaration and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be

dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

10.9 Time of Essence. Time is of the essence of this Declaration.

10.10 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

10.11 Governing Law. The laws of the State of Oregon shall govern the interpretation, validity, performance, and enforcement of this Declaration.

10.12 Estoppel Certificates. Each Owner, within fifteen (15) days of its receipt of written request of the other Owner or an Existing Major Tenant, shall from time to time provide the requesting Owner a certificate binding upon such Owner stating: (a) whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

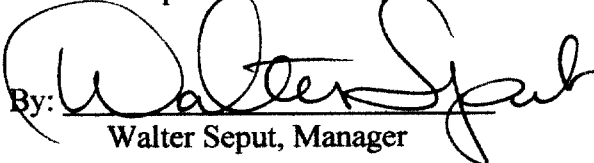
10.13 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Any party may change or add from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Declarant is as follows:

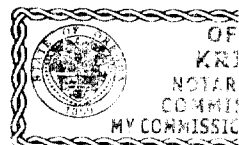
Jefferson: Jefferson Square of Klamath LLC
 Attn: Walter Seput
 501 Damont
 Klamath Falls, OR 97601
 Fax (541) 783-2719

10.14 Implied Easements Except for the easements expressly granted in Paragraph 2 hereof, no other easements are either granted or implied.

IN WITNESS WHEREOF, Jefferson has executed this Declaration as of the date first written above.

Owner of Parcel A and Owner of Parcel B:
Jefferson Square of Klamath, LLC

By: 
Walter Seput, Manager



Notary Acknowledgement for Declaration of Easements, Covenants , Conditions and Restrictions dated December 12, 2005

State of Oregon
County of KLAMATH

This instrument was acknowledged before me on December 16, 2005 by Walter Seput, Manager of Jefferson Square of Klamath, LLC, an Oregon limited liability company.


(Notary Public for Oregon)

My commission expires 11/16/2007

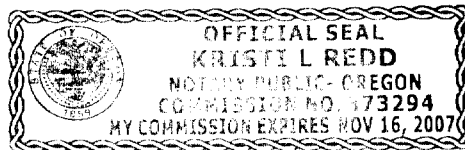
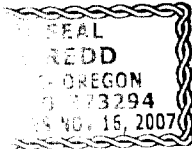


EXHIBIT "A"
(Legal Description of Parcel A)

PARCEL 1 OF LAND PARTITION 48-05

A PARCEL OF LAND SITUATED IN THE WEST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY OF THE O C & E RAILROAD AND THE SOUTHEAST CORNER OF SURVEY NUMBER 6149, KLAMATH COUNTY RECORDS, EVIDENCED BY A 5/8" PIN WITH CAP MARKED "ADKINS CONSULT. ENGRS. INC."; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, NORTH 66°57'30" WEST, 676.16 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, NORTH 66°57'30" WEST, 305.83 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF WASHBURN WAY; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, NORTH 00°02'35" WEST, 503.42 FEET; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY, SOUTH 55°52'30" EAST, 306.28 FEET; THENCE NORTH 34°07'30" EAST, 160.00 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY OF SOUTH SIXTH STREET, SAID POINT BEARS SOUTH 34°07'30" WEST, 1.00 FEET FROM A PK NAIL WITH WASHER; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY, SOUTH 55°52'30" EAST, 186.11 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY, ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 59°30'55", AN ARC DISTANCE OF 31.16 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 09°02'40" WEST, 29.78 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 34°08'37" WEST, 58.41 FEET; THENCE SOUTH 23°03'50" WEST, 165.53 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 12.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 58°23'32", AN ARC DISTANCE OF 12.23 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 55°39'40" WEST, 11.71 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 23°06'46" WEST, 263.87 TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS 4.49 ACRES, MORE OR LESS.

THE BASIS OF BEARING IS PER SURVEY NUMBER 6149, KLAMATH COUNTY RECORDS.

EXHIBIT "B"
(Legal description of Parcel B)

PARCEL 2 OF LAND PARTITION 48-05

A PARCEL OF LAND SITUATED IN THE WEST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INITIAL POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY OF THE O C & E RAILROAD AND THE SOUTHEAST CORNER OF SURVEY NUMBER 6149, KLAMATH COUNTY RECORDS, EVIDENCED BY A 5/8" PIN WITH CAP MARKED "ADKINS CONSULT. ENGRS. INC."; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, NORTH 66°57'30" WEST, 676.16 FEET; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY, NORTH 23°06'46" EAST, 263.87 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF A 12.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 58°23'32", AN ARC DISTANCE OF 12.23 FEET (THE LONG CHORD OF WHICH BEARS NORTH 55°39'40" EAST, 11.71 FEET) TO A POINT OF TANGENCY; THENCE NORTH 23°03'50" EAST, 165.53 FEET; THENCE NORTH 34°08'37" EAST, 58.41 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 59°30'55", AN ARC DISTANCE OF 31.16 FEET (THE LONG CHORD OF WHICH BEARS NORTH 09°02'40" EAST, 29.78 FEET) TO A POINT OF NON-TANGENCY ON THE SOUTHWESTERLY RIGHT-OF-WAY OF SOUTH SIXTH STREET; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY, SOUTH 55°52'30" EAST, 608.91 FEET TO A POINT THAT BEARS SOUTH 34°07'30" WEST, 1.00 FEET FROM A PK NAIL WITH WASHER; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY, SOUTH 34°07'49" WEST, 203.96 FEET; THENCE SOUTH 55°53'51" EAST, 145.07 FEET; THENCE SOUTH 34°06'32" WEST, 183.85 FEET TO SAID INITIAL POINT.

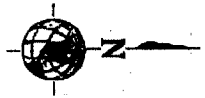
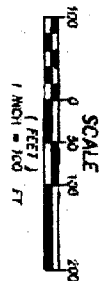
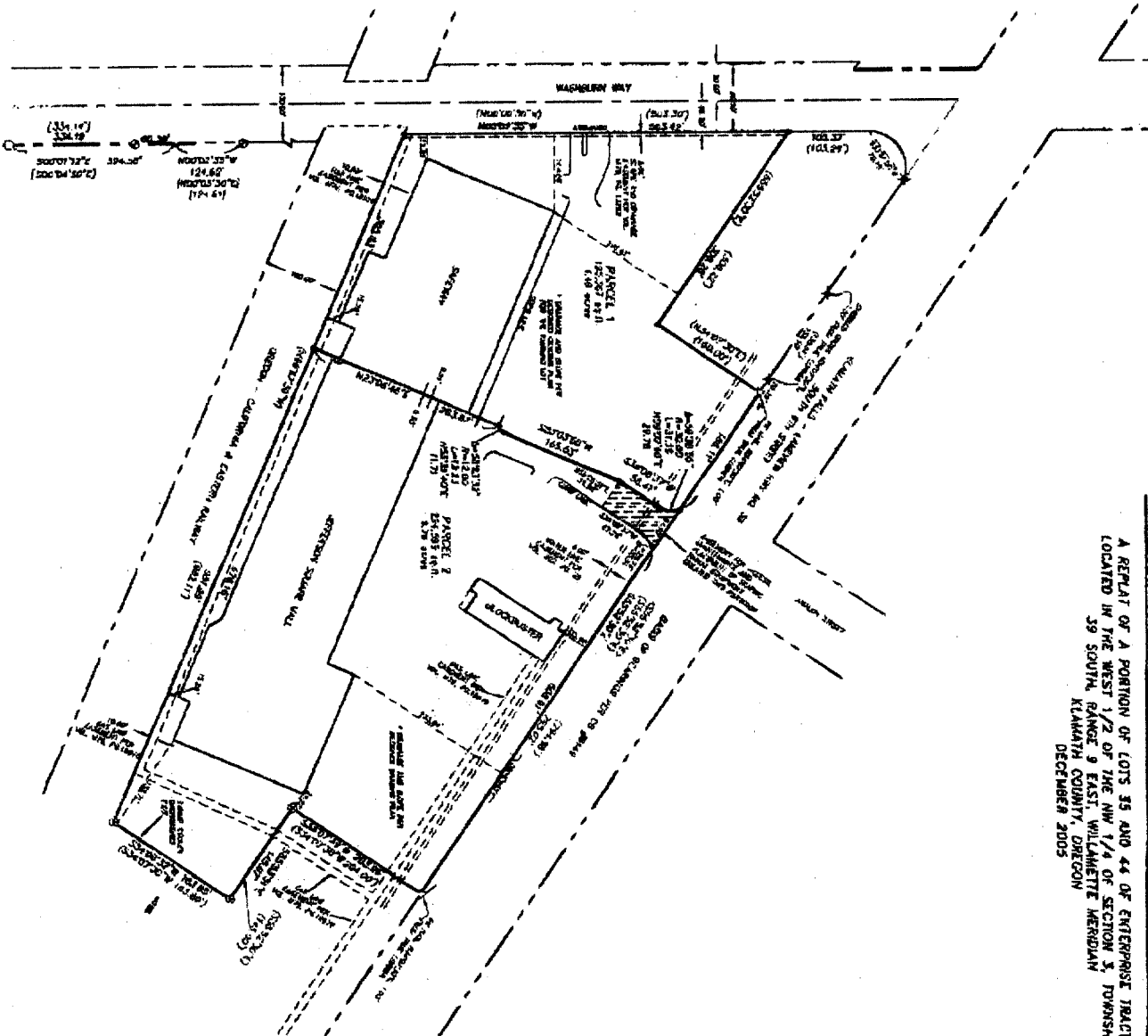
SAID PARCEL CONTAINS 6.76 ACRES, MORE OR LESS.

THE BASIS OF BEARING IS PER SURVEY NUMBER 6149, KLAMATH COUNTY RECORDS.

EXHIBIT "C"

LAND PARTITION NO. 48-05

A REPEAT OF A PORTION OF LOTS 35 AND 44 OF ENTERPRISE TRACTS
LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 3, TOWNSHIP
39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN
CLATSOP COUNTY, OREGON
DECEMBER 2005



LEGEND

- SET 0.7" HIGH AND NEW YELLOW PLASTIC CAP
- BORDED "A" SIGN
- ⑥ FOUND 3" HIGH PINE FOR C.S. 2000
- FOUND 5/8" HIGH AND FOR C.S. 2000
- ⑧ FOUND 5/8" HIGH AND FOUND PLASTIC CAP FOR C.S. 2000
- ② FOUND 3" HIGH, NEW WAGON FOR C.S. NO. 8140
- ④ FOUND CHISEL POINTS IN CHAIN FOR C.S. NO. 2000
- [XXX] RECORD DATA FOR C.S. NO. 8140
- [XXX] RECORD DATA FOR C.S. NO. 2000
- [XXX] RECORD DATA FOR C.S. NO. 2000
- XXXX RECORD DATA FOR C.S. NO. 2000

1. NO NEUTRAL CURVE THAT HAS A TANGENT AND EACH COPY OF THE ORIGINAL PARTITION PLAT HAS BEEN AS FILED WITH THIS OFFICE.

CLATSOP COUNTY CLERK

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CLATSOP COUNTY CLERK

RECEIVED
PROFESSIONAL
LAND SURVEYOR

TRAVIS P. FOSTER
JULY 8, 2005
CLATSOP COUNTY, OREGON
RECEIVED DATE 12-21-05



1004 Main St.
Rainier, OR 97131
503-261-1111
503-261-1112 Fax

127801-SURV-PTC00005

SHEET 2 OF 2

Planners • Engineers • Surveyors • Landscape Architects

EXHIBIT "D"

SAFEWAY LEASE

GROUND LEASE

BY AND BETWEEN

JEFFERSON SQUARE OF KLAMATH LLC

AS LANDLORD

AND

SAFEWAY INC.

AS TENANT

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GROUND LEASE

THIS GROUND LEASE ("Lease") is dated for reference purposes February 16, 2000, and is made and entered into by and between **JEFFERSON SQUARE OF KLAMATH LLC.**, a _____ limited liability company, as Landlord, and **SAFeway INC.**, a Delaware corporation, as Tenant.

1. PREMISES AND TERM. THE RITE-AID LEASE.

1.1. Premises And Original Term.

1.1.1. Landlord leases to Tenant the "Leased Premises" consisting of a portion of the real property and all buildings and improvements thereon located in the City of Klamath Falls, County of Klamath, State of Oregon, upon which Landlord has constructed a shopping center (the "Shopping Center") as shown on the plan attached to this Lease as Exhibit A. The real property comprising the Shopping Center is described in Exhibit B attached to this Lease. The Leased Premises is designated "Safeway Parcel" and is outlined in BOLD on Exhibit A. The remainder of the Shopping Center is referred to from time to time herein as Landlord's Premises.

1.1.2. TO HAVE AND TO HOLD the Leased Premises, with all appurtenances, for an original term ("Original Term") commencing on February 1, 2000 (the "Original Term Commencement Date") and terminating on January 31, 2025 (the "Original Term Expiration Date").

1.1.3. The portion of the Leased Premises marked "Expansion Area" on Exhibit A is presently subject to other leases. Landlord shall cause those leases to be terminated at Landlord's expense and shall deliver vacant possession of the Expansion Area to Tenant by June 1, 2000. Tenant may terminate this Lease by notice to Landlord if Landlord has not delivered vacant possession of the Expansion Area to Tenant by September 30, 2000, provided that Tenant is not permitted to terminate this Lease pursuant to this Section 1.1.3 for so long as Landlord is diligently pursuing vacant possession of the Expansion Area.

1.2. Options for Extension.

1.2.1. Tenant is hereby granted the right to extend the term of this Lease for six separate, consecutive and additional extension terms ("Extension Term(s)"), each for a period of ten years. Unless Tenant shall notify Landlord in writing, not less than six months prior to the expiration of the Original Term or any Extension Term then in effect, of its intention to terminate this Lease effective as of the end of the Original Term or Extension Term then in effect, Tenant shall be deemed to have exercised its option to renew this Lease for the next ensuing Extension Term and Tenant shall not be required to give any notice of its intention to avail itself of such Extension Term. Each Extension Term shall be on the same terms and conditions set forth in this Lease for the Original Term, except as to length of term and number of extensions remaining. The Original Term and the Extension Terms are occasionally referred to herein as a "Term". Tenant must not be in default beyond the time permitted to cure at the time Tenant exercises the option to renew the Lease for an Extension Term.

1 **1.3. The Rite-Aid Lease.**

2 **1.3.1.** The Leased Premises is subject to a lease dated June 28, 1979, between
3 Frederick Ehlers and Helen Ehlers as landlord and Payless Drug Stores Northwest as tenant ("the
4 Rite-Aid Lease"). Landlord is successor-in-interest to the Ehlers as landlord. Tenant is
5 successor-in-interest to Payless Drug Stores Northwest as tenant by purchase from Rite-Aid
6 contemporaneously with entering into this Lease. Landlord and Tenant terminate the Rite-Aid
7 Lease as of the Original Term Commencement Date. Landlord releases Tenant from all liability
8 under the Rite-Aid lease.

9 **2. RENT.**

10 **2.1. Original Term and Extension Terms.**

11 **2.1.1.** Commencing on March 1, 2000, Tenant agrees to pay monthly rent ("Rent") to
12 Landlord, in the amount of \$18,750.00 on the first day of each calendar month. The Rent shall
13 increase by ten percent at the start of each Extension Term over the Rent payable immediately
14 prior to the commencement of the Extension Term. Tenant shall pay Rent by checks or drafts
15 payable to Landlord and mailed at least five days prior to the due date to Landlord at PO Box
16 900, Chiloquin OR 97624 or such other address as may be designated in writing by Landlord.
17 Rent for any fractional calendar month shall be prorated.

18 **2.2. Additional Rent.**

19 **2.2.1.** All payments and other charges to be paid by Tenant hereunder shall be
20 deemed, for purposes of Oregon's unlawful detainer statutes, due as rent hereunder and are
referred to herein as "Additional Rent".

22 **2.3. Net Lease.**

23 **2.3.1.** Tenant is not permitted any offset or deduction to the payment of Rent or
24 Additional Rent except as expressly set forth in this Lease.

25 **2.4. Rent Credit.**

26 **2.4.1.** Tenant is entitled to an offset equal to 50 percent of the Rent from June 1,
27 2000, until the date Landlord delivers vacant possession of the spaces marked "Expansion Area"
28 on Exhibit A. Landlord will pay Tenant any rent Landlord receives from the tenants in the
29 spaces marked "Expansion Area" on Exhibit A from June 1, 2000, until the date Landlord
30 delivers vacant possession of the spaces marked Expansion Area.

31 **3. TAXES, UTILITY CHARGES, ETC.**

32 **3.1. Taxes**

33 **3.1.1.** As used in this Lease, and except as provided below, "Real Property Tax"
34 means and includes only real estate taxes and assessments, general and special, ordinary and
35 extraordinary, foreseen and unforeseen, including without limitation, assessments for local
36 improvements and betterments, which are assessed, levied or imposed against the entire
37 Shopping Center, including the improvements, during the Term of this Lease by any federal,
38 state, county, city or other authority having the power to tax. Real Property Tax excludes,
39 without limitation, any income, franchise, gross receipts, corporation, capital levy, excess profits,
40 revenue, rental, inheritance, devolution, gift, estate or payroll tax by whatsoever authority
41 imposed or howsoever designated or any tax upon the sale, transfer and/or assignment of

1 Landlord's title or estate which at any time may be assessed against or become a lien upon all or
any part of the Shopping Center or this leasehold. Real Property Tax includes any increased
3 property taxes resulting from a reassessment of the Leased Premises, for example, following a
4 sale of the Leased Premises. As used this Lease, "Tenant's Tax Parcel" means the area labeled
5 "Safeway Parcel" on Exhibit A.

6 3.1.2. Tenant shall pay all Real Property Taxes on Tenant's Tax Parcel prior to
7 delinquency. Tenant's obligation to pay Real Property Taxes shall be prorated as of the
8 commencement and expiration or earlier termination of the Term of this Lease.

9 3.1.3. Each party will provide to the other any notices of assessment on the Leased
10 Premises and/or Shopping Center in advance of any appropriate appeal date so that either party
11 may appeal such assessment. Tenant reserves the right to appear before the appropriate taxing
12 authority for the purposes of protesting any Real Property Taxes. Landlord agrees to cooperate
13 with Tenant, if Tenant elects to protest any assessment. Tenant is responsible for the cost of any
14 protest. Landlord shall give Tenant at least ten days prior written notice of any meeting with the
15 tax assessor's office to discuss Real Property Tax assessments and Tenant may elect to attend
16 such meeting.

17 3.2. Utility Charges, Etc.

18 3.2.1. Tenant shall pay all charges for electricity, gas, heat, water, telephone and other
19 utility services used on the Leased Premises during the Term.

20 4. CONSTRUCTION AND ALTERATION OF BUILDING IMPROVEMENTS.

4.1. Construction And Alteration Of Building Improvements.

22 4.1.1. Tenant may, at Tenant's expense, raze any improvements on the Leased
23 Premises provided that Tenant constructs a replacement building on the Leased Premises of at
24 least equal value. Tenant may construct on the Leased Premises any improvements, including,
25 without limitation, a store building ("Tenant's Building") and parking areas, and make such
26 repairs, additions, alterations and improvements as Tenant may deem desirable. Tenant will
27 reconstruct and repave the main drive aisle and the parking lot on the Leased Premises as shown
28 on Exhibit A at Tenant's expense if Tenant replaces the existing building. Landlord consents to
29 any action taken by Tenant and agrees to cooperate with and assist Tenant in applying for any
30 and all approvals, consents, permits, licenses, certificates, variances or other entitlements which
31 Tenant finds necessary or desirable (i) to construct Tenant's Building and associated common
32 area improvements on the Leased Premises, and (ii) to operate a general mercantile business
33 (including the sale of liquor and alcoholic beverages, as well as the sale of pharmaceuticals, if
34 not prohibited by law) on the Leased Premises ("Permits"). Without limiting the foregoing,
35 Landlord shall cooperate with and assist Tenant in (i) arranging for the release and/or relocation
36 and/or the granting of any utility easements as may be required by Tenant, and (ii) obtaining the
37 permits to erect sign(s) on the Leased Premises. Landlord appoints Tenant its agent for applying
38 for and processing said Permits.

39 4.1.2. Landlord and Tenant agree that all Buildings (defined below) in the Shopping
40 Center (i) shall be one story only (but may include mezzanines), (ii) shall not exceed (1) twenty
41 (20) feet in height for any free-standing pad building, (2) thirty (30) feet in height for any in-line
42 building designed for small tenant shops and (3) forty-five (45) feet in height for the Leased
43 Premises and any building in excess of 35,000 square feet to be occupied by a single tenant, the

1 locations of all of which buildings are shown on Exhibit A, and (iii) except for Permitted
2 Encroachments (defined later), shall be constructed only within the Building Areas. "Permitted
3 Encroachments" include those parts of Buildings such as loading docks and trash enclosures,
4 doors and exits, canopies and other covered areas, so long as such encroachments (i) are
5 maintained and insured as a part of the Building from which they extend, (ii) do not alter parking
6 configuration, access or circulation, (iii) do not extend into another Building Area or interfere
7 with construction or maintenance of adjacent Buildings, and (iv) do not interfere with Tenant's
8 use of the Leased Premises.

9 **4.1.3.** Landlord may redevelop the remainder of the Shopping Center, provided that
10 (a) the buildings are within the building envelopes shown on Exhibit A, (b) the total building
11 area of the buildings in each envelope does not exceed the maximum area indicated on the
12 envelope, and (c) there will be at least 573 parking spaces in the Shopping Center. Landlord will
13 not alter the Common Area without Tenant's consent.

14 **4.1.4.** Tenant is responsible for repairing or restoring the wall of Landlord's premises
15 adjacent to the Leased Premises to an independent structural wall. Tenant is responsible for
16 reinforcing the structure of Landlord's premises at the new wall to the extent reasonably
17 necessary to comply with building codes. Tenant is responsible for the costs of that work.
18 Landlord will cause Landlord's tenants affected by that work to cooperate with Tenant. Tenant
19 will reasonably minimize the disruption to Landlord's tenants.

20 **4.2. Conditional Commitment to Build.**

21 **4.2.1.** Tenant is required to build a new grocery supermarket occupying at least
22 45,000 square feet at a cost of at least \$3 million if Tenant demolishes the existing drugstore
23 building on the Leased Premises. Tenant shall pursue construction diligently and complete the
24 new grocery supermarket so as to obtain a certificate of occupancy within 12 months from the
25 date Tenant commences demolition of the existing drugstore building, subject to extension of
26 time for force majeure. The grocery supermarket must be of first-class materials and
27 workmanship similar to Tenant's other supermarkets constructed in Oregon in the past two years.
28 Tenant shall comply with all applicable laws and regulations in constructing the grocery
29 supermarket building.

30 **4.2.2.** Tenant acknowledges that Landlord owns the existing drugstore building.
31 Landlord will convey ownership of the existing building improvements to Tenant free and clear
32 of any liens if Tenant gives notice to Landlord that Tenant will demolish the existing building
33 improvements. Tenant accepts the existing building improvements "as-is".

34 **5. TENANT'S TRADE FIXTURES AND SIGNS; MAINTENANCE; ALTERATIONS;** 35 **SURRENDER; LIENS.**

36 **5.1. Tenant's Trade Fixtures and Signs.**

37 **5.1.1.** Tenant may (i) install in the Leased Premises such fixtures and equipment as
38 Tenant deems desirable, and (ii) paint, erect, or authorize signs in, on, or about the Leased
39 Premises, and all of said items shall remain Tenant's property whether or not affixed or attached
40 to the Leased Premises. Tenant has the option to remove such items from the Leased Premises
41 no later than the expiration of the Term or one month after the date of any earlier termination of
42 this Lease but shall repair any damage caused by removal. Tenant shall have the right to the
43 space previously occupied by Rite-Aid on all monument signage and the pylon sign for the

Shopping Center. If Landlord replaces the existing pylon sign, Landlord may place a shopping center identification at the top of the pylon and Tenant is entitled to the first and largest position below the shopping center identification. No more than three tenant signs are permitted on the pylon sign. No tenant sign may appear on the pylon unless the tenant occupies at least 20,000 square feet.

5.2. Maintenance; Alterations; Surrender; Liens.

5.2.1. Landlord shall not be obligated to maintain the Leased Premises or to maintain, replace or rebuild any improvements.

5.2.2. All improvements constructed on the Leased Premises by Tenant, and all additions, alterations and improvements made by Tenant, and all of Tenant's trade fixtures and equipment, shall not become a part of the realty even if affixed to the realty but shall remain the exclusive personal property of Tenant during the Term.

5.2.3. Tenant will maintain the exterior of the building on the Leased Premises in a condition at least equal to the condition of the exteriors of the buildings on Landlord's Premises. On surrendering possession to Landlord, all building improvements then located on the Leased Premises shall become the exclusive property of Landlord (said improvements do not include Tenant's trade fixtures and equipment). Tenant will deliver all portions of the Leased Premises to Landlord, and Landlord will accept the Leased Premises, in good condition with normal wear and tear upon surrender, with all alterations and improvements as made by Tenant.

5.2.4. Neither Tenant nor Landlord shall permit any mechanic's or materialmen's or other lien to stand against the Leased Premises or the Shopping Center in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien shall be filed against the Leased Premises or Shopping Center, the party charged with causing the lien shall cause the same to be discharged; provided, however, that either party may contest any such lien so long as enforcement thereof is stayed.

6. USE AND MAINTENANCE OF COMMON AREA.

6.1. Use Of Common Area.

6.1.1. "Building(s)" means those building(s) shown on Exhibit A. "Building Area" means those portions of the Shopping Center shown as building areas on Exhibit A. "Common Area" means those portions of the Shopping Center not shown as Building Areas on Exhibit A.

6.1.2. The Common Area is for the joint and exclusive use of all tenants in the Shopping Center, their customers, invitees, and employees. Landlord grants to Tenant and its customers, invitees, and employees the right to use of all of the Common Area on Landlord's Premises. Tenant grants to Landlord's other tenants and their customers, invitees, and employees the right to use of all of the Common Area on the Leased Premises. Except as otherwise provided in this Lease, the Common Area improvements may be used only for the purpose for which they were designed ("Primary Uses"). By way of example, but not limitation, parking areas may be used only for the parking of motor vehicles, drive aisles may be used only for access and traffic circulation, service areas may be used only for servicing and supplying tenants' businesses, sidewalks may be used only for pedestrian access and landscaped areas, and trash dumpster areas and baskart collection areas may be used only for such purposes. All uses permitted within the Common Area must be used with reason and judgment so as not to interfere

1 with the Primary Uses. Persons using the Common Area in accordance with this Lease must not
2 be charged any fee for such use without the written consent of Landlord and Tenant unless such
3 fee is ordered by an appropriate governmental authority. If an appropriate governmental
4 authority imposes a surcharge or regulatory fee on customer or employee parking or based on the
5 number of parking spaces within the Shopping Center or any other similar fee or charge, then
6 Landlord, Tenant, and other tenants in the Shopping Center by mutual agreement shall use their
7 best efforts to institute a uniform fee collection parking system for the Shopping Center.

8 **6.2. Outside Merchandising Area.**

9 **6.2.1.** Tenant may use that portion of the Common Area consisting of the sidewalks
10 and pedestrian walkways immediately adjacent to the front of Tenant's Building to display and
11 sell merchandise, maintain vending machines, and store baskarts. Other tenants occupying
12 20,000 square feet or more in the Shopping Center may use that portion of the Common Area
13 consisting of the sidewalks and pedestrian walkways immediately adjacent to the front of their
14 buildings to display and sell merchandise, maintain vending machines, and store baskarts.
15 Tenant shall not allow such uses unreasonably to interfere with pedestrian traffic. In addition,
16 Tenant may utilize the area cross-hatched on Exhibit A and designated "Outside Merchandising
17 Area" (if any) for the display and sale of seasonal merchandise. When Tenant is using the
18 Outside Merchandising Area, Tenant shall keep the Outside Merchandising Area in a neat and
19 orderly condition.

20 **6.3. Layout of Shopping Center.**

21 **6.3.1.** The sizes and arrangements of the Building Area and Common Area (including
22 access, parking areas and traffic circulation and flow patterns) as shown on Exhibit A shall not be
23 changed without Tenant's and Landlord's written consent. If said sizes or arrangements of the
24 Building Area or Common Area are changed without Tenant's written consent, Tenant may
25 terminate this Lease by written notice to Landlord or seek other remedies, including without
26 limitation specific enforcement of the terms of this Section by injunctive relief. Landlord and
27 Tenant agree that, in any lawsuit by Tenant for injunctive relief, the harm suffered by Tenant by
28 reason of a breach of this Section shall be deemed to be irreparable for which Tenant does not
29 have an adequate remedy at law. In no event shall Tenant be required to post a bond or other
30 security in any action seeking to enforce the provisions of this Section by injunctive relief or
31 other remedy.

32 **6.4. Common Area Maintenance.**

33 **6.4.1.** Landlord, at Landlord's expense, shall maintain the Common Area on
34 Landlord's Premises in good order, repair, and condition in compliance with the provisions of
35 this Lease and in compliance with all laws, rules and regulations, orders and ordinances of
36 governmental agencies having jurisdiction thereof. Tenant, at Tenant's expense, shall maintain
37 the Common Area on the Leased Premises in good order, repair, and condition in compliance
38 with the provisions of this Lease and in compliance with all laws, rules and regulations, orders
39 and ordinances of governmental agencies having jurisdiction thereof. Such maintenance and
40 repair obligation shall include, without limitation, the following: (i) maintaining and repairing
41 the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing
42 material and striping originally installed or such substitute therefor as shall in all respects be
43 equal in quality, use and durability; (ii) removing all papers, debris, filth, and refuse, and washing
44 or thoroughly sweeping the Common Area to the extent reasonably necessary to keep the

Common Area in a neat, clean, orderly, and safe condition; (iii) placing, keeping in repair and replacing the pylon, monument and any necessary appropriate directional signs, markers and lines; (iv) maintaining all landscaped areas, repairing automatic sprinkler systems or water lines in the Common Area, and replacing shrubs and other landscaping as necessary; (v) keeping the Common Area adequately lighted during any hours the Leased Premises are open for business and replacing all damaged or defective bulbs or fixtures; (vi) maintaining in full force and effect the public liability insurance required to be maintained by Landlord pursuant to this Lease; (vii) providing security and any other service (e.g., traffic control) or maintenance program that is agreed upon by Tenant and Landlord to keep the Common Area comparable to the common areas of other shopping centers in the same county; and (viii) cleaning, maintaining and repairing all sidewalks (including those situated on the perimeter or outside the boundaries of the Common Area, if customarily performed by adjoining property owners).

7. INDEMNIFICATION.

7.1. Indemnification.

7.1.1. Tenant shall defend, indemnify, and hold harmless Landlord from and against all liabilities, demands, claims, losses, damages, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person, loss of life or damage to property occurring on the Leased Premises during the Term of this Lease and arising out of Tenant's use and occupancy, whether foreseeable or unforeseeable, direct or indirect, or contributed to by the active or passive negligence of Landlord, its contractors, agents or employees (except when caused by the sole negligence or willful misconduct of Landlord, its contractors, agents or employees).

7.1.2. Landlord shall defend, indemnify and hold harmless Tenant from and against all liabilities, demands, claims, losses, damages, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person, loss of life or damage to property occurring anywhere within the Shopping Center prior to the commencement of the Term or occurring on Landlord's Premises during the Term of this Lease, whether foreseeable or unforeseeable, direct or indirect, or contributed to by the active or passive negligence of Tenant, its contractors, agents or employees (except when caused by the sole negligence or willful misconduct of Tenant, its contractors, agents or employees).

7.1.3. The parties agree to indemnify and hold each other harmless from and against all liabilities, demands, claims, losses, damages, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same for breach of the representations, warranties and covenants contained in the following Sections: Section 10, regarding Environmental Matters, Section 20, regarding Landlord's Representations, and Warranties, and Section 26.15 regarding Commissions.

7.1.4. Landlord's and Tenant's obligations in this Section to defend, indemnify and hold harmless shall survive the expiration or earlier termination of this Lease.

8. INSURANCE

8.1. Insurance.

8.1.1. Each of the parties shall obtain and maintain commercial or comprehensive general liability insurance, including coverage for contractual liability and coverage, covering

1 their contractual indemnification obligations under this Lease. The limits of liability of such
2 insurance shall be not less than Two Million Dollars (\$2,000,000.00) combined single limit
3 coverage for injury to person, loss of life and damage to property arising out of any single
4 occurrence. The dollar limit set forth above shall be increased on the commencement of the sixth
5 year of the Original Term and at five-year intervals thereafter by agreement of Landlord and
6 Tenant to reflect current industry practices.

7 **8.1.2.** During the Term of this Lease, Tenant will keep in effect on the buildings on
8 the Leased Premises fire insurance with an extended coverage endorsement and with a co-
9 insurance clause in an amount not less than 100 percent of the replacement cost (excluding costs
10 of replacing excavations and foundations but without deduction for depreciation) of the building
11 improvements thereon at Tenant's own expense. If Tenant's insurance policy permits the release
12 of others from liability for loss of casualties insured against, the release from liability is hereby
13 granted to Landlord to the extent of Tenant's actual recovery of loss under the policy.

14 **8.1.3.** All insurance to be provided by either Landlord or Tenant pursuant to this
15 Lease shall be carried with a company, or companies, qualified to do business in the State of
16 Oregon and having a general policy holder's rating of not less than A- and a financial rating of
17 VII or better as rated in the most current available "Best's Key Rating Guide" and shall provide
18 that payment for any losses covered thereunder shall be made to Landlord and Tenant and/or any
19 mortgage or trust deed beneficiary designated by Landlord from time to time as their respective
20 interests may appear; provided that no mortgage or trust deed beneficiary shall be named unless it
21 agrees in writing to make insurance proceeds available for restoration of the Leased Premises
22 pursuant to the provisions of this Lease. Each party, upon receipt of written request from the
23 other party, shall furnish the other party with certificates evidencing the insurance required under
24 this Lease and thereafter during the Term of this Lease shall furnish the other party with
25 certificates evidencing extension or replacement insurance. Such policies of insurance and
26 certificates provided by Landlord and Tenant shall provide (i) that the other party is named as an
27 additional insured, (ii) that the named insured's insurance is primary and non-contributory with
28 any insurance maintained by the other party, (iii) that the other party shall receive at least one
29 month's written notice before any insurance evidenced by such policy or certificate is reduced or
30 terminated and (iv) that the liability insurance policy shall apply separately to each insured party.
31 For the purposes of this Lease, Tenant's deductible under any insurance policy will be deemed to
32 be equal to Landlord's deductible under Landlord's policy covering parallel liabilities or losses.
33 Each party will cause its insurance company to waive subrogation against the other.

34 **9. ASSIGNMENT AND SUBLETTING.**

35 **9.1. Assignment and Subletting.**

36 **9.1.1.** Tenant may assign this Lease or sublet the whole or any part of the Leased
37 Premises, but Tenant shall remain liable to Landlord for full performance of Tenant's obligations
38 under this Lease. The intended use by such subtenant or assignee must be for a retail purpose
39 and may not include any use for which Landlord has previously provided notice to Tenant that it
40 has granted an exclusive to another Shopping Center tenant of space in excess of 30,000 square
41 feet. The immediately preceding sentence shall not restrict Tenant's right to make available
42 goods or services in the Leased Premises similar to those available in any of Tenant's other
43 stores, whether directly or through subleases, licenses or concession agreements, which shall not
44 be subject to any restriction other than as set forth in Section 14.2 below. The assignee or

1 sublessee must agree in writing to be bound by the terms of this Lease. If Tenant assigns this
2 Lease or subleases 75 percent of the ground floor area, the assignee or any subtenant must be an
3 operator which is equal or better in quality and type as compared to the remainder of the
4 Shopping Center at the time of the assignment or sublease.

5 **10. ENVIRONMENTAL MATTERS.**

6 **10.1. Environmental Representation.**

7 **10.1.1.** Landlord represents and warrants that as of the date of this Lease (1) Landlord
8 has not been named as a party in any proceeding or lawsuit for violation of any Environmental
9 Laws (as defined below), (2) the Shopping Center is not currently subject to investigation for
10 alleged Environmental Laws violations, and (3) without any independent investigation, Landlord
11 has no knowledge of any underground storage tanks or Hazardous Substances located on, in or
12 under the Leased Premises or the balance of the Shopping Center.

13 **10.2. Environmental Covenants.**

14 **10.2.1.** If required to do so by any governmental entity having jurisdiction, Tenant
15 shall remove from the Shopping Center all Hazardous Substances originating on the Leased
16 Premises after the Original Term Commencement Date and shall restore the Shopping Center to
17 a clean, safe, good and serviceable condition, all in conformance with all applicable
18 "Environmental Laws" (as defined in this Lease). If required by any governmental entity having
19 jurisdiction, Landlord shall remove from the Leased Premises and the balance of the Shopping
20 Center all Hazardous Substances originating on Landlord's Premises at any time or on the Leased
21 Premises prior to the Original Term Commencement Date and shall restore the Leased Premises
22 and the balance of the Shopping Center to a clean, safe, good and serviceable condition, all in
23 conformance with all applicable Environmental Laws, in such a way as to minimize disruption of
24 the business conducted on the Leased Premises. Neither Landlord nor Tenant has any obligation
25 under this Lease to remediate any contamination which originates outside the Shopping Center.

26 **10.3. Environmental Definitions.**

27 **10.3.1.** As used in this Lease. (i) "Environmental Laws" means any and all applicable
28 federal, state and local statutes, regulations, ordinances and rules as presently existing or as may
29 be amended or adopted in the future, pertaining to the protection of human health and/or the
30 environment, (ii) "Hazardous Substances" shall mean any and all hazardous, toxic or radioactive
31 substance, waste, or material, including without limitation petroleum oil and its fractions, listed
32 or defined by applicable Environmental Laws, and (iii) "Hazardous Discharge" shall mean any
33 and all leaks, spills, release, discharge, emission or disposal of Hazardous Substances into or
34 upon the Leased Premises or balance of the Shopping Center or of any migration of Hazardous
35 Substances into or upon any part of the Shopping Center through the air, soil or ground water
36 from any other part of the Shopping Center or from the property adjacent to the Shopping Center.

37 **11. HOLDING OVER.**

38 **11.1. Holding Over.**

39 **11.1.1.** If Tenant remains in possession of the Leased Premises after the expiration of
40 this Lease and Rent is paid and accepted, such possession shall create a month-to-month tenancy
1 on the terms specified in this Lease, which tenancy may be terminated by either party by one

1 month's notice to the other party. The Rent during any holdover period will be 150 percent of the
2 Rent payable at the expiration of the Term.

3 **12. DEFAULT.**

4 **12.1. Tenant's Default.**

5 **12.1.1.** If Tenant defaults in the payment of Rent and the default continues for
6 fifteen days after receipt of Landlord's written notice specifying the default, or if
7 Tenant defaults in the performance of any other covenant or agreement under this
8 Lease and the default continues for one month after receipt of Landlord's written
9 notice specifying the default or, if the default is of a type which is not reasonably
10 curable within one month, if Tenant fails to commence to cure the default within
11 one month after receipt of the notice or fails to diligently pursue the curing of the
12 default to completion, Landlord, so long as the default continues, may pursue any
13 remedy available under Oregon law.

14 **12.2. Landlord's Default.**

15 **12.2.1.** If Landlord defaults in the performance of any covenant or agreement under
16 this Lease and the default continues for one month after receipt of Tenant's
17 written notice specifying the default or, if the default is of a type which is not
18 reasonably curable within one month, if Landlord fails to commence to cure the
19 default within one month after receipt of the notice or fails to diligently pursue
20 the curing of the default to completion, Tenant, so long as the default continues,
21 may incur any reasonable expense necessary to perform the covenant or
22 agreement and, if Landlord fails to reimburse Tenant for such expense within
23 fifteen days after receipt of Tenant's written demand (which demand shall be
24 accompanied by documentation evidencing the expense) or if Landlord fails to
25 reimburse Tenant for any other amount owing under this Lease within fifteen
26 days after receipt of Tenant's written demand, Tenant may deduct the amount
27 which Landlord has failed to reimburse from any sums payable by Tenant under
28 this Lease.

29 **12.3. Tenant's Notice to Mortgagee.**

30 **12.3.1.** Tenant will give notice of any Landlord default to all mortgagees or trust
31 deed beneficiaries of record of which Tenant, prior to such notice, has been
32 notified in writing contemporaneously with Tenant's notice to Landlord. Such
33 mortgagee or trust deed beneficiary may, but is not required to, cure Landlord's
34 default on Landlord's behalf.

35 **12.4. Interest.**

36 **12.4.1.** In the event of default by either party hereunder, any amount due from the
37 defaulting party or expended by the other party to cure the default of the
38 defaulting party shall bear interest at the rate of twelve percent per year or the
39 highest rate allowed by law, whichever is lower, from the date such amount was
40 due from the defaulting party or was expended by the curing party, until paid.
Tenant will pay Landlord \$500, in addition to any interest which may be due, as

1 compensation to Landlord for late payment if any rent payment is received after
2 the tenth of a month for a second time in any twelve-month period.

3 **12.5. Remedies Cumulative.**

4 **12.5.1.** No remedy herein conferred upon or reserved to Landlord or Tenant shall
5 exclude any other remedy herein or by law provided, but each shall be cumulative
6 and in addition to every other remedy given hereunder or now or hereafter
7 existing at law or in equity or by statute.

8 **12.6. No Waiver.**

9 **12.6.1.** The failure of Landlord or Tenant to insist in any one or more cases upon
10 the performance of any of the provisions, covenants, agreements or conditions of
11 this Lease or to exercise any option herein contained shall not be construed as a
12 waiver or a relinquishment for the future of any such provision, covenant,
13 agreement, condition or option. Receipt by Landlord of Rent or of any other
14 payment or the acceptance by Landlord or Tenant of performance of anything
15 required by this Lease to be performed with knowledge of the breach of a
16 covenant shall not be deemed a waiver of such breach. No waiver of any
17 provision, covenant, agreement or condition of this Lease shall be deemed to
18 have been made unless expressed in writing and signed by the party against
19 whom such waiver is charged. The express waiver by either Landlord or Tenant
20 of any breach shall not operate to extinguish the covenant or condition, the
21 breach of which has been waived.

22 **12.7. Governing Law.**

23 **12.7.1.** This Lease shall be governed and enforced by, and construed in accordance
24 with, the laws of the State of Oregon.

25 **12.8. Attorneys' Fees.**

26 **12.8.1.** In the event either party hereto finds it necessary to employ legal counsel or
27 to bring an action at law or other proceedings against the other party to enforce
28 any of the terms, covenants or conditions hereof, the unsuccessful party shall pay
29 to the prevailing party a reasonable sum for attorneys' fees. Attorneys' fees shall
30 include attorneys' fees on any appeal, and in addition a party entitled to attorneys'
31 fees shall be entitled to all other reasonable costs for investigating such action,
32 taking depositions and the discovery, travel, and all other necessary costs
33 incurred in such litigation.

34 **13. LANDLORD'S COVENANT OF QUIET ENJOYMENT.**

35 **13.1. Quiet Enjoyment.**

36 **13.1.1.** Landlord covenants that Tenant shall and may peaceably and quietly have, hold
37 and enjoy the Leased Premises and enjoy all rights herein granted free from interference, eviction
38 or disturbance by Landlord or by any other person or persons.

1 **14. SEPARATION OF USES.**

2 **14.1. Tenant's Concern.**

3 **14.1.1.** Landlord recognizes Tenant's customers' need for adequate parking in close
4 proximity to the Leased Premises and the importance of protecting such parking facilities against
5 unreasonable or undue use which is likely to result from long-term parking by patrons or
6 employees of certain types of business establishments. Landlord further recognizes Tenant's
7 interest in not having tenants occupying space in close proximity to the Leased Premises who
8 create or cause excessive noise, litter or odor.

9 **14.2. Landlord's Safeguard for Tenant.**

10 **14.2.1.** To safeguard Landlord's and Tenant's interest in a clean, quiet environment,
11 free of obnoxious odors, and to ensure adequate parking for customers, Landlord and Tenant
12 covenant and agree that (i) each shall permit only the sale of retail goods and provision of retail
13 services within the Shopping Center, except for industrial, manufacturing, warehouse or office
14 uses that are incidental to the provision of retail goods and services; (ii) each shall not permit any
15 use which creates a nuisance, materially increases noise, noxious emissions or dust, or endangers
16 health and safety of persons at the Shopping Center; (iii) each shall not permit car washes, gas
17 stations or dry cleaners with an on-premises plant; (iv) each shall not permit any second hand,
18 thrift stores or mortuaries; (v) each shall not permit any use involving a Hazardous Substance,
19 except as may be customary in neighborhood shopping centers, similar in size and tenant mix to
20 the Shopping Center; (vi) each shall not permit the displaying, repairing, renting, leasing or sale
21 of any motor vehicle, boat or trailer; (vii) each shall not permit any business with drive-up or
22 drive-through lanes; (viii) each shall not permit the operation of any training or educational
23 facility within three hundred feet (300') of any wall defining the limit of the Leased Premises,
24 (ix) Landlord shall not permit the operation of any restaurant (including any take-out, fast-food,
25 cafeteria or full service sit-down restaurant) within 250 feet measured from the main customer
26 entrance, and (x) each shall not permit the use or operation of any portion of the Shopping Center
27 for the purpose of any entertainment or recreational facility. As used herein "training or
28 educational facility" includes, without limitation, a beauty school, barber college, place of
29 instruction, or any other operation catering primarily to students or trainees rather than to
30 customers, but excludes employee training by Shopping Center tenants incidental to the conduct
31 of their businesses within the Shopping Center. As used herein, "entertainment or recreational
32 facility" includes, without limitation, a theater, carnival, bowling alley, skating rink, amusement
33 center, electronic or mechanical games arcade (except as an incidental use to a retail business),
34 child care facility, pool or billiard hall, betting parlor, bingo parlor, health or aerobic spa or
35 studio, martial arts studio, gymnasium, massage parlor, pornographic shop, adult book store,
36 nightclub, dance hall, tavern, cocktail lounge, any facility serving alcoholic beverages, excepting
37 only from this prohibition a full service restaurant serving alcoholic beverages as an incidental
38 part of its food service operation (which restaurant nevertheless shall be subject to the restriction
39 contained in item (ix) of this Section) or other place of public or private amusement. The
40 restriction against restaurants within 250 feet from the main customer entrance of the Leased
41 Premises does not apply to the existing Terry's Donuts operation.

1 **15. COMPETITIVE BUSINESS.**

2 **15.1. Competitive Business Expectation.**

3 **15.1.1.** Landlord recognizes that Tenant is entering into this Lease and is foregoing
4 other opportunities to locate its business in other locations based on the expectation ("Tenant's
5 Expectation") that, except as set forth in Section 15.2, Tenant will be the sole seller in the
6 Shopping Center of (i) food for off-premises consumption, (ii) alcoholic beverages for off-
7 premises consumption, (iii) pet foods, and (iv) merchandise which, under the laws of the State of
8 Oregon, is required to be dispensed by or under the supervision of a registered or licensed
9 pharmacist, ("prescription pharmacy merchandise"). Landlord further recognizes that (i) Tenant
10 is making considerable investments in fixtures, equipment, merchandise, personnel, and
11 advertising, (ii) Tenant is investing its business reputation in the Leased Premises which
12 reputation will be adversely affected if Tenant's sales volume from the Leased Premises
13 ("Tenant's Sales") is significantly less than the level planned by Tenant, (iii) the addition of other
14 businesses to the Shopping Center which sell food for off-premises consumption, alcoholic
15 beverages for off-premises consumption, pet foods, and/or prescription pharmacy merchandise,
16 except as permitted in Section 15.2, will result in a reduction of Tenant's Sales and thus impair
17 the benefit of the bargain for which Tenant negotiated in entering into this Lease, and (iv)
18 Tenant's agreement to pay rent and to assume all other economic obligations of this Lease are
19 predicated upon Tenant's Expectation.

20 **15.2. Landlord's Competitive Business Covenant.**

21 **15.2.1.** In recognition and consideration of Tenant's Expectation, Landlord covenants
22 that, except as provided hereinafter in this Section 15.2, (i) Tenant shall have the sole and
23 exclusive right in the Shopping Center to sell food for off-premises consumption, alcoholic
24 beverages for off-premises consumption, pet foods, and prescription pharmacy merchandise and
25 (ii) no store other than Tenant's store shall sell, or be permitted by Landlord to sell, food for off-
26 premises consumption, alcoholic beverages for off-premises consumption, pet foods, and/or
27 prescription pharmacy merchandise. Notwithstanding the preceding sentence, the provisions of
28 this Section 15.2 shall not be deemed to prohibit a restaurant (fast food or sit-down) from selling
29 alcoholic beverages and/or food prepared on premises for off-premises consumption. In addition
30 to the provisions of Section 15.3, Tenant shall have the right to enforce its rights under the
31 provisions of this Section 15.2 against the owner, tenant, or occupant of any other store in the
32 Shopping Center if the store violates Tenant's exclusive right under this Section 15.2 or the store
33 violates the restriction set forth in this Section 15.2 against the sale of food for off-premises
34 consumption, alcoholic beverages for off-premises consumption, pet food, or prescription
35 pharmacy merchandise.

36 **15.3. Enforcement of Competitive Business Covenant.**

37 **15.3.1.** The parties agree that the economic loss to Tenant resulting from a violation of
38 Section 15.2 is not readily measurable or subject to precise calculation. Accordingly, in the event
39 of a violation of the provisions of Section 15.2, which violation is not corrected within one
40 month after Landlord's receipt of written notice thereof from Tenant, then, in addition to Tenant's
41 right to seek other remedies as provided in this Lease, Tenant's obligation to pay rent shall be
42 abated, as long as such violation continues, by an amount equal to 50 percent of the rent
43 otherwise due and payable. If the violation has not been corrected within six months after
44 Landlord's receipt of Tenant's notice, the Tenant, at its option, may terminate this Lease by

written notice to Landlord. Landlord and Tenant agree that, in any lawsuit by Tenant seeking specific performance of the terms of Section 15.2 by injunctive relief, the harm suffered by Tenant by reason of a breach of Section 15.2 shall be deemed to be irreparable for which Tenant does not have an adequate remedy at law. In no event shall Tenant be required to post a bond or other security in any action seeking to enforce the provisions of Section 15.2 by injunctive relief or other remedy.

16. CONDEMNATION.

16.1. Condemnation.

16.1.1. If any portion of or interest in the Shopping Center is taken or damaged by condemnation under any right of eminent domain or any transfer in lieu of condemnation which renders the Leased Premises unsatisfactory for grocery supermarket use in Tenant's reasonable opinion, Tenant may terminate this Lease by notice to Landlord within six months after the date of the taking. The Rent under Section 2 of this Lease will be reduced in the ratio which the remaining land area in the Leased Premises bears to the total land area preceding such condemnation if Tenant does not terminate this Lease. Tenant shall deliver to Landlord a bill of sale transferring the title to any building improvements (but not Tenant's trade fixtures and equipment) on the Leased Premises to Landlord if Tenant terminates the Lease pursuant to this Section.

16.1.2. In the event of any condemnation and whether or not Tenant elects to terminate this Lease, Landlord and Tenant shall share any awards or payments made in the condemnation proceedings as prescribed by Oregon law.

17. OPERATIONS.

17.1. No Covenant to Operate.

17.1.1. Landlord agrees that (i) Tenant, its subtenants or assignees shall not be obligated to operate any particular type of business in the Leased Premises and shall have the right to discontinue whatever type of business (grocery or otherwise) which may exist from time to time in the Leased Premises, and (ii) Tenant makes no express or implied covenant (a) to continuously operate a grocery store or any other business in the Leased Premises, (b) to operate during any particular hours, or (c) to conduct its business in any particular manner. Tenant has the sole right in its unrestricted discretion to decide whether or not to operate in the Leased Premises and in what manner to conduct operations, if any.

17.2. Landlord Recapture Right.

17.2.1. Landlord may terminate this Lease on two month's notice to Tenant if (a) Tenant fails to open a retail business occupying at least one-half of the floor area of the Leased Premises within one year after Tenant obtains possession of the entire Leased Premises, and (b) Tenant has not commenced construction of the new grocery supermarket building as described in Section 4.2.1. Tenant may void Landlord's notice to terminate by notice to Landlord within one month after Landlord's notice committing either (c) to complete construction of the new grocery supermarket building as described in Section 4.2.1 within one year from the date of Tenant's notice or (d) to commence retail operations in more than one-half of the floor area of the Leased Premises within the longer of three months or the time reasonably necessary to install tenant improvements for the intended use.

1 **18. COMPLIANCE WITH LAWS.**

2 **18.1. Compliance With Laws.**

3 **18.1.1.** Tenant agrees not to violate any law, ordinance, rule or regulation of any
4 governmental authority having jurisdiction of the Leased Premises. Tenant may contest the
5 validity of any such law, ordinance, rule or regulation but shall indemnify and hold Landlord
6 harmless against the consequences of any violation by Tenant.

7 **19. TENANT'S CONDITIONAL RIGHT TO PURCHASE SHOPPING CENTER.**

8 **19.1. Landlord's Notice to Tenant.**

9 **19.1.1.** Landlord shall not sell the Shopping Center during the first ten years of the
10 Term without first sending notice to Tenant offering to sell the Shopping Center to Tenant for
11 cash. The price shall be the higher of (a) 98 percent of fair market value or (b) the balance due
12 under the existing first deed of trust on the Shopping Center, including without limitation,
13 principal, interest, prepayment fees, late charges, default interest and reasonable attorneys' fees.
14 Landlord's notice shall state the balance due under the first deed of trust. Tenant shall have until
15 the later of (c) two months from Landlord's notice, or (d) two weeks from the appraiser's
16 determination of the fair market value of the Shopping Center, to accept the offer. Landlord will
17 promptly provide copies of all tenant leases in the Shopping Center and of all financing
18 documents. Landlord may require Tenant to assume the existing financing as a credit against the
19 purchase price if Tenant buys the Shopping Center, subject to the lender's approval of the
20 assumption. The balance due under the deed of trust includes the outstanding principal balance,
accrued interest, and any other amounts recoverable by lender under the loan documents.

22 **19.2. Determination of the Fair Market Value.**

23 **19.2.1.** Landlord and Tenant will negotiate to determine the fair market value of the
24 Shopping Center. If Landlord and Tenant do not succeed in agreeing on the fair market value
25 within one month from Landlord's notice, the fair market value must be determined by appraisal.
26 Landlord may select an unbiased MAI-member appraiser with at least five years experience in
27 appraising commercial shopping center real estate. The selection is subject to Tenant's approval,
28 not to be unreasonably withheld. Landlord and Tenant will each pay one-half of the appraiser's
29 fee. Landlord and Tenant will instruct the appraiser to complete the appraisal within one month
30 and to consider all existing leases in valuing the Shopping Center.

31 **19.3. Lender Notice of Landlord Default Under First Deed of Trust.**

32 **19.3.1.** Landlord and Tenant agree that the lender under the first deed of trust on the
33 Shopping Center may send notice to Landlord and Tenant certifying that Landlord is in default
34 under the first deed of trust and requiring Landlord to offer to sell the Shopping Center to Tenant
35 on the terms provided in Section 19.1 and with the same effect as Landlord's notice under
36 Section 19.1. This provision is intended to be for the benefit of and is to be enforceable by the
37 lender under the existing first deed of trust.

38 **19.4. Closing.**

39 **19.4.1.** The purchase will close three months from the Landlord's notice. Tenant
() will pay all customary closing costs.

19.5. Expiration of Purchase Right.

19.5.1. Tenant will have no further right to purchase the Shopping Center under this Section 19 if Tenant rejects Landlord's or the lender's offer under Section 19.1.

20. TITLE AND SURVEY.

20.1. Short Form Lease.

20.1.1. This Lease shall not be recorded; however, to establish the status of Landlord's title and to establish the priority of this Lease, Landlord and Tenant, simultaneously with the execution of this Lease, shall execute a memorandum of this Lease (the "Short Form Lease") which shall be recorded by Tenant at the expense of Landlord. Within one month after the date of recording the Short Form Lease, Landlord, at its expense, shall provide Tenant with a current title report ("Title Report"), satisfactory to Tenant, from a responsible title insurance company, reflecting the status of Landlord's title to the Shopping Center as of a date after the recordation of the Short Form Lease. The Title Report shall be delivered to Tenant together with legible copies of all documents creating exceptions to title.

21. REPRESENTATIONS AND WARRANTIES.

21.1. Landlord's Representations and Warranties.

21.1.1. Landlord represents, warrants, and covenants to Tenant as follows: (i) Landlord has lawful title to the Shopping Center, is entitled to possession of the Shopping Center and has full right and authority to make this Lease; (ii) no other leases affecting the Shopping Center shall be recorded prior to the recording of the "Short Form Lease" (as defined below); (iii) the leases of other tenants in the Shopping Center do not presently and shall not in the future contain provisions inconsistent with this Lease concerning the use of the Leased Premises, of other Buildings, or of the Common Area and, if there are any such inconsistent provisions, then the provisions of this Lease shall be controlling; and (iv) at the time of the recording of the Short Form Lease, (1) the Shopping Center will be free from encumbrances with priority over Tenant's interest pursuant to this Lease, except those encumbrances agreed to in writing by Tenant, and (2) there will be no laws, rules, orders, regulations, decrees or other ordinances (including zoning) or title or other matters, except those agreed to in writing by Tenant, which will restrict Tenant's operation of a general mercantile business (including the sale of alcoholic beverages and pharmaceuticals if not prohibited by law and if Tenant obtains all necessary licenses and/or permits at Tenant's expense) in the Leased Premises or the use of the Common Area as provided for in this Lease.

21.2. Mutual Representations and Warranties.

21.2.1. Landlord represents and warrants to Tenant that Landlord is a limited liability company duly organized and validly existing under the laws of the State of Oregon and the execution and delivery by Landlord of and Landlord's performance under this Lease are within Landlord's powers and have been duly authorized by all requisite action. Tenant represents and warrants to Tenant that Tenant is a corporation duly organized and validly existing under the laws of the State of Delaware and the execution and delivery by Tenant of and Tenant's performance under this Lease are within Tenant's powers and have been duly authorized by all requisite action.

22. NOTICES.

22.1. Notices.

22.1.1. Notices and communications required or permitted to be given in connection with this Lease shall be mailed, by certified or registered United States mail, postage prepaid, or delivered (either personal delivery or delivery by private express courier service such as Federal Express). Notices may also be given by fax, provided that the notice is concurrently given by one of the methods described in the preceding sentence and that confirmation of completed transmission is obtained. The address for notices shall be, (i) if to Landlord, to the payee to whom Rent is then payable at the address to which Rent is then mailed, or (ii) if to Tenant, to 5918 Stoneridge Mall Road, Pleasanton, California 94588, Attention: Real Estate Law Division (#1766), (fax no. 925-467-3224) with a copy to Safeway Inc., Attn.: Real Estate, 16300 S. E. Evelyn, Clackamas OR 97015. The person and the place to which notices are to be mailed or delivered may be changed by either party by written notice to the other party given in accordance with the provisions of this Section. Notices sent in accordance with this Section shall be effective (i) in the case of fax notices, one business day after transmission, and (ii) in the case of all other delivery methods, upon receipt or on the date of attempted delivery of such notice.

23. SUBORDINATION. ESTOPPEL CERTIFICATE.

23.1. Subordination.

23.1.1. This Lease is paramount and superior to all deeds of trust or mortgages hereafter affecting the Shopping Center. In the event any bona fide loan secured by a first deed of trust or mortgage is made a lien against the Shopping Center and Landlord and the lender first complete, execute and acknowledge a subordination, attornment and non-disturbance agreement in the form attached hereto and by this reference made a part hereof as Exhibit D ("the SNDA"), Tenant will subordinate this Lease to the lien by executing and acknowledging the SNDA. Landlord will record the fully-executed and acknowledged SNDA at Landlord's expense and will deliver an original SNDA to Tenant.

23.2. Estoppel Certificate.

23.2.1. Upon Tenant's written request, and provided Landlord can do so truthfully, Landlord will certify in writing to all persons designated by Tenant (i) that Tenant has performed all of Tenant's obligations and is not in default under this Lease, (ii) that this Lease is in full force and effect, and (iii) that each person receiving such certification may rely on the certification for all purposes. Upon Landlord's written request, and provided Tenant can do so truthfully, Tenant will certify in writing to all persons designated by Landlord (i) that Landlord has performed all of Landlord's obligations and is not in default under this Lease, (ii) that this Lease is in full force and effect, and (iii) that each person receiving such certification may rely on the certification for all purposes.

24. RIGHTS OF MORTGAGEES.

24.1. Mortgage Financing.

24.1.1. Tenant may sell and/or obtain mortgage financing on any improvements, alterations or additions made by Tenant on the Leased Premises, subject however, to the provisions of this Lease; in the event of any such sale and/or mortgage financing, no mortgagee or other holder of a security interest in Tenant's leasehold or in the improvements on the Leased

Premises shall be deemed to have assumed the performance of any of Tenant's obligations under this Lease until the holder of the security interest takes possession of the Leased Premises.

24.1.2. Landlord and Tenant agree that in the event of any default by the other party under this Lease, any mortgagee or other holder of a security interest in the defaulting party's interest in the improvements and the Leased Premises ("Mortgagees") and/or any assignee or subtenant of Tenant may cure such default and continue this Lease in full force and effect. Landlord and Tenant further agree that in the event the defaulting party fails to cure any default within the allowable time period, the non-defaulting party shall give notice of such failure to the defaulting party's Mortgagees (and any assignee or subtenant of Tenant, if applicable) and to take no action to terminate this Lease or any existing subleases of the Leased Premises so long as any of said parties are diligently attempting to obtain possession of the Leased Premises and to cure the default, or to institute and complete foreclosure proceedings or otherwise acquire Tenant's interest under this Lease.

25. NON-MERGER.

25.1. Non-Merger.

25.1.1. The leasehold interest created by this Lease shall not merge into the fee interest in the Leased Premises and this Lease shall continue in full force and effect unless formally terminated, notwithstanding future ownership by a single party or entity of the fee interest in the Leased Premises and the leasehold interest created by this Lease.

26. MISCELLANEOUS.

26.1. "Force Majeure",

26.1.1. Force majeure means circumstances beyond a party's reasonable control which render performance of the party's obligation unreasonably difficult or expensive. Force majeure includes strikes or lockouts, shortage of labor or materials, fire, flood, or other casualty, adverse weather conditions, civil disruption, and governmental intervention or action or inaction. Financial inability to perform is not force majeure. Where a party's performance is subject to force majeure, the party's time to perform an obligation will be extended by one day for every day during which force majeure prevented the party from performing its obligation.

26.2. Paragraph Headings.

26.2.1. The paragraph headings of this Lease are inserted only for reference and do not affect the terms and provisions of this Lease.

26.3. Reasonableness.

26.3.1. Where a party's consent or approval is required under this Lease, the party will not unreasonably withhold or delay the consent or approval.

26.4. Advertising.

26.4.1. Safeway will make efforts to include the Shopping Center name in Safeway's local advertising. No failure to include the Shopping Center name in any advertising will be a default under the Lease.

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26.5. Rights Of Successors.

26.5.1. All of the rights and obligations of the parties under this Lease shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

26.6. No Joint Venture.

26.6.1. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other joint or equity type agreement between Landlord and Tenant.

26.7. No Third Party Beneficiaries Intended.

26.7.1. No term or provision of this Lease is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action under this Lease.

26.8. Interpretation.

26.8.1. Whenever used in this Lease, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Sections of this Lease are for convenience of reference only, and shall not be deemed to define or limit the provisions of this Lease.

26.9. Invalid Provisions.

26.9.1. If any term or provision of this Lease or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which the term or provision was held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease and each portion thereof shall be valid and enforceable to the fullest extent permitted by law.

26.10. Non-Disclosure.

26.10.1. Landlord and Tenant agree that the terms of this Lease are confidential and constitute proprietary information of the parties. Each of the parties agrees that such party, and its respective partners, officers, directors, and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of the other party except pursuant to an order of a court of competent jurisdiction; provided, however, that either party may disclose the terms of this Lease to its lenders or prospective lenders or the accountants who audit its financial statements or prepare its tax returns, to any prospective transferee of all or any portions of their respective interests under this Lease (including a prospective assignee or subtenant of Tenant), to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Lease, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights or obligations of the parties under this Lease.

1 **26.11. Dates of Performance.**

2 **26.11.1.** In the event that any date for performance by either party of any obligation
3 under this Lease required to be performed by such party falls on a Saturday, Sunday, nationally
4 established holiday or state established holiday in the state where the Landlord or Tenant has its
5 principal place of business, the time for performance of such obligation shall be deemed
6 extended until the next business day following such date.

7 **26.12. Authority.**

8 **26.12.1.** The individuals who execute this Lease represent and warrant that they are
9 duly authorized to execute this Lease on behalf of Landlord or Tenant (as the case may be).

10 **26.13. Time of the Essence.**

11 **26.13.1.** Time is of the essence in this Lease and each and every term, condition and
12 provision hereof.

13 **26.14. Landlord's Transfer.**

14 **26.14.1.** In the event Landlord sells the Shopping Center and/or assigns Landlord's
15 interest in this Lease and Landlord's successor in interest assumes all of Landlord's obligations
16 under this Lease, Landlord shall be released from all obligations under this Lease, not accrued as
17 of the date of such sale or transfer; and the purchaser, at such sale or transfer or any subsequent
18 sale or transfer of the Shopping Center, shall be deemed, without any further agreement between
19 the parties or their successors in interest or between the parties and any such purchaser, to have
20 assumed and agreed to carry out any and all of the covenants and obligations of the Landlord
21 under this Lease after the consummation of such sale. Notwithstanding the foregoing, the
22 original Landlord under this Lease shall remain primarily liable for the performance of the
23 covenants which are to be performed prior to the commencement of the Term of this Lease.
24 Tenant shall attorn to any assignee, transferee or purchaser of Landlord's interest in this Lease
25 who assumes all of Landlord's obligations under this Lease in accordance with the provisions of
26 this Section from and after the date of written notice to Tenant of such assignment, transfer or
27 sale and assumption in the same manner and with the same force and effect as though this Lease
28 were made in the first instance by and between Tenant and such assignee, transferee or purchaser.

29 **26.15. Commissions.**

30 **26.15.1.** Landlord represents and warrants to Tenant that Landlord has not used any
31 broker, agent, finder or other person in connection with the transaction contemplated by this
32 Lease to whom a brokerage or other commission or fee may be payable, other than Commercial
33 Realty Advisors. Tenant represents and warrants to Landlord that Tenant has not used any
34 broker, agent, finder or other person in connection with the transaction contemplated by this
35 Lease to whom a brokerage or other commission or fee may be payable, other than Commercial
36 Realty Advisors. Landlord and Tenant will each pay one-half of the commission due to
37 Commercial Realty Advisors. Each party indemnifies and agrees to defend and hold the other
38 harmless from any claims resulting from the breach by the indemnifying party of the warranties
39 and representations in this Section.

40 **26.16. Exhibits.**

41 **26.16.1.** The Exhibits attached hereto are incorporated in this Lease by this reference.

1 **26.17. Counterparts.**

2 **26.17.1.** This Lease may be executed in multiple counterparts, each of which shall be
3 deemed to be an original, but all of which, together, shall constitute one and the same instrument.

4 **26.18. Lease Execution And Change.**

5 **26.18.1.** It is understood and agreed that until this Lease is fully executed and
6 delivered by both Landlord and the authorized corporate officers of Tenant there is not and shall
7 not be an agreement of any kind between the parties upon which any commitment, undertaking
8 or obligation can be founded. It is further agreed that once this Lease is fully executed and
9 delivered that it contains the entire agreement between the parties to this Lease and that, in
10 executing it, the parties do not rely upon any statement, promise or representation not expressed
11 in this Lease and this Lease once executed and delivered shall not be modified, changed or
12 altered in any respect except by a writing executed and delivered in the same manner as required
13 for this Lease.

14 **IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease.

15
SAFEWAY INC.,
a Delaware corporation

By: [Signature]
Assistant Vice President

JEFFERSON SQUARE OF KLAMATH LLC.,
a Walter Seput limited liability company

By: [Signature]
Blaine C. Janin
as attorney in fact for Walter Seput,
Its Managing Member

Date: February 23, 2000

(LANDLORD)

By: [Signature]
Assistant Secretary
(TENANT)

Tax ID No. _____

Form Approved [Signature]

EXHIBIT "B"

DESCRIPTION OF PROPERTY

PARCEL ONE

The following described real property situate in Klamath County, Oregon:

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South 00°00'30" East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55°52'30" East, at Engineers Station 9+17.42 feet on Washburn Way and Engineers Station 16+14.87 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16+41.99 feet; thence South 55°52'30" East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South 55°52'30" East parallel to said centerline 795.36 feet; thence at right angles South 34°07'30" West, 204 feet; thence South 55°52'30" East parallel to Sixth Street 145.00 feet; thence at right angles South 34°07'30" West, 183.80 feet, more or less, to Northerly right of way line of the Oregon, California and Eastern Railroad; thence North 57°30" West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North 00°00'30" West along said right of way line 503.39 feet; thence South 55°52'30" East, 306.22 feet; thence North 34°07'30" East, 160.00 feet to the true point of beginning.

PARCEL TWO

Easement as disclosed in Reciprocal Easement and Maintenance Agreement, recorded December 8, 1995, in M-95 on page 33582, records of Klamath County, Oregon.

Exhibit B

SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT ("Agreement") is made February 16, 2000, between _____, a _____ corporation (hereinafter called Landlord); **SAFEWAY INC.**, a Delaware corporation, (hereinafter called Tenant); and _____, a National Association (hereinafter called Lender).

R E C I T A L S

- A. Landlord has entered into a Lease with Tenant, dated _____ (hereinafter called "the Lease"), demising a certain portion of the property described on Exhibit "A" attached hereto and by this reference made a part hereof. The demised premises are all or a portion of the real estate encumbered by the hereinafter referred to Deed of Trust. A memorandum of the Lease, dated _____, was recorded on _____, in Book _____, Page _____, Records of _____ County, _____.
- B. Landlord has obtained a loan from Lender and has executed a Deed of Trust dated _____, (hereinafter called the "Deed of Trust"), to secure the loan granted Landlord by Lender. The Deed of Trust was recorded on _____, in Book _____, Page _____, Records of _____, _____. The Deed of Trust encumbers the real estate demised to Tenant.
- C. Lender is the owner and holder of the Deed of Trust.
- D. Tenant requires as a condition of its leasehold estate that the shopping center premises be free from encumbrances, except those it approves. However, Tenant will subordinate its Lease, at Lender's request, subject to Lender's covenant, that Tenant's possession and rights under its Lease will not be disturbed as hereinafter provided.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, and the mutual benefits to accrue to the parties hereto, the parties agree as follows:

T E R M S

1. Subordination.

1.1. Leasehold Estate.

Tenant subordinates the Lease to the Deed of Trust on the terms and conditions of this Agreement. The terms of the Lease control if there are any inconsistencies between the Lease and the Deed of Trust as to Tenant's rights and obligations under the Lease or as to Landlord's obligations under said Lease.

1.2. Tenant's Fixtures and Equipment Not Subject to Deed of Trust.

The lien of the Deed of Trust does not encumber any trade fixtures or equipment used by Tenant in its business on the Leased Premises.

2. Tenant's Rights.

Tenant has the following rights in the event (a) Lender commences any proceedings for foreclosure and sale or any other suit, sale or proceeding under the Deed of Trust or (b) Landlord delivers a deed in lieu of foreclosure to Lender, so long as Tenant is not in default under the Lease beyond any period given Tenant to cure the default, after notice as required by the Lease:

2.1. Nondisturbance.

Lender will not interfere with Tenant's possession of the Leased Premises or Tenant's rights under the Lease.

2.2. Tenant Not Made a Party to Litigation.

Lender will not make Tenant a party to any foreclosure or other suit, sale or proceeding under the Deed of Trust. No foreclosure or other suit, sale or proceeding under the Deed of Trust may affect Tenant's rights under the Lease.

2.3. Position of Lender as Landlord.

The Lender will assume the Landlord's position under the Lease, including Landlord's liabilities, responsibilities and obligations, as though Lender was the original Landlord. The following are exceptions:

2.3.1. Lender is not liable for any act or omission of any prior landlord if Lender did not receive (a) notice of the act or omission and (b) the opportunity to cure. Lender may have the period of time reasonably necessary to cure provided that Lender gives notice to Tenant within a reasonable time that Lender intends to cure and provided that Lender diligently pursues the cure.

2.3.2. Lender is not subject to any offsets or defenses which Tenant has under the Lease of which Tenant did not give notice to Lender.

2.3.3. Lender is not responsible for any base rent, percentage rent, or other payments which Tenant makes more than one month in advance.

2.3.4. Lender is not responsible for the return of any security deposit except to the extent Lender actually received the security deposit.

2.4. Lease Modifications.

Lender consents to any modification of the Lease made by Landlord and Tenant in good faith which does not (a) reduce the rent or other sums payable under the Lease, (b) reduce the term of the Lease which Tenant is committed to, or (c) otherwise materially impair Lender's interest in the Lease as security for the loan.

3. Attornment.

Tenant will attorn to the purchaser or grantee upon any foreclosure and sale or deed in lieu of foreclosure and will recognize the purchaser or grantee as the Landlord under the Lease.

4. Consent.

Tenant consents to the existence of the Deed of Trust.

5. Notices.

Tenant will give Lender a copy of any notice of default served upon the Landlord. Tenant will mail the copy to Lender by certified mail, return receipt requested, postage prepaid, at the following address:

6. Successors and Assigns.

This Agreement binds upon and inures to the benefit of the successors and assigns of the parties hereto; the singular number includes the plural, and any gender includes all other genders.

IN WITNESS WHEREOF, the parties hereto have each caused this Subordination, Attornment and Nondisturbance Agreement to be executed on its behalf and appropriate seals to be hereunto affixed pursuant to the proper authorities which have been duly delegated to them.

(a _____ corporation)

By: _____
Its: _____

(Corporate Seal)

By: _____
Its: _____
(Landlord)

SAFEWAY INC.
(a Delaware corporation)

(Corporate Seal)

By: _____
Its Assistant Vice President

By: _____
Its Assistant Secretary
(Tenant)

(a _____ corporation)

(Corporate Seal)

By: _____
Its: _____

By: _____
Its: _____
(Lender)

Record & Return to:

Safeway Inc.
Real Estate Law Division
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attention: Jerome P. Harrison

Abbreviated Legal:
Assessor's Parcel #:

**SHOPPING CENTER LEASE
(Short Form)**

This Shopping Center Lease (Short Form) is made as of February 16, 2000, by and between **JEFFERSON SQUARE OF KLAMATH LLC.**, a Delaware limited liability company, as Landlord, and **SAFEWAY INC.**, a Delaware corporation, as Tenant.

1. Landlord hereby leases to Tenant a portion of the following-described real property situated in the City of Klamath Falls, County of Klamath, State of Oregon:

(See **Exhibit A** attached hereto and made a part hereof.)

Together with the building or portion of building on the leased premises, and together with certain rights to use portions of the above-described property in addition to that portion comprising the leased premises.

TO HAVE AND TO HOLD the Leased Premises, with all appurtenances, for an original term ("Original Term") commencing on March 1, 2000 (the "Original Term Commencement Date") and terminating on February 28, 2025 (the "Original Term Expiration Date") as provided for in the lease executed by the parties hereto and referred to in Section 2 hereof, with options in Tenant to extend said term as provided in the lease.

2. The rentals to be paid by Tenant and all of the obligations and rights of Landlord and Tenant in respect to the above-described property are set forth in that certain Shopping Center Lease, dated February 16, 2000, executed by the parties hereto, covering the above-described property of which the leased premises are a part.

3. Landlord and Tenant set forth excerpts of provisions found in the Shopping Center Lease:

Section 4.1.2 "Landlord and Tenant agree that all Buildings (defined below) in the Shopping Center (i) shall be one story only (but may include mezzanines), (ii) shall not exceed (1) twenty (20) feet in height for any free-standing pad building, (2) thirty (30) feet in height for any in-line building designed for small tenant shops and (3) forty-five (45) feet in height for the Leased Premises and any building in excess of 35,000 square feet to be occupied by a single tenant, the locations of all of which buildings are shown on Exhibit A, and (iii) ... shall be constructed only within the Building Areas. ..."

Section 4.1.3 "Landlord may redevelop the remainder of the Shopping Center, provided that (a) the buildings are within the building envelopes shown on [the site plan], (b) the total building area of the buildings in each envelope does not exceed the maximum area indicated on the envelope, and (c) there will be at least 573 parking spaces in the Shopping Center. Landlord will not alter the Common Area without Tenant's consent."

Section 5.1.1 "... Tenant shall have the right to the space previously occupied by Rite-Aid on all monument signage and the pylon sign for the Shopping Center. If Landlord replaces the existing pylon sign, Landlord may place a shopping center identification at the top of the pylon and Tenant is entitled to the first and largest position below the shopping center identification. No more than three tenant signs are permitted on the pylon sign. No tenant sign may appear on the pylon unless the tenant occupies at least 20,000 square feet."

Section 6.1.2 "The Common Area is for the joint and exclusive use of all tenants in the Shopping Center, their customers, invitees, and employees. Landlord grants to Tenant and its customers, invitees, and employees the right to use of all of the Common Area on Landlord's Premises. Tenant grants to Landlord's other tenants and their customers, invitees, and employees the right to use of all of the Common Area on the Leased Premises. Except as otherwise provided in this Lease, the Common Area improvements may be used only for the purpose for which they were designed ("Primary Uses"). By way of example, but not limitation, parking areas may be used only for the parking of motor vehicles, drive aisles may be used only for access and traffic circulation, service areas may be used only for servicing and supplying tenants' businesses, sidewalks may be used only for pedestrian access and landscaped areas, and trash dumpster areas and basket collection areas may be used only for such purposes. All uses permitted within the Common Area must be used with reason and judgment so as not to interfere with the Primary Uses. Persons using the Common Area in accordance with this Lease must not be charged any fee for such use without the written consent of Landlord and Tenant unless such fee is ordered by an appropriate governmental authority. ..."

Section 6.2.1 "Tenant may use that portion of the Common Area consisting of the sidewalks and pedestrian walkways immediately adjacent to the front of Tenant's Building to display and sell merchandise, maintain vending machines, and store baskarts. Other tenants occupying 20,000 square feet or more in the Shopping Center may use that portion of the Common Area consisting of the sidewalks and pedestrian walkways immediately adjacent to the front of their buildings to display and sell merchandise, maintain vending machines, and store baskarts. Tenant shall not allow such uses unreasonably to interfere with pedestrian traffic. In addition, Tenant may utilize the area cross-hatched on Exhibit A and designated "Outside Merchandising Area" (if any) for the display and sale of seasonal merchandise. When Tenant is using the Outside Merchandising Area, Tenant shall keep the Outside Merchandising Area in a neat and orderly condition."

Section 6.3.1 "The sizes and arrangements of the Building Area and Common Area (including access, parking areas and traffic circulation and flow patterns) as shown on Exhibit A shall not be changed without Tenant's and Landlord's written consent. If said sizes or arrangements of the Building Area or Common Area are changed without Tenant's written consent, Tenant may [obtain, among other remedies] specific enforcement of the terms of this Section by injunctive relief."

Section 14.2.1 "To safeguard Landlord's and Tenant's interest in a clean, quiet environment, free of obnoxious odors, and to ensure adequate parking for customers, Landlord and Tenant covenant and agree that (i) each shall permit only the sale of retail goods and provision of retail services within the Shopping Center, except for industrial, manufacturing, warehouse or office uses that are incidental to the provision of retail goods and services; (ii) each shall not permit any use which creates a nuisance, materially increases noise, noxious emissions or dust, or endangers health and safety of persons at the Shopping Center; (iii) each shall not permit car washes, gas stations or dry cleaners with an on-premises plant; (iv) each shall not permit any second hand, thrift stores or mortuaries; (v) each shall not permit any use involving a Hazardous Substance, except as may be customary in neighborhood shopping centers, similar in size and tenant mix to the Shopping Center; (vi) each shall not permit the displaying, repairing, renting, leasing or sale of any motor vehicle, boat or trailer; (vii) each shall not permit any business with drive-up or drive-through lanes; (viii) each shall not permit the operation of any training or educational facility within three hundred feet (300') of any wall defining the limit of the Leased Premises, (ix) Landlord shall not permit the operation of any restaurant (including any take-out, fast-food, cafeteria or full service sit-down restaurant) within 250 feet measured from the main customer entrance, and (x) each shall not permit the use or operation of any portion of the Shopping Center for the purpose of any entertainment or recreational facility. As used herein "training or educational facility" includes, without limitation, a beauty school, barber college, place of instruction, or any other operation catering

primarily to students or trainees rather than to customers, but excludes employee training by Shopping Center tenants incidental to the conduct of their businesses within the Shopping Center. As used herein, "entertainment or recreational facility" includes, without limitation, a theater, carnival, bowling alley, skating rink, amusement center, electronic or mechanical games arcade (except as an incidental use to a retail business), child care facility, pool or billiard hall, betting parlor, bingo parlor, health or aerobic spa or studio, martial arts studio, gymnasium, massage parlor, pornographic shop, adult book store, nightclub, dance hall, tavern, cocktail lounge, any facility serving alcoholic beverages, excepting only from this prohibition a full service restaurant serving alcoholic beverages as an incidental part of its food service operation (which restaurant nevertheless shall be subject to the restriction contained in item (ix) of this Section) or other place of public or private amusement. ..."

Section 15.2.1 "... Landlord covenants that, except as provided hereinafter in this Section 15.2, (i) Tenant shall have the sole and exclusive right in the Shopping Center to sell food for off-premises consumption, alcoholic beverages for off-premises consumption, pet foods, and prescription pharmacy merchandise and (ii) no store other than Tenant's store shall sell, or be permitted by Landlord to sell, food for off-premises consumption, alcoholic beverages for off-premises consumption, pet foods, and/or prescription pharmacy merchandise. Notwithstanding the preceding sentence, the provisions of this Section 15.2 shall not be deemed to prohibit a restaurant (fast food or sit-down) from selling alcoholic beverages and/or food prepared on premises for off-premises consumption. In addition to the provisions of Section 15.3, Tenant shall have the right to enforce its rights under the provisions of this Section 15.2 against the owner, tenant, or occupant of any other store in the Shopping Center if the store violates Tenant's exclusive right under this Section 15.2 or the store violates the restriction set forth in this Section 15.2 against the sale of food for off-premises consumption, alcoholic beverages for off-premises consumption, pet food, or prescription pharmacy merchandise."

Section 17.1.1 "Landlord agrees that (i) Tenant, its subtenants or assignees shall not be obligated to operate any particular type of business in the Leased Premises and shall have the right to discontinue whatever type of business (grocery or otherwise) which may exist from time to time in the Leased Premises, and (ii) Tenant makes no express or implied covenant (a) to continuously operate a grocery store or any other business in the Leased Premises, (b) to operate during any particular hours, or (c) to conduct its business in any particular manner. Tenant has the sole right in its unrestricted discretion to decide whether or not to operate in the Leased Premises and in what manner to conduct operations, if any."

4. This instrument is a memorandum of the Shopping Center Lease and is subject to all of the terms and conditions of the Shopping Center Lease. In the event of any inconsistency between

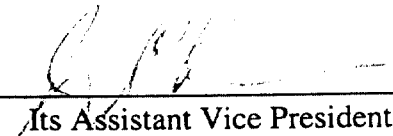
the terms of this instrument and the Shopping Center Lease, the terms of the Shopping Center Lease shall prevail as between the parties hereto.

IN WITNESS WHEREOF Landlord and Tenant have executed this Shopping Center Lease.

TENANT:

SAFeway INC.

(a Delaware corporation)

by 
Its Assistant Vice President

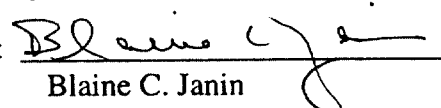
by 
Its Assistant Secretary

Date: February 17, 2000

LANDLORD:

JEFFERSON SQUARE OF KLAMATH LLC.,

(a an Oregon limited liability company)

Walter Seput
By: 
Blaine C. Janin
as attorney in fact for Walter Seput,
Its Managing Member

Date: February 23, 2000

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On February 25, 2000, before me, Sylvia Burnett, Notary Public, personally appeared Jerome P. Harrison and Steven J. Gouig personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sylvia Burnett

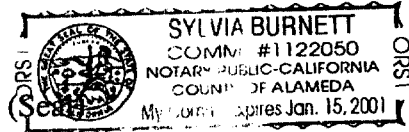


EXHIBIT "A"

DESCRIPTION OF PROPERTY

PARCEL ONE

The following described real property situate in Klamath County, Oregon:

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South $00^{\circ}00'30''$ East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South $55^{\circ}52'30''$ East, at Engineers Station 9+17.42 feet on Washburn Way and Engineers Station 16+14.87 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16+41.99 feet; thence South $55^{\circ}52'30''$ East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South $55^{\circ}52'30''$ East parallel to said centerline 795.36 feet; thence at right angles South $34^{\circ}07'30''$ West, 204 feet; thence South $55^{\circ}52'30''$ East parallel to Sixth Street 145.00 feet; thence at right angles South $34^{\circ}07'30''$ West, 183.80 feet, more or less, to Northerly right of way line of the Oregon, California and Eastern Railroad; thence North $57^{\circ}30''$ West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North $00^{\circ}00'30''$ West along said right of way line 503.39 feet; thence South $55^{\circ}52'30''$ East, 306.22 feet; thence North $34^{\circ}07'30''$ East, 160.00 feet to the true point of beginning.

PARCEL TWO

Easement as disclosed in Reciprocal Easement and Maintenance Agreement, recorded December 8, 1995, in M-95 on page 33582, records of Klamath County, Oregon.

Exhibit A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Francisco

SS.

On February 23, 2000, before me,

Carol North Olson

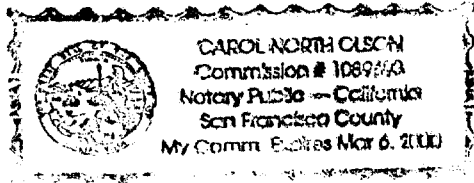
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Blaine C. Janin

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol North Olson

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Shopping Center Lease (short term)

Document Date:

February 23, 2000

Number of Pages:

6

(7 w/ acknowledgments)

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

Blaine C. Janin

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☒ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

Walter Seput

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE
AND ESTOPPEL CERTIFICATE

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION TO LEASE AND ESTOPPEL CERTIFICATE (the "Instrument") is given by JEFFERSON SQUARE OF KLAMATH, LLC, an Oregon limited liability company ("Landlord") to THRIFTY PAY LESS, INC., a California corporation ("Tenant") and to SAFEWAY, INC., a Delaware corporation ("Safeway").

RECITALS

A. Landlord and Tenant are the current Lessor and Lessee under that certain Lease dated June 28, 1979 (the "Lease") for the premises commonly known as 2521 South 6th Street, Klamath Falls, Oregon 97603 (the "Premises"). Tenant now holds the lessee's position under the Lease.

B. Tenant intends to transfer to Safeway its interest in the Lease.

C. Tenant seeks Landlord's consent to the assignment of the Lease to Safeway and Landlord is willing to consent to the assignment of the Lease.

D. Landlord is willing to consent to the assignment of the Lease and to certify as to the effectiveness of the Lease and as to certain matters affecting the Lease and Tenant's liability therefore, as set forth in this Instrument.

IT IS AGREED that in consideration for Safeway's assumption of the Tenant's obligations under the Lease, the receipt of which valuable consideration is hereby acknowledged:

1. Consent. The undersigned, the current Landlord under the Lease hereby consents to the assignment by Tenant of all of its right, title and interest in and to the Lease to Safeway and to the assumption by Safeway of all of Tenant's obligations accruing under the Lease from and after the Effective Date of such assignment as set forth in the version of the Assignment (as defined below) filed for recordation (the "Effective Date"); provided, however, that Safeway and Tenant shall duly and validly execute a formal written assignment and assumption agreement in the form attached hereto as Exhibit "A" (the "Assignment") and provide a copy thereof to Landlord, which Assignment shall require Safeway to perform all of the obligations of Tenant under the Lease accruing from and after the Effective Date without exception. The consent by Landlord to the assignment described herein shall not be deemed a consent to any subsequent assignment of or subletting under the Lease. Landlord's consent hereunder shall not relieve Tenant of any liability which Tenant may have under the Lease for

periods prior to the Effective Date and Tenant shall continue to retain any such liability, even if a claim based upon such liability shall be made after the Effective Date, but Landlord hereby releases and discharges Tenant and any and all prior lessees and their guarantors as to liability for periods from and after the Effective Date.

2. Estoppel Certificate. Landlord hereby certifies, with the understanding that Safeway and Tenant are each relying upon the statements herein, the following: (i) the Lease has not been modified, changed, altered or amended in any respect; (ii) the Lease term, including any presently exercised option or renewal term, will expire on April 10, 2010. Tenant under the Lease has the right to extend the term for six (6) five (5) year options, exercisable on written notice to Landlord not less than sixty (60) days prior to the expiration of the then existing term; (iii) the Lease is not in default and is in full force and effect and Landlord knows of no uncured defaults by either Landlord or Tenant in the performance of any of the terms and conditions of the Lease, nor of any condition or circumstance which, with notice or the passage of time, or both, would constitute a default by either Landlord or Tenant; (iv) rent and other charges payable monthly under the Lease is paid through the end of the month during which this Consent is signed; (v) there has not been filed by or against Landlord a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, any appointment of a receiver, or any other action brought under said bankruptcy laws with respect to Landlord; and (vi) except for the lender's consent attached hereto, there are no persons (including, but not limited to lenders, ground lessors or others) having an interest in the Premises the consent of whom is required for this Instrument.

Landlord understands that Safeway and Tenant are each relying on the information contained in this Instrument, and agrees that Safeway and Tenant may rely on this information, for purposes of determining whether to enter into the Assignment.

IN WITNESS WHEREOF, Landlord has executed this Instrument as of this _____ day of 02/23, 2000 and Landlord's execution hereof shall constitute its consent and agreement to all of the provisions contained herein.

LANDLORD:
JEFFERSON SQUARE OF KLAMATH, LLC
an Oregon limited liability company

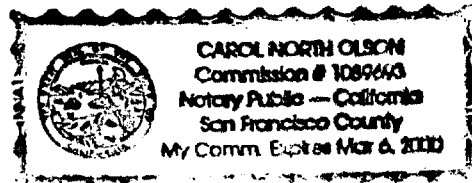
By: Walter Sepot by Blaine J. [Signature]
Its: Manager attorney in fact

STATE OF California)
) ss.
COUNTY OF San Francisco)

On February 23, 2000, before me, Carol North Olson, Notary Public, personally appeared Blaine C. Janin, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol North Olson



CONSENT BY LENDER

_____ as Lender to JEFFERSON SQUARE OF KLAMATH, LLC ("Landlord") hereby consents to all of the terms, covenants and conditions contained in the CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE AND ESTOPPEL CERTIFICATE regarding the property located at 2521 South 6th Street, Klamath Falls, Oregon and the lease dated June 28, 1979 by and between Landlord and Thrifty Pay Less, Inc. as successor to Pay Less Drug Stores Northwest, Inc. to which this consent is attached.

Dated: _____, 2000

By: _____
Its: _____

EXHIBIT A

After recording, return to:

Thrifty Pay less, Inc.
Box 3165
Harrisburg, PA 17105
Attn: Corporate Secretary

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made this 31st day of January, 2000, by and between THRIFTY PAY LESS, INC., a California corporation ("Assignor") and SAFEWAY, INC., a Delaware corporation ("Assignee").

RECITALS:

A. WHEREAS, Assignor is currently the holder of the interest of tenant ("Lessee") pursuant to that certain Lease entered into between JEFFERSON SQUARE OF KLAMATH, LLC an Oregon limited liability company, as successor to Frederick D. Ehlers and Helen Ann Ehlers, as the original lessor (the "Lessor") and THRIFTY PAY LESS, INC., as successor by merger to Pay Less Drug Stores Northwest, Inc., as the original lessee, on the 28th day of June, 1979 (the "Lease"), leasing certain premises located at 2521 South 6th Street, Klamath Falls, Oregon 97603, which premises are more particularly described on Exhibit A attached hereto and by this reference incorporated herein ("Premises"); and

B. WHEREAS, Assignor desires to assign its interest in the Lease and Premises (collectively the "Leasehold Interest") to Assignee and Assignee desires to acquire Assignor's Leasehold Interest upon the terms and conditions set forth in this Assignment and in that certain Purchase and Sale Agreement entered into between the parties and dated January 31, 2000 (the "Agreement").

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Effective as of _____, 2000 ("Effective Date"), Assignor hereby unconditionally assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the Lease covering the Premises. Time is of the essence with respect to the Effective Date and other matters herein concerning which time is a factor.

2. Assumption. Assignee hereby accepts the foregoing assignment and transfer and assumes, as its own obligations, all duties and obligations of Assignor as lessee under the Lease and arising and occurring from and after the Effective Date and agrees to perform, in accordance with the terms and provisions of the Lease all of such duties and obligations.

3. Indemnity.

(a) Assignor shall indemnify, defend and hold Assignee harmless for all costs, expenses and damages, including all related and resulting expenses (including but not limited to reasonable attorneys' fees), resulting from: (i) any failure of Assignor to fulfill its obligations under the Lease arising or accruing prior to the Effective Date; and (ii) any and all third-party claims for injury, liabilities or other obligations with respect to any activities, actions or incidents which occurred or arose in Premises prior to the Effective Date, except to the extent caused by Assignee, its agents, employees or contractors.

(b) Assignee shall indemnify, defend and hold Assignor harmless for all costs, expenses and damages, including all related and resulting expenses (including but not limited to reasonable attorneys' fees), resulting from: (i) any failure of Assignee to fulfill its obligations under the Lease arising or accruing on or after the Effective Date; and (ii) any and all third-party claims for injury, liabilities or other obligations with respect to any activities, actions or incidents which occur or arise in Premises on or after the Effective Date.

4. Miscellaneous Provisions.

(a) Governing Law. This Assignment shall be governed by the laws of the State of Oregon.

(b) Notice. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any person shall be in served or delivered in the manner provided in the Agreement.

(c) Successors. This Assignment shall be binding on and inure to the benefit of the parties and their successors and assigns.

(d) Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

(e) Severability. If any term or provision of this Assignment or the application of it to any person or a circumstance in any event be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances shall not be affected thereby, other than those as to which it is invalid or unenforceable.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Assignment as of the date first set forth above.

ASSIGNOR:

THRIFTY PAY LESS, INC.,
a California corporation

By: _____
Robert B. Sari
Authorized Representative

ASSIGNEE:

SAFEWAY, INC.,
a Delaware corporation

By: _____
Its: Assistant Vice President

By: _____
Its: Assistant Secretary

[Signatures must be acknowledged.]

On _____, 2000, before me, _____, Notary Public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

On January 31, 2000_____, before me, Iris Garrett, Notary Public, personally appeared Robert B. Sari., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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EXHIBIT "E"

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THIS LEASE (the “Lease”) is made as of the Effective Date by and between Landlord and Tenant who are designated in Section 1.2 hereof. Landlord and Tenant hereby agree as follows:

1. SALIENT LEASE TERMS

1.1. Effective Date.

March 31, 2004.

1.2. Parties/Addresses.

1.2.1. Landlord: **JEFFERSON SQUARE OF KLAMATH, LLC,**
an Oregon limited liability company

Address: 501 Damont

City/State/Zip: Klamath Falls, OR 97601

Facsimile #: (541) 783-2524

Phone #: (541) 891-0020

Initial Contact Name: Walter Seput

Landlord's Taxpayer I.D. #: 93-1244-652

1.2.2. Tenant: ROSS STORES, INC.,

a Delaware corporation

(a) **Address for all invoices for Rent and Reimbursements due under this Lease, and change of Landlord or Payee, or change of Landlord's or Payee's address:**

Address: 8311 Central Avenue

City/State/Zip: Newark, CA 94560-3433

Attention: **Property Management Department**

Facsimile #: (510) 505-4174

Phone #: (510) 505-4400

(b) **Address for all notices (other than invoices), including notices of default and notices pertaining to disputed invoices:**

Address: 8311 Central Avenue

City/State/Zip: Newark, CA 94560-3433

Attention: **Real Estate Law Department**

Facsimile #: (510) 505-4174

Phone #: (510) 505-4400

(c) Initial Contact Name: Marilyn Teghtmeyer

(d) Tenant's Taxpayer I.D. #: 94-1390387

1.3. Location Information.

1.3.1. Shopping Center Name: Jefferson Square Mall.

Location: SEC Washburn Way and S. 6th Street, Klamath Falls, OR.

1.3.2. Minimum Leasable Floor Area for Pro Rata Share Denominator and Co-Tenancy Denominator:

(a) Common Area Charges: 131,149 square feet.
(Section 7.2)

(b) Taxes: 131,149 square feet.
(Section 8.2.3)

(c) Casualty Insurance: 131,149 square feet.
(Section 9.1.4)

(d) Co-Tenancy:

- (i) 20,500 square feet of the Required Co-Tenancy Area;
- (ii) 41,000 square feet of the Retail Redevelopment Area.
(Section 6.1.3)

The amount of square feet of Leasable Floor Area in Sections 1.3.2(a), (b) and (c) above includes the Leasable Floor Area of the Safeway store located on the Safeway Parcel. In the event Safeway, at its sole cost and expense, (i) maintains the Common Areas located on the Safeway Parcel, and/or (ii) pays the Taxes on the Safeway Parcel, and/or (iii) maintains Casualty Insurance for the Safeway Parcel, then the Minimum Leasable Floor Area in Sections 1.3.2(a), (b) and (c), shall be sixty-four thousand (64,000) square feet, as applicable. In such event, the Common Area Charges, Taxes and insurance costs for the Safeway Parcel shall not be included in the Common Area Charges, Taxes and insurance costs to which Tenant contributes pursuant to this Lease. The amount of square feet of Leasable Floor Area in Section 1.3.2(d) above reflects the exclusion of the Store Agreed Size as required by Section 6.1.3(a) below.

1.3.3. Store Agreed Size: The actual Store size is estimated to be approximately thirty-three thousand four hundred five (33,405) square feet of Leasable Floor Area; however, the Store Agreed Size for purposes of calculating Rent and Reimbursements is thirty thousand one hundred eighty-seven (30,187) square feet of Leasable Floor Area, including a minimum of one hundred sixty (160) feet of frontage on that portion of the Common Areas that contain the principal parking area for Tenant's customers, subject to adjustment of the Leasable Floor Area pursuant to the provisions of Section 3.7. The Store Agreed Size includes the Building only unless the loading dock is both enclosed and exclusive to Tenant.

1.4. Critical Dates.

1.4.1. Tenant's obligation for Minimum Rent and Reimbursements shall commence two hundred ten (210) days after the Delivery Date (the "Commencement Date").
(Section 4.2)

1.4.2. Intended Delivery Date: May 1, 2004.
(Article 2)

1.4.3. Date of Tenant's Right to Cancel for Landlord's failure to commence Landlord's Construction Obligations ("Construction Commencement Cancel Date"): December 1, 2004.
(Section 5.2)

1.4.4. Date of Tenant's Right to Cancel for Landlord's failure to complete Landlord's Construction Obligations ("Construction Completion Cancel Date"): May 1, 2005.
(Section 5.7)

1.4.5. Automatic Termination Date: September 1, 2005.
(Section 5.8)

1.5. Lease Term.

1.5.1. Initial Term: From the Commencement Date through the January 31 next following the expiration of one hundred twenty (120) months after the Commencement Date. As a hypothetical example and for illustration purposes only, if the Commencement Date is September 15, 2004, then the expiration of the Initial Term shall be January 31, 2015.

1.5.2. Option Periods: Total number of five (5) year Option Periods: Four (4).
(Section 4.4)

1.6. Minimum Rent.

	Per Sq. Ft. Per Year	Monthly	Annually
(a) Initial Term			
Commencement Date through 5th Full Lease Year	\$6.10	\$15,345.05	\$184,140.70
6th Full Lease Year through 10th Full Lease Year	\$6.85	\$17,231.74	\$206,780.95
(b) Option Periods			
First:	\$7.60	\$19,118.43	\$229,421.20
Second:	\$8.35	\$21,005.12	\$252,061.45
Third:	\$9.10	\$22,891.80	\$274,701.70

Fourth: The greater
of:
\$9.85 \$24,778.49 \$297,341.95
or ninety
percent
(90%) of
the Fair
Market
Rental for
the Store

(Section 6.5)

The Minimum Rent amounts listed above may be adjusted to reflect the actual Leasable Floor Area of the Store calculated in accordance with the provisions of Section 3.7.

1.7. Required Co-Tenancy.

1.7.1. The following Co-Tenant ("Required Co-Tenant") occupying no less than the Required Leasable Floor Area indicated as follows:

<u>Co-Tenant's Name</u>	<u>Required Leasable Floor Area</u> (minimum sq. ft.)
-------------------------	--

Safeway	50,000
---------	--------

(Section 6.1.3)

1.7.2. (a) Required percentage of Leasable Floor Area of the Shopping Center to be occupied by operating retailers: fifty percent (50%) of the Required Co-Tenancy Area designated on **Exhibit B** (i.e., the Leasable Floor Area of the Required Co-Tenancy Area is twenty thousand five hundred (20,500) square feet; therefore, at least ten thousand two hundred fifty (10,250) square feet of Leasable Floor Area in the Required Co-Tenancy Area must be occupied and open for business by retail tenants).

(b) In the event Landlord completes the Retail Redevelopment, then the required percentage of Leasable Floor Area of the Shopping Center to be occupied by operating retailers shall be: fifty percent (50%) of the Retail Redevelopment Area designated on **Exhibit B** (i.e., the Leasable Floor Area of the Retail Redevelopment Area must be no less than forty-one thousand (41,000) square feet of Leasable Floor Area; therefore, at least twenty thousand five hundred (20,500) square feet of Leasable Floor Area in the Retail Redevelopment Area must be occupied and open for business by retail tenants).

(Section 6.1.3)

1.8. Common Area Charge Administrative Fee.

Five percent (5%).

(Section 7.3)

1.9. Title Report.

That certain report on the state of Landlord's title to the Shopping Center or the Store issued by American Title Company, dated January 5, 2004, and numbered 0063807, Report No. 2. (Section 17.2)

1.10. Contents of Lease.

1.10.1. Pages: 1 - 71

1.10.2. Sections: 1.1 - 26.17

1.10.3. Exhibits:

A Legal Description of the Shopping Center

B Site Plan

C Construction Obligations of Tenant

D Landlord's Prohibited Uses

E Acknowledgment of Commencement

F Non-Disturbance Agreement

[F-1 Sublease Non-Disturbance Agreement (if applicable)]

G Delivery Notice

H Exclusive Uses

H-1 Safeway Waiver

I Permitted Title Exceptions

J Tenant's Signs

2. DEFINITIONS OF GENERAL APPLICATION

Abatement Work. See Section 11.4.3.

Annual Statement. See Section 7.4.5.

Building. The structure in which the Store is located.

Building Envelope. Those certain areas designated on **Exhibit B** within the boundaries of which buildings may be constructed.

1 **CAM Audit.** See Section 7.4.7.

2 **Casualty.** See Section 21.1.1.

3 **Casualty Insurance.** See Section 9.1.1.

4 **Commencement Date.** See Sections 1.4.1 and 4.2.

5 **Common Area(s).** Those portions of, and facilities within the Shopping Center which are
6 intended solely for the common use of the occupants, their customers, agents, employees and
7 suppliers, such as the parking areas, driveways, walkways, loading zones (whether or not such
8 loading zones are available for common use) and landscaping, but specifically excluding the whole
9 or any portion of any building located within the Shopping Center. Enclosed malls are not
10 includable for purposes of Common Area Charges hereof. Any area which is not enclosed by
11 demising walls, but which is substantially used for the benefit of one tenant or group of tenants such
12 as, for example, those areas sometimes referred to in the shopping center industry as "food courts,"
13 shall not be considered Common Areas. A "food court" is an open area of the Shopping Center
14 which accommodates a common seating, serving or service area for the patrons of two or more
15 retailers of prepared food whose premises are proximate to such seating, serving or service area.

16 **Common Area Charges.** See Section 7.3.

17 **Communication Equipment.** See Section 12.2.1.

18 **Control Area.** The area so designated on **Exhibit B** which may not be altered except as
19 expressly set forth in this Lease. If no Control Area is indicated on **Exhibit B**, the Control Area
20 shall be the same as the Common Areas.

21 **Co-Tenancy Report.** See Section 6.1.3(g).

22 **Co-Tenants.** See Sections 1.7.1 and 6.1.3.

23 **Deferred Refurbishment Work.** See clause (m) of the Article 2 Delivery Date definition.

24 **Deferred Roof Refurbishment Work.** See Section 5.1.1(a).

25 **Delivery Date.** The Delivery Date is the first Permitted Delivery Day after the last of the
26 following conditions is satisfied (hereinafter "deliver" or "delivery"). Each of the conditions set
27 forth in clauses (a) through (m) below are conditions of delivery and in the aggregate are the
28 "Delivery Conditions."

29 (a) Substantial Completion which shall mean completion of all of Landlord's
30 Construction Obligations, if any, other than Punchlist work (described in Section 5.10), and, both
31 the following conditions are satisfied: (i) Tenant is legally permitted to occupy the Store in order to
32 perform Tenant's Work, and (ii) upon completion of Tenant's Work, Tenant is otherwise able,
33 legally, to conduct its normal retail operations, without material impediment arising from incomplete
34 or defective performance of Landlord's Construction Obligations ("Substantial Completion").
35 Notwithstanding the foregoing, Landlord may postpone completion of the Deferred Roof
36 Installation Work [defined in Section 5.1.1(a)] until thirty (30) days after the later to occur of (i) the

1 Delivery Date, or (ii) the date Tenant obtains permits for the initial Tenant's Work, provided that
2 Landlord shall coordinate completion of the Deferred Roof Installation Work with Tenant so as not
3 to interfere with or delay the commencement and completion of Tenant's Work. Promptly
4 following completion of the Deferred Roof Installation Work, Landlord shall deliver to Tenant
5 written evidence that the Deferred Roof Installation Work has passed final inspection by the
6 authority by whom the building permit for such work was issued. In the event Landlord fails to
7 complete the Deferred Roof Installation Work within the thirty (30) day period set forth above, then
8 Tenant shall have the right to occupy and conduct business in the Store without any obligation to
9 pay Rent to Landlord on and after the Commencement Date for a period equal to the number of
10 days of Landlord delay [e.g., if Landlord fails to complete the Deferred Roof Installation Work until
11 ninety (90) days after the later to occur of (i) the Delivery Date, or (ii) the date Tenant obtains
12 permits for the initial Tenant's Work, then Tenant shall have no obligation to pay Rent for a period
13 of sixty (60) days following the Commencement Date];

14 (b) Receipt by Tenant of written certification of Substantial Completion of
15 Landlord's Construction Obligations from Landlord and Landlord's contractor;

16 (c) Receipt by Tenant of written evidence that Landlord's Work which is to be
17 completed on or before the Delivery Date has passed final inspection by the authority by whom the
18 building permit for Landlord's Construction Obligations was issued;

19 (d) If the Store is to be constructed within an existing building, receipt by
20 Tenant of a report and certificate ("Environmental Report") from a licensed environmental
21 consultant, acceptable to Tenant, certifying to Tenant that such consultant conducted a
22 comprehensive survey of the Store, after the date of the Substantial Completion but not more than
23 thirty (30) days prior to the Delivery Date, and that the Store, including, without limitation, the
24 walls, ceilings, structural steel, flooring, pipes and boilers, are free of Hazardous Materials (including
25 asbestos-containing materials);

26 (e) Intentionally Deleted;

27 (f) Receipt by Tenant of two (2) fully executed originals of this Lease, and a
28 Memorandum of Lease signed by Landlord and Tenant and notarized so that such Memorandum of
29 Lease may be recorded;

30 (g) Delivery to Tenant of exclusive possession of the Store in broom clean
31 condition with Landlord's and its contractors' agents and employees' and previous tenant's tools,
32 equipment, materials and personal property removed from the Store;

33 (h) Tenant's receipt of Landlord's approval of Tenant's plans for Tenant's Work;

34 (i) Landlord shall have constructed the pylon and monument sign structures in
35 the Shopping Center as shown on **Exhibit B** so that Tenant may at any time install its sign faces
36 thereon as depicted on **Exhibit J**;

37 (j) Landlord has installed permanent power to the Store;

1 (k) The Store has been secured by Landlord from unauthorized entry by persons
2 without a key (an adjacent premises without a store front or store rear or which has any unlocked
3 opening in its exterior walls shall be deemed to render the Store insecure);

4 (l) Intentionally Deleted; and

5 (m) Landlord has completed the general upgrading of the buildings and Common
6 Areas of the Shopping Center, including completing a newly paved and restriped parking lot in the
7 "Parking Lot Refurbishment Area" designated on **Exhibit B** and installing lighting in the Common
8 Areas (other than the Common Areas of the Safeway Parcel) with fixtures producing an average of
9 not less than four and eight tenths (4.8) foot candle illumination in order that the entire Shopping
10 Center conforms to the construction quality of the Store as specified in Tenant's Final Plans
11 ("Refurbishment"); provided that Landlord may postpone completion of the final paving and
12 restriping of the parking lot in the Parking Lot Refurbishment Area and installation of the Common
13 Area lighting ("Deferred Refurbishment Work"), until sixty (60) days following the later of (i) the
14 Delivery Date, or (ii) the date Tenant obtains permits for the initial Tenant's Work, provided that
15 Landlord shall coordinate and phase the completion of this work with Tenant so as not to interfere
16 with or delay the commencement and completion of Tenant's Work. Promptly following
17 completion of the Deferred Refurbishment Work, Landlord shall deliver to Tenant written evidence
18 that the Deferred Refurbishment Work has passed final inspection by the authority by whom the
19 building permit for such work was issued. In the event Landlord fails to complete the Deferred
20 Refurbishment Work within the sixty (60) day period set forth above, then Tenant shall have the
21 right to occupy and conduct business in the Store without any obligation to pay Rent to Landlord on
22 and after the Commencement Date for a period equal to the number of days of Landlord delay [e.g.,
23 if Landlord fails to complete the foregoing work until ninety (90) days after the later to occur of
24 (i) the Delivery Date, or (ii) the date Tenant obtains permits for the initial Tenant's Work, then
25 Tenant shall have no obligation to pay Rent for a period of thirty (30) days following the
26 Commencement Date].

27 Notwithstanding anything to the contrary contained in this Lease, and notwithstanding any
28 delays in completion of Landlord's Construction Obligations due to Force Majeure, in no event will
29 the Delivery Date be on a date other than a Permitted Delivery Day (as defined in this Article 2). If
30 an event of Force Majeure occurs and Landlord complies with the notice provisions of
31 Section 26.13, the Delivery Date will be on the next Permitted Delivery Day, and the determination
32 of the Commencement Date shall be determined in accordance with Section 1.4.1.

33 **Environmental Regulations.** See Section 11.4.1.

34 **Exempted Discontinuances.** See Section 6.1.3(f).

35 **Final Plans.** See Exhibit C.

36 **Force Majeure.** See Section 26.13.

37 **Full Lease Year.** The expression "Full Lease Year" refers to a Lease Year which consists
38 of twelve (12) complete calendar months commencing on a February 1 and terminating on the
39 ensuing January 31.

1 **Gross Sales.** This definition applies to the calculation of Substitute Rent only. Gross Sales
2 are revenue received by Tenant from the selling price of all merchandise or services contracted to be
3 sold in or from the Store by Tenant, its subtenants, licensees and concessionaires, whether for cash
4 or for credit, excluding, however, the following: (a) the sales price of all merchandise returned and
5 accepted for full credit or the amount of the cash refund or allowance made thereon; (b) the sums
6 and credits received in settlement of claims for loss or damage to merchandise; (c) the consideration
7 received in connection with a sale of inventory which occurs other than in the ordinary course of
8 Tenant's business, including, but not limited to, a sale in bulk or to a jobber, liquidator or assignee;
9 (d) sales taxes, so-called luxury taxes, excise taxes, gross receipt taxes, and other taxes now or
10 hereafter imposed upon the sale or value of merchandise or services, whether added separately to
11 the selling price of the merchandise or services and collected from customers or included in the
12 retail selling price; (e) receipts from public telephones, vending machines, sales of money orders, and
13 the collection of public Utility bills; (f) bank card discounts or fees (e.g., Visa, MasterCard, etc.),
14 interest, carrying charges, or other finance charges in respect of sales made on credit; (g) sales of
15 fixtures, trade fixtures, or personal property that are not merchandise held for sale at retail; (h) sales
16 to employees and senior citizens at discount, each not to exceed two percent (2%) of Gross Sales
17 per Lease Year; (i) revenue received from mailing, alterations, delivery or other services performed
18 on a non-profit basis for the benefit of customers; (j) Tenant's accounts receivable, not to exceed
19 two percent (2%) of Gross Sales, which have been determined to be uncollectible for federal income
20 tax purposes during the Lease Year; provided, however, that if such accounts are actually collected
21 in a later Lease Year, the amount shall be included in the Gross Sales for such later Lease Year;
22 (k) rents, subrents or other consideration received in connection with an assignment, sublease,
23 license, concession or other transfer of any portion of the Store; (l) amounts received for
24 merchandise transferred to any other place of business of Tenant (or its subtenants, concessionaires
25 and/or licensees) or to any business organization affiliated with Tenant wherever located; provided
26 such merchandise is not used to complete a sale originated in the Store; and (m) any Internet or
27 other sale contracted on a telecommunications network whether or not the sale item is delivered to
28 the customer at the Store; provided such Internet sales shall be included in Gross Sales if Tenant
29 operates the Store primarily as an Internet distribution site.

30 **Hazardous Materials.** See Section 11.4.1.

31 **HVAC.** See Section 11.1.

32 **Inline Building.** The Building in the Shopping Center in which the Store is situated and
33 any other building in the Shopping Center that is not located on an "Outparcel," and which has
34 more than one (1) tenant with common demising walls.

35 **Insurance Bill.** See Section 9.1.4.

36 **Intended Delivery Date.** The date specified in Section 1.4.2.

37 **Invitee(s).** An Invitee shall mean any agent, employee, customer or other entity or
38 individual who comes upon the Shopping Center property for business or retail consumption
39 purposes, or to perform services for the occupants of the Shopping Center, by the invitation of any
40 party who is entitled to grant access to the Shopping Center such as Landlord, Tenant or any other
41 occupant of the Shopping Center.

1 **Landlord's Construction Obligations.** The construction obligations imposed on
2 Landlord by Section 5.1 also referred to herein as "Landlord's Work."

3 **Leasable Floor Area.** All areas available, or held for the exclusive use and occupancy of
4 occupants or future occupants of the Shopping Center, measured from the exterior surface of
5 exterior walls and from the center of interior demising partitions excepting that:

6 (a) Any mezzanines not intended to be used for distribution, sale or display of
7 merchandise to retail customers shall be excluded in the computation of Leasable Floor Area.

8 (b) Any areas ("Outdoor Areas") which are located wholly or partially outside of
9 a building, or which, although located substantially inside of a building, are not bounded on all sides
10 by exterior walls or a roof, such as outdoor sales, seating, garden or storage areas, or enclosed truck
11 docks or loading areas, shall be included in Leasable Floor Area if and to the extent that such
12 Outdoor Areas are available or held for the exclusive use and occupancy of occupants or future
13 occupants of the Shopping Center, whether or not such Outdoor Areas are clearly delineated and
14 whether or not any rental or other charges are paid by tenants with respect to such Outdoor Areas.
15 Outdoor Areas shall, to the extent that they are bounded by walls, be measured in the same manner
16 as provided above; otherwise, they shall be measured along lines which reasonably delineate the
17 boundaries of such Outdoor Areas.

18 (c) Kiosks shall be includable in Leasable Floor Area. A "kiosk" is a structure of
19 no more than one hundred (100) square feet, set within the Common Areas and completely
20 surrounded by pedestrian walkways or driveways.

21 **Lease Year.** The first Lease Year shall extend from the Commencement Date to the first
22 January 31 thereafter. Subsequent Lease Years shall commence on the following February 1 and
23 terminate the following January 31.

24 **Legal Rate.** In the event any rental or other payment due from one party to the other is
25 not paid when due, or in the event interest is required to be paid under the terms of this Lease, such
26 rental or payment amount shall bear interest at the rate of the lesser of (a) ten percent (10%) per
27 annum, or (b) the prime rate per annum quoted by the Wall Street Journal for short term
28 commercial loans, plus one percent (1%) per annum, but not in any event exceeding the highest rate
29 permissible by law which is not usurious.

30 **LFA Minimums.** Solely for purposes of calculating Co-Tenancy and Tenant's Pro Rata
31 Share of Reimbursements, the minimum amount of Leasable Floor Area in the Shopping Center
32 agreed by the parties and set forth in Section 1.3.2.

33 **Minimum Rent.** See Section 6.1.

34 **Off-Site Improvements.** Public improvements not located within the Shopping Center,
35 without which the Shopping Center could not reasonably be used for its intended purpose, such as,
36 without limitation, roadways, offramps, Utility lines and turning lanes.

37 **Option.** See Section 4.4.

38 **Option Periods.** See Section 4.4.

1 **Outparcel.** Any parcel of land upon which a building is or may be constructed which is
2 between the Store and any street bordering the Shopping Center.

3 **Permitted Delivery Day(s).** Permitted Delivery Days shall be the first Monday of any
4 month falling between September and May, both inclusive ("blackout" months being June, July and
5 August) which next follows the actual date Landlord tenders possession of the Store to Tenant with
6 all Delivery Conditions satisfied, provided that it is no earlier than the Intended Delivery Date.
7 Once established, the Permitted Delivery Day is not subject to alteration notwithstanding a Force
8 Majeure event.

9 **Prohibited Uses.** See Section 3.2.2.

10 **Recommencement Date.** See Section 21.2.

11 **Redelivery Date.** The last of the following to occur after a Casualty or Taking: (a) the date
12 on which Landlord's architect, or contractor having charge of the Restoration, certifies by written
13 notice to the parties that the Restoration has been Substantially Completed; and (b) Tenant receives
14 from all applicable governmental agencies all necessary written approvals to reopen the Store for
15 business.

16 **Reduced Occupancy Period.** See Section 6.1.3.

17 **Refurbishment.** See clause (m) of the Article 2 Delivery Date definition. The term
18 "Substantial Completion" shall also include the Refurbishment of the Shopping Center.

19 **Reimbursements.** Tenant's obligation to reimburse Landlord for Tenant's Pro Rata Share
20 under the provisions of Sections 7.4.1, 8.2.1 and 9.1.4.

21 **Rent.** The terms "Rent" or "Rental" shall mean all Minimum Rent, and Reimbursements
22 which may be due from Tenant to Landlord pursuant to this Lease.

23 **Required Co-Tenancy Area.** The area so designated on **Exhibit B.**

24 **Requirements.** See Section 11.3.2.

25 **Restoration.** See Section 21.1.4.

26 **Retail Redevelopment.** See Section 6.1.3(d).

27 **Retail Redevelopment Area.** The area so designated on **Exhibit B** and see
28 Section 6.1.3(d).

29 **Roof Repairs.** See Section 12.2.2.

30 **Safeway Lease.** That certain Ground Lease dated February 16, 2000 by and between
31 Landlord and Safeway, Inc.

32 **Safeway Parcel.** The area so designated on **Exhibit B.**

1 **Section Numbers.** In this Lease, all references to "Section" shall mean the section
2 numbers of this Lease, unless otherwise indicated.

3 **Shopping Center.** That certain real property development with all appurtenances generally
4 described in Section 1.3 above, which is constructed or is to be constructed on the property
5 described in **Exhibit A**.

6 **Site Plan.** The Site Plan is the plan attached hereto as **Exhibit B**. Landlord represents and
7 warrants that the Site Plan depicts the Shopping Center described on **Exhibit A** and that the
8 boundaries thereof are delineated thereon with reasonable accuracy. The Inline Buildings depicted
9 thereon contain or shall contain no more than one (1) story (but mezzanines having Leasable Floor
10 Area not in excess of one-third (1/3) of the occupant's ground floor Leasable Floor Area, when not
11 used for selling purposes, shall be permitted). Further, the height (including any architectural
12 features and rooftop equipment) of any portion of the Inline Buildings shall not exceed the height of
13 the exterior elevation of the Store on the Final Plans described in **Exhibit C**. The highest point of
14 any exterior elevation of any other building in the Shopping Center (including architectural features
15 and rooftop equipment) between the Store and the roads which the Store and the Shopping Center
16 face and/or from which the Store has side visibility shall not exceed the height of any building
17 existing as of June 23, 2003. No new building located between the Store and the roads which the
18 Store and the Shopping Center face and/or from which the Store has side visibility shall exceed
19 twenty-four (24) feet in height measured from the finished floor elevation of Tenant's Store.

20 **Special Form Policy.** See Section 9.1.1.

21 **Store.** The Store is that portion of the Shopping Center designated on **Exhibit B**, having
22 the dimensions and containing the Leasable Floor Area specified in Section 1.3, including the use of
23 the roof as specified in Section 12.2.

24 **Substitute Rent.** Substitute Rent shall mean the lesser of (a) Minimum Rent, or (b) two
25 percent (2%) of Tenant's Gross Sales during the preceding month. Except as otherwise expressly
26 set forth in this Lease, Substitute Rent, where applicable in this Lease, shall be paid in lieu of
27 Minimum Rent and Reimbursements.

28 **Support Systems.** See Section 11.4.2.

29 **Taking.** See Section 22.1.

30 **Tax or Taxes.** See Section 8.1.

31 **Tax Bill.** See Section 8.1.

32 **Tax Year.** The twelve (12) month period used by the taxing authority as the period to
33 which the Tax Bill applies.

34 **Tenant Delay.** A delay in the performance by Landlord of any obligation it is to perform
35 under **Exhibit C** to this Lease as a result of: (a) Tenant's failure to approve, consent, comment
36 upon or otherwise respond to a request for plan approval within the express time provisions of
37 **Exhibit C**; or (b) Tenant's request for a change order to Landlord's Construction Obligations which
38 directly results in a delay in Landlord's ability to perform its obligations under this Lease; or (c) the

interference by Tenant or Tenant's contractors in the performance by Landlord or Landlord's contractors of Landlord's Construction Obligations; provided, however, in order for there to be a valid "Tenant Delay" Landlord must first have given Tenant written notice within five (5) business days of the event forming the basis for the claim of the Tenant Delay and provided Tenant with at least five (5) business days to rectify the problem causing the delay.

Tenant's Pro Rata Share. Tenant's share of Reimbursements calculated as set forth in Section 7.2 (Common Area Charges), Section 8.2 (Tax Bill) and Section 9.1.4 (Special Form Policy premium).

Tenant's Work. The work to the Store by Tenant after the Delivery Date necessary for Tenant to open the Store for business to the general public; or performed at any time during the Term for the purpose of improving the Store.

Term. References to the Term of this Lease shall include the initial term described in Section 1.5.1 ("Initial Term") and any extension of such Term ("Option Period").

Termination Notice. A notice provided by Tenant to Landlord not less than thirty (30) days prior to a proposed termination of this Lease in which Tenant notifies Landlord of its election to terminate this Lease if permitted to do so under any provision of this Lease.

Third Party Audit. See Section 7.4.8.

Unamortized Cost. The remaining balance of an original amount expended by Tenant for leasehold improvements to the Store (not including any allowance paid by Landlord to Tenant for Tenant's leasehold improvements as specified in **Exhibit C**), as amortized on a straight line basis over a ten (10) year period.

Utilities. Utilities are electricity, gas, power (including steam), sanitary sewer, storm sewer, telecommunications (audio, video or data bit streams, whether terrestrial, over the air or satellite), and water supplied by public or private entities.

Utility Room. See Section 3.5.

3. GRANTS OF LEASE, COMMON AREA USE, EASEMENTS AND ACCESS

3.1. Lease.

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Store depicted on the Site Plan, together with all easements, rights and privileges appurtenant thereto, on the terms and conditions set forth herein.

3.2. Nature of the Shopping Center.

3.2.1. Retail Use.

(a) **General.** Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center is and shall remain retail in character, and, further, no part of the Shopping Center shall be used for office or residential purposes or as a theater,

auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium, veterinary services, overnight stay pet facilities, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of fifteen (15) years old because such inventory explicitly deals with or depicts human sexuality). No ATM or similar machine shall be permitted in the Shopping Center within one hundred (100) feet of the front and side perimeter walls of the Store. Further, no restaurant or other "High Intensity Parking User" (as hereinafter defined) shall be permitted in the Shopping Center within five hundred (500) feet of the front and side perimeter walls of the Store (except for the existing restaurant "Terry's Doughnut Shop" designated on **Exhibit B** and a replacement restaurant in the same location). A "High Intensity Parking User" is a tenant or occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of Leasable Floor Area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement. The foregoing use restrictions are referred to herein as the Ross Prohibited Uses.

(b) Exceptions. Notwithstanding the restrictions contained in Section 3.2.1(a) above, the following uses shall be permitted in the Shopping Center:

(i) Retail oriented office uses typically found in shopping centers such as travel agencies, real estate brokers, insurance brokers and financial offices provided that no single office space shall exceed three thousand (3,000) square feet of Leasable Floor Area and provided such retail oriented offices in the aggregate do not exceed fifteen percent (15%) of the total Leasable Floor Area of the Shopping Center (excluding the Leasable Floor Area of the Store and the Safeway store from the calculation), and provided that no more than three thousand (3,000) square feet of Leasable Floor Area of retail oriented offices in the aggregate shall be permitted within one hundred fifty (150) feet of the Store.

(ii) One (1) quick serve / fast food restaurant not to exceed one thousand five hundred (1,500) square feet of Leasable Floor Area which is located at least one hundred (100) feet from the Store and one (1) full service/sit down restaurant not to exceed three thousand (3,000) square feet of Leasable Floor Area which is located at least two hundred (200) feet from the Store.

3.2.2. Further Prohibited Uses. Landlord agrees that the Ross Prohibited Uses set forth in Section 3.2.1 and the "Landlord's Prohibited Uses" which are listed in **Exhibit D** (collectively, the "Prohibited Uses") shall not be permitted in the Shopping Center. If Landlord sells any portion of the Shopping Center or sells any property adjacent to the Shopping Center, Landlord shall attach and incorporate into every deed or other instruments of conveyance the Prohibited Uses and the provisions of Section 15.3. Any property contiguous to any portion of the Shopping Center which may be purchased, leased or otherwise controlled by Landlord, or any affiliate of Landlord, after the Effective Date shall be subject to all of the restrictions of the Prohibited Uses and Section 15.3 hereof. Tenant agrees that it will not violate the Prohibited Uses.

3.3. Grant of Common Area Use.

Tenant, as well as its agents, employees, customers and invitees, shall have and is granted nonexclusive and undisturbed access to, and use of all Common Areas (hereinafter "easement"),

which easement shall be appurtenant to the Store during the entire Term of this Lease. Landlord shall use commercially reasonable efforts to prevent (a) Common Area use by other than the Shopping Center's occupants and their Invitees, and (b) other Shopping Center's occupants and their employees and officers from parking within two hundred fifty (250) feet of the Store's front doors. In no event shall Tenant or Tenant's Invitees' use of Common Areas be conditioned upon payment of parking or other charges by Tenant.

3.4. Grant of Utility Easements.

(a) Subject to the reasonable approval of Landlord as to location, Landlord hereby grants to Tenant and its employees, agents, contractors and vendors, the nonexclusive right by easement to install, replace, maintain and use Utilities of Tenant's choice serving the Store within the Shopping Center.

(b) Upon prior notice to Landlord and subject to Landlord's approval as to location, which approval shall not be unreasonably withheld, delayed, or conditioned, Tenant, at Tenant's election, shall have the right to install, at Tenant's expense: (i) a cart retention system within the parking lot, utilizing wires or other embedded objects as a means of perimeter control provided that Tenant shall repair any damage caused by such installation, and (ii) bollards in front of the Store. The parties acknowledge that it will not be unreasonable for Landlord to withhold its consent if the installation of the cart retention system or the bollards would eliminate any parking areas.

3.5. Utility Rooms.

In the event any meters, controls or conduits for any Utility system serving the Store are at any time situated outside the Store (the "Utility Room"), Tenant shall at all times have access to the Utility Room and to controls and other conduits therein in common with Landlord and other tenants affected by such Utility systems. No other parties (other than Landlord and the other tenants affected by such Utility systems) shall have access to the Utility Room at any time without the consent of Tenant. Landlord shall provide adequate heat and security for the Utility Room and shall cause the Utility Room to be kept locked at all times. Access to the Utility Room shall be restricted to an exterior entrance situated in the rear wall of the building in which it is located.

3.6. Site Plan or Shopping Center Alterations.

3.6.1. Control Area and Inline Buildings. The Site Plan is a material consideration for Tenant entering into this Lease. Subject to the rights of Safeway pursuant to the existing Safeway Lease, no change, alteration, deletion, or addition shall be made to the Control Area on the Site Plan nor shall any change in the location of a front wall of any premises in any Inline Building be made without the prior written consent of Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion. In addition, notwithstanding the foregoing, if Landlord has rights under the Safeway lease to approve material changes, alterations, deletions or additions by Safeway to the Control Area, Landlord will not consent to such changes, alterations, deletions or additions without first obtaining the prior written consent of Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion.

3.6.2. Common Areas. No change or alteration shall be made in the Common Areas of the Shopping Center outside of the Control Area (to the extent Landlord has the legal ability to control such changes or alterations) which materially and adversely affects any one or more of the

1 following, without the prior written consent of Tenant (which consent shall not be unreasonably
2 withheld by Tenant if the change is not materially adverse to Tenant): (a) the configuration of the
3 Common Areas, (b) methods of ingress and egress, direction of traffic, lighting, parking, or curbing
4 in the Common Areas, or (c) other alterations in the Common Areas affecting the visibility of the
5 Store. Notwithstanding the foregoing, in connection with Landlord's Mall Redevelopment,
6 Landlord shall be permitted to reconfigure the "Expansion Area" designated on **Exhibit B** in order
7 to meet the requirements of existing or future tenants of the Shopping Center provided that the
8 exterior elevations of buildings in the Expansion Area, including the color, texture, design and
9 theme of said buildings, shall be compatible with the color, texture and design of Tenant's
10 storefront. In no event shall the front wall of any storefront in the Expansion Area extend beyond
11 Tenant's storefront. In addition, any reconfiguration of the Expansion Area shall not materially
12 change, alter, delete or add to the Control Area.

13 **3.6.3. Building Envelopes.** No construction of any building, or remodeling of any
14 building in the Shopping Center between the Store and the roads which the Store faces and/or from
15 which the Store has side visibility may occur except within the Building Envelopes and shall be
16 limited in size to the Leasable Floor Area as designated on **Exhibit B**.

17 **3.6.4. Store Exterior; Inline Building Exteriors.** The use of the exterior walls of the
18 Store shall be subject to the exclusive control of Tenant. Further, Landlord may not alter the
19 exterior of the Store, including, but not limited to, the color of the exterior of the Store, without the
20 prior written consent of Tenant, which consent may be granted or denied in Tenant's sole and
21 absolute discretion. No alteration or change in the color or design of any exterior wall of any Inline
22 Building may be made without the prior written consent of Tenant, which consent shall not be
23 unreasonably withheld provided that the color and design is architecturally compatible with the
24 color and design of the Store.

25 **3.6.5. Outparcels.** Any Outparcel(s) which is (are) not developed as of the date that
26 Tenant opens in the Store for business ("Undeveloped Outparcels") shall be continuously
27 maintained (or caused to be maintained) by Landlord, in a neat and sightly condition until such
28 Outparcel(s) is (are) developed, at no cost or expense to Tenant (e.g., not as a Common Area
29 Charge or otherwise) in the following condition. Each Undeveloped Outparcel shall either be
30 completely paved or shall be completely landscaped with low level shrubs or grass (such grass to be
31 mowed regularly to a height not to exceed eight inches (8")).

32 **3.7. Dimensions.**

33 Landlord represents that to the best of its knowledge, as of the Effective Date, the actual
34 Leasable Floor Area of the Store is thirty-three thousand four hundred five (33,405) square feet. In
35 the event that the Leasable Floor Area of the Store is less than the Agreed Size specified in
36 Section 1.3.3 [i.e., thirty thousand one hundred eight-seven (30,187) square feet], Minimum Rent and
37 all other charges shall be proportionately reduced and the parties shall set forth the actual Leasable
38 Floor Area of the Store, the adjusted Minimum Rent and other corrections necessitated by the
39 adjustment in Store size in the Acknowledgment of Commencement in **Exhibit E** hereto. In the
40 event that the Leasable Floor Area of the Store is more than the Agreed Size, Minimum Rent and all
41 other charges shall be based upon the Agreed Size. Nothing herein shall be construed as permitting
42 a material variance in dimensions or area. For purposes of this Section 3.7, a material variance is any
43 decrease in the amount of Store frontage set forth in Section 1.3.3 or any decrease in the Agreed

1 Size by more than one-half (1/2) of one percent (1%) of the amount of square feet of Leasable Floor
2 Area. Landlord represents that to the best of its knowledge, as of the Effective Date, the total
3 Leasable Floor Area in the Shopping Center depicted on **Exhibit B** is one hundred thirty-one
4 thousand one hundred forty-nine (131,149) square feet. Tenant shall have the right to dispute
5 through its own licensed architect the amounts of Leasable Floor Area of the Store and the
6 Shopping Center so represented and, if so, any unresolved dispute shall be resolved as provided in
7 Section 20.2. Until the amounts of Leasable Floor Area in the Store and in the Shopping Center
8 have been finally determined, Tenant may defer payment of Minimum Rent (to the extent of the
9 disputed amount) and the disputed portion of Tenant's Pro Rata Share of any charges which require
10 the use of Leasable Floor Area for computational purposes under the terms of this Lease (e.g.,
11 Taxes, insurance and Common Area Charges).

12 4. LEASE TERM

13 4.1. Term.

14 The Term of this Lease shall commence on the Commencement Date and shall expire as
15 specified in Section 1.5.

16 4.2. Commencement Date.

17 The Term shall commence on the Commencement Date as set forth in Section 1.4.1.

18 4.3. Acknowledgment of Commencement.

19 Within ninety (90) days after the Commencement Date, Landlord and Tenant shall execute a
20 written acknowledgment in the form attached hereto as **Exhibit E**, and by this reference it is hereby
21 incorporated herein.

22 4.4. Option Periods.

23 Tenant shall have the right to extend the Term of this Lease (an "Option") for the number
24 of separate, consecutive additional periods ("Option Periods") which are specified in Section 1.5.2,
25 on the terms and conditions set forth herein, except that the number of Option Periods remaining
26 to be exercised shall, in each case, be reduced by one. If Tenant elects to exercise an Option,
27 Tenant shall notify Landlord in writing at least one hundred eighty (180) days prior to the expiration
28 of the Term, or the then current Option Period, as the case may be. If Tenant neglects to timely
29 exercise any Option, Tenant's right to exercise shall not expire or lapse unless Tenant fails to
30 exercise such Option within fifteen (15) days after notice from Landlord of Tenant's failure to timely
31 exercise the Option. If Landlord does so notify Tenant, Tenant shall have the right at any time
32 within fifteen (15) days after such notice to notify Landlord in writing of either Tenant's unqualified
33 and irrevocable exercise of its Option, or Tenant's unqualified and irrevocable waiver of its Option.
34 If Tenant fails to respond within such fifteen (15) day period, Tenant shall conclusively be deemed
35 to have waived its Option and this Lease shall terminate on the then expiration date of the Term.

1 5. CONSTRUCTION AND ACCEPTANCE

2 5.1. Landlord's Construction Obligations.

3 5.1.1. Current.

4 (a) Landlord shall, at its sole cost and expense, (i) remove all Hazardous
5 Materials (including asbestos-containing materials) from the Store, including, without limitation, the
6 walls, ceilings, structural steel, flooring, pipes and boilers; (ii) install a new roof for the Store which shall
7 be watertight and Landlord shall obtain (and provide Tenant with a copy of) a ten (10) year roof
8 warranty covering repair and maintenance of the roof; (iii) have delivered to Tenant a plan designating
9 the location of the existing HVAC units and specifications for the existing HVAC units, and the
10 working condition and specifications of the HVAC units ("Landlord's HVAC Plan"); and
11 (iv) complete the Refurbishment. The Landlord's Work referred to in clauses (i), (iii) and (iv) other
12 than the Deferred Refurbishment Work shall be completed on or before the Delivery Date. The
13 Deferred Refurbishment Work shall be completed by Landlord within the time period set forth in
14 clause (m) of the Article 2 - Delivery Date definition. The Deferred Roof Installation Work (as
15 described herein) shall be completed by Landlord within the time period set forth in clause (a) of the
16 Article 2 - Delivery Date definition. Landlord shall deliver to Tenant a copy of the roof warranty
17 within thirty (30) days after Landlord's completion of the Deferred Roof Installation Work. Tenant
18 has previously delivered to Landlord, Tenant's HVAC plans and specifications ("Tenant's HVAC
19 Plans"). The parties acknowledge that as part of Tenant's Work, Tenant intends to retain six (6) of the
20 existing HVAC units designated on Landlord's HVAC Plan. The four (4) existing HVAC units located
21 in the northern half of the roof shall remain in their present locations. The two (2) existing HVAC
22 units located in the southern half of the roof are to be relocated as shown on Tenant's HVAC Plans.
23 Tenant, as part of Tenant's Work, will add a third (3rd) HVAC unit in the southern half of the roof as
24 shown on Tenant's HVAC Plans. As part of Landlord's installation of the new roof for the Store,
25 Landlord will remove the existing two (2) rear HVAC units and Landlord will fill in those two (2)
26 HVAC openings and remove the curbs for those two (2) HVAC units. Tenant, as part of Tenant's
27 Work will reinstall the two (2) existing HVAC units removed by Landlord. Landlord will frame for the
28 back three (3) HVAC unit locations set forth in Tenant's HVAC Plans and Landlord shall complete
29 the new roof of the Store as required by clause (ii) above. Landlord's roof work as described in this
30 Section 5.1.1(a) shall be referred to as the "Deferred Roof Installation Work." Except for the
31 foregoing Landlord's Construction Obligations (and subject to Landlord's maintenance and repair
32 obligations set forth in this Lease), the Store shall be delivered to Tenant in an "AS IS" condition. All
33 of Tenant's Work shall be at Tenant's sole cost and expense (except as may otherwise be expressly set
34 forth in this Lease).

35 (b) If the Store is part of a larger premises existing as of the Effective Date,
36 Landlord shall be responsible, at its sole cost and expense, for any requirement (whether governmental,
37 insurance or otherwise), for construction of fire access, including corridors or fire doors.

38 (c) Landlord shall indemnify, defend, protect and hold Tenant harmless from
39 all claims, demands and liabilities, including attorneys' fees and expenses, arising out of such
40 construction, remodeling, alteration or other work, including but not limited to, claims for defective
41 work. The obligations of this Section 5.1 are a material consideration to Tenant without which Tenant
42 would not have entered into this Lease.

1 **5.1.2. Future.** If at any time during the Term, Landlord undertakes the upgrading of
2 the exterior of buildings in the Shopping Center other than the Store, then Landlord shall be
3 obligated to similarly upgrade the exterior of the Building so that the Shopping Center presents a
4 uniform appearance of quality, design and age. Landlord's failure to perform its obligations under
5 this Section 5.1.2 within sixty (60) days following the completion of the general upgrading of other
6 buildings in the Shopping Center shall constitute a material default under the provisions of this
7 Lease entitling Tenant to all remedies at law, in equity and/or under the terms hereof.

8 **5.2. Construction Commencement.**

9 If Landlord fails to commence to perform Landlord's Construction Obligations, prior to the
10 Construction Commencement Cancel Date specified in Section 1.4.3 of this Lease, then at any time
11 thereafter, but prior to Landlord's commencement of Landlord's Construction Obligations, Tenant
12 shall have the right to terminate this Lease by notifying Landlord in writing. Commencement of
13 Construction means the day that the contractor's workers commence Landlord's Construction
14 Obligations as described in Section 5.1.

15 **5.3. Completion of Construction.**

16 Landlord shall use its best efforts to complete Landlord's Construction Obligations and
17 deliver possession of the Store to Tenant on the Intended Delivery Date.

18 **5.4. Delivery Notice.**

19 (a) The parties acknowledge the necessity for Landlord to provide Tenant with
20 the Delivery Notice specified in this Section 5.4 in order that Tenant shall have adequate time to,
21 among other things, hire personnel, arrange promotion, purchase and delivery of merchandise,
22 perform Tenant's improvements and fixturing of the Store and enter into other commitments
23 required to timely occupy and conduct business within the Store. Not less than thirty (30) calendar
24 days prior to the Delivery Date, Landlord must notify Tenant in writing as to when the Delivery Date
25 will occur (the "Delivery Notice") in the form set forth in **Exhibit G** (a Delivery Date must be on a
26 Permitted Delivery Day).

27 (b) Landlord may tender delivery of the Store to Tenant on other than a
28 Permitted Delivery Day, however, Tenant shall be under no obligation to take delivery, or, if Tenant
29 does take delivery, to pay Rent or any other charge.

30 **5.5. Rollover.**

31 (a) Notwithstanding any other provisions of this Lease, Tenant shall not be
32 obligated to accept delivery of the Store at any time other than on a Permitted Delivery Day nor at any
33 time (whether or not on a Permitted Delivery Day) if Landlord has failed to give the Delivery Notice in
34 accordance with Section 5.4(a) hereof. If Landlord delivers a Delivery Notice to Tenant and thereafter
35 Landlord fails to timely deliver the Store to Tenant on the date specified in the Delivery Notice, then,
36 the Delivery Date shall, at Tenant's option, be deferred until the next Permitted Delivery Day which
37 occurs or is in effect after the actual date Landlord satisfies all Delivery Conditions and tenders
38 possession of the Store to Tenant.

1 (b) If Landlord does not deliver a Delivery Notice to Tenant, and Landlord
2 satisfies all Delivery Conditions and tenders possession of the Store to Tenant, then, at Tenant's
3 option, Tenant may elect to accept delivery of the Store, but Tenant shall not be required to take
4 possession of the Store and the Delivery Date shall not occur until the next Permitted Delivery Day
5 following the thirtieth (30th) day after the date Landlord satisfies all Delivery Conditions and tenders
6 possession of the Store to Tenant.

7 (c) Tenant's right to defer the Delivery Date in accordance with the provisions
8 of Sections 5.5(a) and (b) shall be referred to as the Rollover remedy.

9 **5.6. Remedies Cumulative.**

10 The Rollover remedy described in Section 5.5 above shall apply in addition to all other
11 remedies at law, or in equity, or under the terms of this Lease.

12 **5.7. Construction Completion Cancel Date.**

13 If for any reason Landlord has not completed Landlord's Construction Obligations, or the
14 Store is not delivered to Tenant prior to the Construction Completion Cancel Date specified in
15 Section 1.4.4 of this Lease, Tenant may, at its sole option, cancel this Lease by written notice to
16 Landlord. Notwithstanding the preceding sentence, if the Delivery Date has not occurred by the
17 date set forth in Section 1.4.4 of this Lease solely because Tenant has not received all governmental
18 approvals for Tenant's plans for Tenant's Work (the "Approval Delivery Condition") and Tenant
19 has not elected to terminate this Lease, then Landlord shall have the right to terminate this Lease
20 upon thirty (30) days' written notice to Tenant and this Lease shall terminate unless, prior to the
21 expiration of the thirty (30) day period, Tenant either (a) receives all governmental approvals for
22 Tenant's plans for Tenant's Work and notifies Landlord that the Approval Delivery Condition has
23 been satisfied; or (b) Tenant notifies Landlord in writing that Tenant waives the Approval Delivery
24 Condition as a condition to delivery. In either such event, Landlord's termination notice shall be
25 void and the Delivery Date shall be the next Permitted Delivery Day following the satisfaction or
26 Tenant's waiver of the foregoing Approval Delivery Condition.

27 **5.8. Automatic Termination.**

28 This Lease shall be automatically terminated if the Delivery Date does not occur on or
29 before the Automatic Termination Date specified in Section 1.4.5 of this Lease notwithstanding any
30 Force Majeure events.

31 **5.9. Entry Prior to Delivery Date.**

32 Tenant shall have the right, without any obligation to pay Rent, to enter the Store for any
33 legal purpose, including to prepare for and commence Tenant's Work. Tenant agrees that it shall
34 not materially interfere with the progress of Landlord's Work by such entry and shall indemnify
35 Landlord from any damage or liability caused by Tenant's entry. No such entry by Tenant shall be
36 deemed an acceptance of the Store. Tenant may use such Utilities as are available during the course
37 of such period at no charge or cost to Tenant.

1 **5.10. Walk-Through Inspection and Punchlist.**

2 Within fifteen (15) business days after Landlord notifies Tenant of the Substantial
3 Completion of Landlord's Construction Obligations including completion of the Deferred Roof
4 Installation Work and the Deferred Refurbishment Work, Landlord's construction representative
5 and Tenant's construction representative shall meet at and do a complete walk through inspection
6 ("Walk-Through Inspection") of the Store and, if there has been, or is intended to be, a
7 Refurbishment, also the Common Areas, to (a) identify any uncompleted Landlord's Work as
8 required herein, and (b) identify any incomplete or noncomplying items of Landlord's Work. Within
9 five (5) business days after the Walk-Through Inspection, Tenant may deliver to Landlord a list
10 ("Punchlist") containing all items described in clauses (a) and (b) above which were identified during
11 the Walk-Through Inspection as not having been completed (i) to the extent necessary to permit
12 Tenant to commence and complete Tenant's Work without delay or interference from the
13 incomplete nature of Landlord's Work and/or from Landlord's contractor performing Landlord's
14 Work, and (ii) to sufficiently allow Tenant's retail operations to commence in the Store without
15 impediment to the conduct thereof by the incomplete nature of Landlord's Work, subject to the
16 completion of Tenant's Work, and (iii) including completion of the Common Areas to the extent
17 required in this Lease. If Tenant does submit such a list, and the items set forth on the list are, in
18 fact, part of Landlord's Work under this Lease, Landlord shall promptly and diligently complete or
19 correct such items within thirty (30) days thereafter. In any event, the Delivery Date shall not be
20 deemed to have occurred until the listed items are completed and/or corrected to the extent
21 necessary to (i) permit Tenant to commence and complete Tenant's Work without delay or
22 interference from Landlord's contractor performing Landlord's Work and/or caused by the
23 incomplete nature of Landlord's Work and (ii) to permit Tenant's retail operations to commence in
24 the Store without impediment to the conduct thereof subject to the completion of Tenant's Work.
25 A sum equal to the amount of Minimum Rent for one (1) full month may be withheld by Tenant
26 pending completion by Landlord of the Punchlist.

27 **5.11. Completion of Common Area/Store.**

28 Notwithstanding any other provisions of this Lease, the Delivery Date shall not occur until
29 Landlord has substantially completed all of Landlord's Construction Obligations including all
30 construction obligations imposed by governmental authorities as a condition to Tenant performing
31 any work required of Tenant or to Tenant operating in the Store subject to the completion of
32 Tenant's Work.

33 **5.12. Additional Delivery Requirements.**

34 **5.12.1. On the Delivery Date.** Tenant's occupancy of the Store shall not constitute an
35 acceptance of Landlord's Work, or relieve Landlord of responsibility for any warranty or
36 maintenance obligations under this Lease. On the Delivery Date, Landlord shall deliver to Tenant all
37 certificates of insurance required of Landlord by this Lease.

38 **5.12.2. Thirty Days After the Delivery Date.** Within thirty (30) days after the Delivery
39 Date, Landlord shall deliver all of the following to Tenant:

- 40 (a) A copy of all signed building permits (or equivalents), if any, for Landlord's
41 Work completed prior to the Delivery Date, showing that Landlord's Work has passed final inspection.

1 Signed building permits for the Deferred Refurbishment Work and the Deferred Roof Installation
2 Work shall be delivered within the time periods set forth in clauses (a) and (m) of the Article 2 Delivery
3 Date definition, as applicable;

4 (b) All fully executed and dated warranties and guarantees applying to the
5 Store from the date of Substantial Completion of Landlord's Construction Obligations. If such
6 warranties or guarantees are given after the date of Substantial Completion, they shall be dated as of
7 the actual date that the equipment and/or item was placed in service, but in no event shall execution of
8 any warranty and guaranty occur prior to the date of Substantial Completion unless authorized in
9 writing by Tenant;

10 (c) A list of all contractors, subcontractors and suppliers, each of which
11 provided labor, services or materials in excess of Ten Thousand Dollars (\$10,000) ("Major
12 Contractors") for the construction of the Store. Said list shall contain the following information about
13 each contractor, subcontractor or supplier: name, business address, phone number (including area
14 code), facsimile number and e-mail address, contact person for the project, and state license number if
15 required for the execution of work on the Store;

16 (d) If part of Landlord's Work, equipment operation manuals, catalogue data
17 sheets and material safety data sheets on all major equipment and/or fixtures used in the Store;

18 (e) A letter from Landlord stating that site signage structures (i.e., pylon,
19 monument, etc.) have been completed in accordance with the approved drawings and this Lease; and

20 (f) Copies of unconditional lien waivers and releases from all Major
21 Contractors.

22 **5.12.3.** Until the foregoing items specified in Sections 5.12.1 and 5.12.2 have been
23 furnished to Tenant, Tenant may defer payment of one month's Minimum Rent due under this
24 Lease.

25 6. RENT

26 6.1. Minimum Rent.

27 **6.1.1. Payment and Amount.** Commencing on the Commencement Date and
28 continuing through the Term of this Lease (except as otherwise expressly set forth in this Lease),
29 Tenant shall pay Minimum Rent to Landlord in equal monthly installments at the rates specified in
30 Section 1.6 (the "Minimum Rent"). Minimum Rent shall be payable in advance on or before the
31 first (1st) day of each calendar month. If this Lease commences other than on the first day of a
32 calendar month, the first month's Minimum Rent shall be prorated accordingly and paid with the
33 Minimum Rent for the first full month.

34 **6.1.2. Place of Payment.** All Minimum Rent and other payments to be made by Tenant
35 to Landlord shall be sent to the place to which Landlord's notices are required to be sent, unless
36 otherwise directed by Landlord in writing.

37 6.1.3. Required Co-Tenancy.

1 (a) Co-Tenancy Requirements. A "Reduced Occupancy Period" shall occur
2 unless all of the following requirements are satisfied on the Commencement Date and thereafter
3 throughout the Term: (i) the Required Co-Tenant specified in Section 1.7.1, shall be open in the
4 Shopping Center every day for retail business at least from 10:00 a.m. to 6:00 p.m., except public
5 holidays; (ii) the Required Co-Tenant is operating in at least the Required Leasable Floor Area for such
6 Required Co-Tenant specified in Section 1.7.1 under a bona fide lease of a minimum of three (3) years'
7 duration; and (iii) retail tenants of the Shopping Center, including the Required Co-Tenant, are open
8 and operating under bona fide leases in at least the percentage of the Leasable Floor Area of the
9 Shopping Center indicated in Section 1.7.2(a) or if Landlord completes the Retail Redevelopment, the
10 required percentage of the Leasable Floor Area of the Shopping Center shall be as set forth in
11 Section 1.7.2(b) (the Store shall be excluded from the numerator and denominator of the fraction used
12 to calculate such percentage). Landlord shall promptly notify Tenant of any Reduced Occupancy
13 Period. For purposes of calculating the percentages in this paragraph, the denominator of the fraction
14 may not be less than the LFA Minimums described in Section 1.3.2(d).

15 (b) Commencement Date Reduced Occupancy Period. If a Reduced
16 Occupancy Period exists on the Commencement Date ("Commencement Date Reduced Occupancy
17 Period"), Tenant shall not be required to open the Store for business (notwithstanding any contrary
18 provision in this Lease), and no Rent shall be due or payable whatsoever until and unless the
19 Commencement Date Reduced Occupancy Period is cured. In the event Tenant elects to open for
20 business in the Store, Tenant's total obligation for Minimum Rent shall be replaced by Substitute Rent
21 [but Tenant shall continue to be responsible to pay Reimbursements]. Substitute Rent shall be payable
22 within fifteen (15) days after the close of each calendar month during the Commencement Date
23 Reduced Occupancy Period and continuing until the expiration of the Commencement Date Reduced
24 Occupancy Period (or earlier if Tenant terminates this Lease as hereinafter provided in this Section
25 6.1.3(b)). If the Commencement Date Reduced Occupancy Period continues for a period of twelve
26 (12) consecutive calendar months, Tenant shall have the ongoing option to terminate this Lease upon
27 thirty (30) days' notice to Landlord (the "Reduced Occupancy Termination Notice"), provided the
28 Reduced Occupancy Termination Notice is given prior to the expiration of the Commencement Date
29 Reduced Occupancy Period.

30 (c) Secondary Reduced Occupancy Period. If a Reduced Occupancy Period
31 occurs at any time after the Commencement Date and is not the result of an Exempted
32 Discontinuance as hereinafter defined ("Secondary Reduced Occupancy Period"), Tenant's total
33 obligation for Minimum Rent shall be replaced by Substitute Rent (but Tenant shall continue to pay
34 Reimbursements) which shall be payable within fifteen (15) days after the close of each calendar month
35 during the Secondary Reduced Occupancy Period and continuing until the expiration of the Secondary
36 Reduced Occupancy Period (or earlier if Tenant terminates this Lease as hereinafter provided in this
37 Section 6.1.3(c)). If the Secondary Reduced Occupancy Period continues for a period of twelve (12)
38 consecutive calendar months (except in the event of an Exempted Discontinuance), and so long as the
39 Secondary Reduced Occupancy Period continues, Tenant shall have the ongoing option to continue to
40 pay Substitute Rent as provided above or to terminate this Lease upon giving Landlord Tenant's
41 Reduced Occupancy Termination Notice, provided the Reduced Occupancy Termination Notice is
42 given prior to the expiration of the Secondary Reduced Occupancy Period. The provisions of this
43 Section 6.1.3(c) shall apply to any subsequent Secondary Reduced Occupancy Period. In the event
44 Tenant ceases operations in the Store and Tenant's cessation of operations is a cause of a Secondary
45 Reduced Occupancy Period ("Ross Caused SROP") then Tenant shall not have the remedies for a
46 Secondary Reduced Occupancy Period set forth in this Section 6.1.3(c) with respect to a Ross Caused

1 SROP unless Tenant has reopened the Store for business and the Ross Caused SROP has continued
2 for a period of twelve (12) consecutive calendar months following the date Tenant recommenced
3 operations in the Store; with respect to a new or different Secondary Reduced Occupancy Period
4 (which is not a Ross Caused SROP), Tenant shall have the remedies for a Secondary Reduced
5 Occupancy Period set forth in this Section 6.1.3(c) when Tenant reopens the Store for business.

6 (d) Reduced Occupancy Period; Retail Redevelopment. If a Secondary
7 Reduced Occupancy Period occurs, Landlord shall have a one time right to notify Tenant that
8 Landlord intends to demolish the enclosed mall portion of the Shopping Center and redevelop said
9 mall space into non-mall retail space which shall include at least forty-one thousand (41,000) square
10 feet of Leasable Floor Area (the "Retail Redevelopment") in the Retail Redevelopment Area
11 designated on **Exhibit B** ("Retail Redevelopment Area"). Landlord shall give said notice within sixty
12 (60) days following the commencement of the Secondary Reduced Occupancy Period. During the
13 period that Landlord commences demolition and constructs the Retail Redevelopment (which period
14 shall not exceed twenty-four (24) months) (the "Reconstruction Period"), Tenant's total obligation for
15 Rent shall be replaced by "Alternate Substitute Rent" which shall be payable within fifteen (15) days
16 after the close of each calendar month during the Reconstruction Period. For purposes hereof,
17 "Alternate Substitute Rent" shall mean the greater of (i) fifty percent (50%) of the then applicable
18 Minimum Rent, or (ii) two percent (2%) of Tenant's Gross Sales during the preceding month; plus
19 Reimbursements. If the Secondary Reduced Occupancy Period continues for a period of twenty-four
20 (24) consecutive calendar months, then thereafter, Tenant shall have the ongoing option to pay
21 Alternate Substitute Rent or to terminate this Lease upon giving Landlord Tenant's Reduced
22 Occupancy Termination Notice, provided the Reduced Occupancy Termination Notice is given prior
23 to the expiration of the Secondary Reduced Occupancy Period.

24 (e) Unamortized Cost of Leasehold Improvements. In the event Tenant
25 terminates this Lease pursuant to Sections 6.1.3(b) or (c) or (d) above during the Initial Term of this
26 Lease, Landlord shall pay to Tenant an amount equal to the Unamortized Cost of Tenant's leasehold
27 improvements not to exceed Five Hundred Thousand Dollars (\$500,000), which sum shall be due and
28 payable to Tenant within thirty (30) business days following the date of the Reduced Occupancy
29 Termination Notice. If the Unamortized Cost of Tenant's leasehold improvements is not timely paid,
30 Tenant may deduct the amount due from any payments due to Landlord, if any hereunder, in addition
31 to and cumulative with any other remedies available to Tenant at law, in equity, or under the terms of
32 this Lease.

33 (f) Exempted Discontinuance. An Exempted Discontinuance shall mean the
34 closure of a tenant's store because of casualty, condemnation, repairs or remodeling for a period not to
35 exceed ninety (90) days. A tenant's store which is closed due to an Exempted Discontinuance shall not
36 be considered closed for purposes of determining whether a Secondary Reduced Occupancy Period is
37 in effect from the commencement of the Exempted Discontinuance until the earlier of: (i) the
38 expiration of such ninety (90) day period; or (ii) the expiration of the Exempted Discontinuance.

39 (g) Landlord Reporting Requirements. Within sixty (60) days following the
40 close of each calendar year, Landlord, as an addendum to the Annual Statement required pursuant to
41 Section 7.4.5, shall provide Tenant a Shopping Center tenant roster and occupancy/vacancy report for
42 the entire Shopping Center ("Co-Tenancy Report") certified as current as of the date of the report. In
43 the event Landlord fails to provide the Co-Tenancy Report within the time period specified above and
44 such failure continues for thirty (30) days following Tenant's written request therefor, Tenant may

1 defer any payments relating to Common Area Charges until such time as the Co-Tenancy Report is
2 received by Tenant. Tenant shall pay the amount due within thirty (30) days following Tenant's receipt
3 of the Co-Tenancy Report.

4 **6.2. Reimbursements.**

5 In addition to the Minimum Rent described in Section 6.1, Tenant shall be responsible to
6 pay Tenant's Pro Rata Share of Common Area Charges as described in Section 7.4.1, the Tax Bill as
7 described in Section 8.2.1, and the Special Form Policy premium as described in Section 9.1.4.

8 **6.3. Other Payment Provisions.**

9 **6.3.1. Late Payment.** Any sum including Rent accruing to Landlord or Tenant under
10 the provisions of this Lease which is not paid within ten (10) days following written notice ("Late
11 Notice") that such sum is past due ("Payment Notice Period"), shall bear interest at the Legal Rate
12 from the expiration of the Payment Notice Period to the date paid unless the past due sum is
13 disputed pursuant to Section 6.3.3. In addition, in the event Tenant receives a Late Notice of any
14 past due Rent payment more than two (2) times in any one (1) calendar year, and Tenant thereafter
15 fails to pay a Rent payment within the Payment Notice Period, then Tenant shall also pay a late
16 charge to Landlord in the sum of Five Hundred Dollars (\$500) ("Late Fee") as a reasonable estimate
17 of the costs and expenses Landlord will incur and fair compensation to Landlord for its loss suffered
18 by reason of Tenant's late payment of Rent (provided the past due sum is not disputed pursuant to
19 Section 6.3.3).

20 **6.3.2. Timely Billing of Charges.** All charges due from Tenant to Landlord for which
21 Tenant must be billed by Landlord shall be billed within twenty-six (26) months after the close of
22 the calendar year in which the charge is incurred by Landlord, or Landlord will have waived its right
23 to reimbursement as otherwise provided in this Lease.

24 **6.3.3. Disputed Sums.** Under the terms of this Lease numerous charges are and may
25 be due from Tenant to Landlord and vice versa, including without limitation, real estate Taxes,
26 Common Area Charges, casualty and liability insurance premium reimbursements and other items.
27 In the event that at any time during the Term a bona fide dispute arises with respect to the amount
28 due for any of such charges claimed by a party to be due, the party disputing any such charge shall
29 notify the other party in writing of the dispute and that portion of the amount which is undisputed
30 shall be paid by Tenant or Landlord, as the case may be, pending the resolution of the dispute
31 between the parties by litigation or otherwise, and the disputed portion may be withheld pending
32 resolution. Tenant's withholding of a disputed amount in the event of a bona fide dispute shall not
33 be deemed a default by Tenant under the terms of this Lease. Upon resolution of any dispute, the
34 obligated party shall pay to the other the remaining sum liquidated as due (if any) with interest
35 thereupon at the Legal Rate.

36 **6.4. Gross Sales Statement for Purposes of Calculating Substitute Rent.**

37 **6.4.1. Gross Sales Statement.** In the event Tenant pays Substitute Rent pursuant to
38 clause (b) of the Substitute Rent definition in Article 2 (or Alternate Substitute Rent, based upon a
39 percentage of Tenant's Gross Sales pursuant to Section 6.1.3(d)), within fifteen (15) days after the
40 close of each calendar month, Tenant shall submit to Landlord a statement indicating the amount of
41 its Gross Sales for the previous month. Landlord covenants to keep such information confidential.

1 6.4.2. Maintenance of Records. In the event Tenant pays Substitute Rent (or Alternate
2 Substitute Rent) during any Lease Year, Tenant shall maintain adequate records for a period of one
3 (1) year after the close of each such Lease Year for the purpose of allowing Landlord to verify the
4 reported Gross Sales for such Lease Year. At any time within said one (1) year period, Landlord or
5 its agents (but not a contingency fee auditor) may inspect such records at Tenant's main office
6 specified in Section 1.2.2 hereinabove during Tenant's normal business hours.

7 6.4.3. No Representation. Landlord acknowledges that Tenant has made no
8 representation as to the Gross Sales which may be generated from the Store.

9 **6.5. Fourth Option Period Rent.**

10 (a) If Tenant exercises its right to extend the Term for the Fourth Option
11 Period, the Minimum Rent during such period shall be adjusted to equal the greater of (i) Nine and
12 85/100 Dollars (\$9.85) per square foot of the Agreed Size per year (subject to the provisions of
13 Section 3.7), or (ii) ninety percent (90%) of the Fair Market Rental for the Store as of the date of the
14 commencement of the Fourth Option Period, pursuant to the procedures hereinafter set forth. The
15 term "Fair Market Rental" means the market rate Minimum Rent chargeable for the Store based upon
16 the following factors applicable to the Store or any comparable premises:

17 (i) Rental rates being charged for comparable premises in the same
18 geographical location.

19 (ii) The relative locations of the comparable premises.

20 (iii) Improvements, or allowances provided for improvements, or to be
21 provided by Landlord.

22 (iv) Improvements made to the Store by Tenant.

23 (v) Rental adjustments, if any, or rental concessions.

24 (vi) Services and utilities provided or to be provided.

25 (vii) Use limitations or restrictions.

26 (viii) Any other relevant Lease terms or conditions.

27 (b) Upon exercise of the right to extend the Term for the Fourth Option
28 Period, and included within the notice of exercise from Tenant ("Notice of Exercise"), Tenant shall
29 notify Landlord of Tenant's opinion of the Fair Market Rental, as defined above, for the Fourth
30 Option Period. If Landlord disagrees with Tenant's opinion of the Fair Market Rental, Landlord shall
31 so notify Tenant and shall state Landlord's opinion of the Fair Market Rental ("Landlord's Value
32 Notice") within ten (10) days after receipt of Tenant's Notice of Exercise. If the parties are unable to
33 resolve their differences within ten (10) days thereafter, either party may apply for Rent Arbitration as
34 provided below. If neither party applies for Rent Arbitration within ten (10) days after receipt by
35 Landlord of Tenant's Notice of Exercise, Minimum Rent for the Fourth Option Period shall be the
36 greater of (i) ninety percent (90%) of the Fair Market Rental stated in Tenant's Notice of Exercise, or
37 (ii) Nine and 85/100 Dollars (\$9.85) per square foot of the Agreed Size per year (subject to the

1 provisions of Section 3.7). Should either party elect to arbitrate, and if the Rent Arbitration is not
2 concluded before the commencement of the Fourth Option Period, Tenant shall pay Minimum Rent
3 to Landlord in an amount equal to ninety percent (90%) of the Fair Market Rental set forth in Tenant's
4 Notice of Exercise, until the Fair Market Rental is determined in accordance with the arbitration
5 provisions hereof ("Rent Arbitration"). If the Fair Market Rental as determined by Rent Arbitration
6 differs from that stated in Tenant's Notice of Exercise, then any adjustment required to correct the
7 amount previously paid by Tenant shall be made by payment by the appropriate party within thirty (30)
8 days after the determination of the Fair Market Rental by Rent Arbitration has been concluded, as
9 provided herein. Tenant shall be obligated to make payment during the entire Fourth Option Period
10 of the Minimum Rent determined in accordance with the procedures hereunder.

11 (c) In the event either party seeks Rent Arbitration of the Fair Market Rental
12 under the provisions hereof for the Fourth Option Period, the other party shall be bound to submit the
13 matter for determination by Rent Arbitration. The Rent Arbitration shall be conducted and
14 determined in the county where the Store is located.

15 (d) A party demanding Rent Arbitration hereunder shall make its demand in
16 writing ("Demand Notice") within ten (10) days after service of Landlord's Value Notice. A copy of
17 the Demand Notice shall be sent to the Director of the office of the American Appraisal Institute
18 which is closest to the Shopping Center. If there is no such office within one hundred (100) miles of
19 the Shopping Center, then a copy of the Demand Notice shall be sent to the Presiding Judge of the
20 highest trial court in the county in which the Shopping Center is located. The Director, or Presiding
21 Judge, whichever is applicable, is hereinafter referred to as the "Appointer." The Appointer, acting in
22 his or her personal, private capacity, shall appoint within ten (10) days thereafter a real estate broker
23 with at least seven (7) years' experience leasing properties in the same county for the general type of
24 use to which the Store is devoted under the terms of this Lease, i.e., the Shopping Center. The Rent
25 Arbitrator shall be a person who would be qualified to serve as an expert witness and to give opinion
26 testimony addressed to the issue in a court of competent jurisdiction. Such a party is hereinafter
27 referred to as the "Rent Arbitrator." The parties may, however, before sending the Demand Notice to
28 the Appointer, mutually agree upon a Rent Arbitrator of their own choice, in which event such
29 appointment shall nullify the necessity of appointment of a Rent Arbitrator by an Appointer.

30 (e) The Rent Arbitrator so selected shall, within ninety (90) days after his or
31 her appointment, state in writing the Rent Arbitrator's determination as to whether Landlord's
32 valuation, or Tenant's valuation of the Fair Market Rental, most closely approximates his or her own.
33 The Rent Arbitrator may not state his/her own opinion of the Fair Market Rental, but is strictly limited
34 to the selection of Landlord's Fair Market Rental valuation as stated in Landlord's Value Notice or
35 Tenant's Fair Market Rental valuation as stated in the Notice of Exercise. The Rent Arbitrator shall
36 have the right to consult experts and competent authorities with factual information or evidence
37 pertaining to a determination of the Fair Market Rental, but any such consultation shall be made in the
38 presence of both parties with full right to cross examine. The Rent Arbitrator shall have no right to
39 propose a middle ground or any modification of either of the proposed valuations, and shall have no
40 power to modify the provisions of this Lease. The valuation so chosen as most closely approximating
41 to that of the Rent Arbitrator shall constitute the decision of the Rent Arbitrator and shall be final and
42 binding upon the parties, absent fraud or gross error. The Rent Arbitrator shall render a decision and
43 award in writing, with counterpart copies to each party and judgment thereon may be entered in any
44 court of competent jurisdiction.

1 (f) In the event of failure, refusal, or inability of the Rent Arbitrator to act in a
2 timely manner, a successor shall be appointed in the same manner as such Rent Arbitrator was first
3 chosen hereunder, if such Rent Arbitrator was chosen by an Appointer. If chosen by mutual
4 agreement, the parties shall, in this succeeding instance, choose a Rent Arbitrator through means of the
5 procedure for the Appointer. The fees and expenses of the Rent Arbitrator and the administrative
6 hearing fee, if any, shall be divided equally between the parties. Each party shall bear its own attorneys'
7 fees and other expenses including fees for witnesses in presenting evidence to the Rent Arbitrator.

8 7. COMMON AREA MAINTENANCE

9 7.1. Landlord's Obligation to Maintain Common Areas.

10 7.1.1. Maintain Common Areas. Landlord shall maintain all Common Areas in first
11 class condition, repair and cleanliness, including ice and snow removal, and sidewalk steam cleaning
12 and shall keep the Common Areas free of any impediments and open for easy and safe movement
13 within the Common Areas. Landlord shall keep the Common Areas well lighted until 11:00 p.m.
14 each night and thereafter to maintain security lighting in the Common Areas, and otherwise keep
15 such Common Areas safe and secure. Any costs incurred for lighting the Common Areas other
16 than as specified in the preceding sentence shall be borne solely by those tenants requesting the
17 additional lighting hours, and costs incurred in respect to additional lighting shall not be includable
18 as Common Area Charges. No construction or construction-related activity shall be permitted in
19 the Common Areas, except for emergency repairs diligently pursued, during the period from
20 October 1 of any year to January 2 of the ensuing year, without the prior written consent of Tenant,
21 which consent may include conditions designed to eliminate interference with the operation of the
22 Shopping Center or the effect of such activity upon Tenant's business.

23 7.1.2. Common Area Metering. The Common Areas shall be served by meters which
24 do not serve any other areas of the Shopping Center. Landlord shall cause all Utilities for the
25 Common Areas to be separately metered from those of Tenant and/or the Store. Landlord shall
26 obtain from the local Utility companies and shall provide to Tenant, upon Tenant's request therefor
27 from time to time, written verification (a) that such meters service only the Common Areas, and
28 (b) that no sewer service charges are included in the Common Area water billings.

29 7.2. Tenant's Pro Rata Share.

30 Tenant's Pro Rata Share of Common Area Charges is defined as that fraction of Common
31 Area Charges the numerator of which is the Leasable Floor Area in the Store and the denominator
32 of which is the Leasable Floor Area in the Shopping Center; provided, however, in no event shall
33 the denominator of such fraction be less than the Minimum Leasable Floor Area set forth in
34 Section 1.3.2(a). Certain items within the definition of Common Area Charges may be paid directly
35 by certain tenants or occupants of the Shopping Center and/or by the owners of separately-owned
36 parcels within the Shopping Center (collectively, "Separate Parties"). In such event, the Common
37 Area Charges to which Tenant is required to contribute shall exclude such costs which are paid by
38 the Separate Parties and, with respect to each such category of Common Area Charges which is
39 attributable to the balance of the Shopping Center, for purposes of calculating Tenant's Pro Rata
40 Share, the Leasable Floor Area of such Separate Parties shall be deducted from the total Leasable
41 Floor Area of the Shopping Center.

1 **7.3. Definition of Common Area Charges.**

2 **7.3.1. Included Charges.** The following costs reasonably incurred during the Term for
3 maintenance and repair of the exterior Common Areas (but not the Common Areas of the enclosed
4 mall) shall be included as Common Area Charges: maintaining and repairing the parking area of the
5 Common Areas (including slurry-sealing, restriping parking spaces and filling potholes), sidewalks
6 and loading zones (whether or not such sidewalks and loading zones are Common Areas); Shopping
7 Center security; cleaning, sweeping and other janitorial services; sanitation; maintenance of
8 Common Area refuse receptacles; replanting existing landscaping; maintenance of directional signs
9 and other markers; electricity to light the Common Areas during the hours required by Section 7.1
10 (excluding other tenants' after-hours lighting); electricity to light pylon and monument signs
11 identifying the Shopping Center (but not other pylon or monument signs on which Tenant's signage
12 does not appear) as well as Tenant's signs on such pylon or monument signs; repair and
13 maintenance of lighting fixtures; replacement of lighting elements; any maintenance of other Utility
14 systems to serve the Common Areas; premiums of Landlord's liability insurance for the Common
15 Areas; trash removal for the Common Areas of the Shopping Center (Landlord shall arrange for
16 separate, segregated dumpsters for Common Area trash, the allocated cost of which shall be
17 includable in Common Area Charges); and the administrative fee described in Section 1.8 which
18 may be included only to the extent assessed against the remainder of Common Area Charges after
19 excluding therefrom liability insurance premiums, Utility costs, security costs, management fees paid
20 to third parties and capital expenditures, if any are expressly authorized by this Section 7.3.1. Taxes
21 as defined in Article 8, and Casualty Insurance pursuant to Section 9.1 are not included as Common
22 Area Charges, and, accordingly, are not included in the computation of the administrative fee
23 specified in Section 1.8.

24 **7.3.2. Excluded Charges.** In no event shall Common Area Charges include any of the
25 following: (1) costs of original construction (as distinguished from maintenance and repair) of the
26 Shopping Center or any expansion, remodeling or renovation thereof; (2) principal and/or interest
27 payments on any financing for the Shopping Center or any portion thereof or rental under any
28 ground lease or other underlying lease; (3) capital expenditures (i.e., expenditures which, in the
29 customary course of maintenance practice for shopping centers similar in type and location to that
30 of the Shopping Center, do not recur annually) including, but not limited to, repaving, petromatting
31 or resurfacing of the parking area of the Common Areas; (4) the costs of correcting defects in the
32 design or construction of the Shopping Center, or repair and/or replacement of any materials or
33 equipment required as a result of such defects; (5) any expense resulting from the negligence of
34 Landlord, its agents, servants or employees, or any additional expense incurred as a direct result of
35 Landlord's failure to use competitive bidding to minimize expenses to the extent possible without
36 detracting from the standards of a first class shopping center; (6) the cost of any repair to remedy
37 damage caused by or resulting from the negligence of any other tenant(s) in the Shopping Center,
38 including their agents, servants or employees; (7) reserves for anticipated future expenses; (8) legal
39 and other fees, leasing commissions, advertising expenses and other costs incurred in connection
40 with development, leasing or operation of the Shopping Center, or in connection with negotiations
41 or disputes with tenants, occupants or prospective tenants or occupants, or legal fees incurred in
42 connection with this Lease; (9) cost of repairs or other work occasioned by fire, casualty or other
43 insured risk or the exercise of the right of eminent domain; (10) expenses incurred in the build out,
44 renovation, maintenance, repair, alteration, improvement, decoration, painting or redecoration of
45 any portion of any building in the Shopping Center (except for graffiti removal and associated spot
46 repainting); (11) any items for which Landlord is entitled to be reimbursed or compensated,

1 including, without limitation, contractors' warranty or right of reimbursement from any tenant or
2 occupant of the Shopping Center; (12) any bad debt loss, rent loss or reserves for bad debts or rent
3 loss; (13) cleaning, sweeping, and removal of debris within the primary parking area and adjacent
4 walkways and seating area (if any) of any fast food restaurant which is in excess of such costs
5 incurred for other tenants of the Shopping Center; (14) expenses in connection with services or
6 other benefits of a type which are not provided Tenant but which are provided only to or for
7 another tenant or occupant of the Shopping Center; (15) any interest, late charges, or penalties
8 incurred as a result of Landlord's failure to pay any bill as the same shall become due; (16) any and
9 all other costs associated with the operation of the business of Landlord, intending by this exclusion
10 to distinguish the same from the costs of maintenance of the Common Areas (excluded items shall
11 specifically include, but shall not be limited to, formation of the Landlord entity, internal accounting
12 and legal matters, including, but not limited to, preparation of tax returns and financial statements
13 and gathering of data therefor, costs of selling, syndication, financing, mortgaging or hypothecating
14 any of Landlord's interest in the Shopping Center, and costs of any disputes between Landlord and
15 its employees); (17) salaries and bonuses of officers and executives of Landlord and compensation
16 paid to clerks, attendants or other persons in commercial concessions operated by Landlord;
17 (18) advertising and promotional expenditures or customer services; (19) costs, fines, or fees
18 incurred by Landlord due to violations of any federal, state or local law, statute or ordinance, or any
19 rule, regulation, judgment or decree of any governmental rule or authority; (20) any costs or
20 expenses associated with the removal, cleanup or remediation of any Hazardous Materials (as
21 hereinafter defined) from the Shopping Center, any restoration in connection therewith or
22 compliance with any Environmental Regulations (as hereinafter defined); (21) the cost of
23 compliance with any other Requirements (as hereinafter defined) (including, without limitation, the
24 Americans With Disabilities Act) in effect as of the Effective Date; with respect to cost of
25 compliance with Requirements enacted after the Effective Date ("New Requirements"), Common
26 Area Charges shall exclude costs of compliance which are capital expenditures and costs to correct
27 violations of such New Requirements; (22) the cost of any work or services performed for any
28 facility other than the Shopping Center; (23) any costs representing an amount paid to a person,
29 firm, corporation or other entity related to Landlord which is in excess of the amount which would
30 have been paid in the absence of such relationship; (24) management, supervision, administrative
31 and overhead costs (including, but not limited to, office space, equipment, Utilities, and personnel)
32 other than the fee described in Section 1.8; (25) the cost of acquiring sculptures or other art objects
33 and costs of decorative monuments; (26) costs of tools and equipment for operation, repair and
34 maintenance of the Common Area which are not customarily expensed in the year placed in
35 operation pursuant to generally accepted accounting principles; (27) costs incurred in the
36 construction, maintenance, repair or replacement of any buildings in the Shopping Center (whether
37 relating to structural or nonstructural, exterior or interior portions of such buildings), specifically
38 excluding from Common Area Charges any costs incurred for maintenance, repair, Utilities or any
39 other costs with respect to restrooms or restroom facilities, or signs which identify the Shopping
40 Center; (28) any costs to clean up or repair the Common Area as a result of promotional activities or
41 because of construction, maintenance, or reconstruction of buildings in the Shopping Center;
42 (29) premiums for liability insurance of any kind except as specified in Section 7.3.1 above;
43 (30) costs incurred by Landlord as a result of any claim covered by the insurance which Landlord is
44 required to maintain under this Lease, including deductible amounts, provided Landlord shall be
45 permitted to include in the aggregate Common Area Charges to which Tenant contributes, the costs
46 of repairing the Common Areas damaged or destroyed by an insured Casualty which costs are not
47 reimbursed by insurance because such costs are within the amount of Landlord's insurance
48 deductible, provided in no event shall Landlord be permitted to include in such aggregate Common

1 Area Charges on account of such unreimbursed repair costs, in excess of Five Thousand Dollars
2 (\$5,000) per Lease Year; (31) any expense associated with "food courts" as that term is described in
3 Article 2 - "Common Areas", such as maintenance, repair, purchase of personal property or any
4 other cost related thereto; (32) if Tenant is paying any charges for sewer under the provisions of
5 Article 10, sewer charges, whether separately billed or included with the billing for water charges
6 from the Utility provider, in which latter case, the charges for sewer shall be separated out by
7 allocation of a Utility engineer approved by Tenant; (33) should there be commercial offices within
8 the Shopping Center which occupy, in the aggregate more than five thousand (5,000) square feet of
9 Leasable Floor Area, the charges incurred in respect of such office facilities such as, by way of
10 example, elevator charges, common hallways, electricity, water and janitorial expenses; (34) any
11 unreimbursed Common Area Charges arising from a reimbursement to Landlord from an occupant
12 of the Shopping Center of less than its mathematical pro rata share thereof calculated based upon
13 Leasable Floor Area occupied by such occupant relative to the Leasable Floor Area of all occupants
14 of the Shopping Center; (35) the cost of promotional and seasonal decorations, including the
15 purchase, leasing, storage, installation and/or removal and clean-up of same; (36) costs of replacing,
16 repairing, or restoring the Shopping Center, or any portion thereof, in the event of a casualty of any
17 type, regardless of whether insurable or uninsurable, insured or uninsured; (37) rent or other costs
18 for security offices or a police station in the Shopping Center; (38) premiums for earthquake or
19 flood insurance of any kind; (39) costs for the construction and maintenance of any pylon or
20 monument signs for the Shopping Center; (40) any costs or expenses incurred by Landlord in
21 sponsoring events in or upon the Shopping Center or in creating a "brand" or name recognition for
22 the Shopping Center; and (41) costs and expenses with respect to the Common Areas of the
23 enclosed mall. Additionally, Tenant shall have no obligation to contribute to a marketing fund or
24 merchants' association for the Shopping Center.

25 **7.4. Payment of Tenant's Pro Rata Share.**

26 **7.4.1. Payment.** Commencing on the Commencement Date, Tenant shall pay Tenant's
27 Pro Rata Share of the Common Area Charges in the manner set forth herein.

28 **7.4.2. Estimated Payments.** Landlord shall have the right, once a year, to estimate
29 Common Area Charges for the ensuing calendar year, and Tenant's share thereof, based on the
30 previous year's actual expenditures and Landlord's reasonable projections for the following calendar
31 year (except if the Shopping Center has not been operated for one (1) year or more as of the
32 Commencement Date of the Term, Common Area Charges shall be based on Landlord's reasonable
33 estimate thereof based on typical charges for similar shopping centers within five (5) miles of the
34 Shopping Center), and Landlord shall so inform Tenant of such projections in writing along with the
35 Annual Statement referred to below. Beginning with the first (1st) day of the first calendar month
36 of the Term following Tenant's receipt of Landlord's written estimate of its annual obligation in
37 respect of Common Area Charges (but not in any event before thirty (30) days after receipt thereof),
38 Tenant shall include one-twelfth (1/12th) of its annual obligations set forth in such estimate with
39 each payment of Minimum Rent for the ensuing twelve (12) month period. After the first calendar
40 year, any proposed increase in total Common Area Charges in excess of three percent (3%) over the
41 previous year's expenditures must be justified by itemization of each element of charge, together
42 with (a) a written explanation of the reason (i.e., increased scope of work, deferred work, etc.) for
43 the increase in excess of three percent (3%), and (b) copies of the competitive bids described in
44 Section 7.4.3 below. The requirement for bids shall also apply at any time an element of the
45 Common Area Charge is proposed to increase more than ten percent (10%) in any year, in relation

1 to the cost for such element for the previous twelve (12) month period, whether the resulting
2 proposed Common Area Charges for the subject year will be in excess of three percent (3%) over
3 the amount paid by Tenant for the previous twelve (12) month period. In the absence of the
4 required justification of the proposed increase in Common Area Charges in excess of three percent
5 (3%), Tenant shall be under no obligation in respect of such year to pay more than the amount
6 payable by Tenant for the previous twelve (12) months plus three percent (3%).

7 **7.4.3. Landlord's Contracts.** All Landlord's contracts with third parties for work,
8 service or materials, the cost of which may be included in the Common Area Charges, shall include
9 a detailed description of the work, service, or material to be provided by the contractor. No such
10 contracts shall involve a duplication of the work or service provided by other contractors, their
11 employees or agents or the employees of Landlord. Landlord shall maintain detailed job
12 descriptions for all employees employed by Landlord for the purpose of performing Common Area
13 maintenance activities whose salaries, wages and/or benefits may be included in Common Area
14 Charges. Landlord's employees shall not provide duplicate services to those provided by Landlord's
15 third party contractors. Any individual third party contract in excess of Twenty-Five Thousand
16 Dollars (\$25,000) shall be awarded by competitive bidding from at least two (2) bona fide third party
17 contractors.

18 **7.4.4. Fast Food Restaurant Costs.** Notwithstanding anything to the contrary
19 contained in this Article 7, in computing the amount of Tenant's obligation to pay Common Area
20 Charges, the ratable share of any fast food restaurant occupying a portion of the Shopping Center
21 for expenses of sweeping, cleaning, and removing debris in the Common Area shall be double the
22 share such restaurant would have paid assuming a numerator equal to the Leasable Floor Area in the
23 restaurant and a denominator equal to the Leasable Floor Area of the Shopping Center. As a
24 hypothetical example and for illustration purposes only, if XYZ Burgers operates a three thousand
25 (3,000) square foot restaurant in the Shopping Center, XYZ Burgers' share of Common Area
26 Charges shall be computed as if XYZ Burgers occupied six thousand (6,000) square feet. The
27 amount contributed by XYZ Burgers toward Common Area Charges shall then be deducted from
28 the total Common Area Charges for purposes of establishing the amount of Tenant's Pro Rata
29 Share of Common Area Charges. Tenant's Pro Rata Share of Common Area Charges shall have the
30 denominator reduced by the fast food restaurant's Leasable Floor Area, in this case three thousand
31 (3,000) square feet, and the result shall be the amount of Tenant's obligation to pay Common Area
32 Charges. Such method of calculation shall be utilized for all fast food restaurants in the Shopping
33 Center. For purposes of this Lease, a "fast food" restaurant is defined as a tenant whose primary
34 business is delivery, counter, and/or drive-up, drive-through sale of food items, e.g., McDonald's,
35 Burger King, Pizza Hut, KFC, Starbuck's, juice or smoothie store, etc.; provided, however, that the
36 foregoing provisions shall not apply to (a) inline mall restaurants, or (b) fast food restaurants on
37 pads within the Shopping Center that are cleaned separately and apart from the rest of the Shopping
38 Center and the occupants of such restaurants pay for such expenses independent of Common Area
39 Charges.

40 **7.4.5. Annual Statement.** Within sixty (60) days following the close of each calendar
41 year, Landlord shall submit to Tenant a statement ("Annual Statement"), in which Landlord shall set
42 forth in reasonable detail the actual expenditures for Common Area Charges for such calendar year
43 and Tenant's Pro Rata Share of Common Area Charges thereof. The Annual Statement shall be
44 certified by an authorized agent of Landlord to be correct. Within twenty (20) days of Tenant's
45 request, Landlord shall provide Tenant with copies of all invoices and other written evidence of

1 Common Area Charges ("CAM Evidence") paid by Landlord. In the event Landlord fails to
2 provide such Annual Statement or CAM Evidence within the time periods required hereby, Tenant
3 may thereupon defer any payments relating to Common Area Charges until thirty (30) days
4 following its receipt of the last to occur of (a) the Annual Statement, or (b) the CAM Evidence.

5 7.4.6. Reconciliation of Annual Statement. If the Annual Statement indicates that
6 Tenant's payments of estimated Common Area Charges exceeded Tenant's total obligation relating
7 to such calendar year, Landlord shall accompany said Annual Statement with a memo crediting
8 Tenant's account in the amount of such overpayment or, if the amount of the credit exceeds one (1)
9 full month's estimated payment for Common Area Charges, Landlord shall accompany said Annual
10 Statement with a payment to Tenant of the amount of such excess. If the Annual Statement shows
11 that Tenant's payments of estimated Common Area Charges were less than its total obligation
12 relating to such calendar year, Tenant shall pay the difference to Landlord within sixty (60) days of
13 Tenant's receipt of the Annual Statement. Notwithstanding the foregoing, if at the time Landlord
14 delivers such Annual Statement to Tenant, Tenant is auditing Landlord's records of Common Area
15 Charges, any adjustment (if required) and any credit or payment shall be made upon conclusion of
16 such audit.

17 7.4.7. Audit. Tenant shall have the right, not more frequently than once in any
18 calendar year, to audit (the "CAM Audit") all of Landlord's or Landlord's agent's records pertaining
19 to Common Area Charges with a representative of Tenant's choice (but not a contingency fee
20 auditor). Landlord shall retain its records regarding Common Area Charges for a period of at least
21 two (2) years following the final billing for each calendar year during the Term. At any time during
22 such two (2) year period, upon at least thirty (30) days' advance notice to Landlord, Tenant may
23 conduct a CAM Audit. The CAM Audit shall commence on a date (the "Audit Date") of which
24 Tenant has notified Landlord not less than thirty (30) days in advance. In the event of cancellation
25 of the CAM Audit by Landlord, Tenant shall be relieved of its obligation to make monthly payments
26 of the estimated Common Area Charges until the first to occur of twelve (12) months thereafter, or
27 until the CAM Audit is performed and completed. Any overbilling discovered in the course of the
28 CAM Audit shall be refunded to Tenant (together with interest at the Legal Rate) within thirty (30)
29 days following the date that Landlord is provided with a copy of Tenant's CAM Audit (the "Refund
30 Date"). In the event the overbilling of charges exceeds three percent (3%) of the sum previously
31 billed to Tenant by Landlord, Landlord shall also reimburse Tenant for all reasonable expenses of
32 the CAM Audit by the Refund Date. On or before the Refund Date, Landlord shall: (a) refund any
33 overbilled amount (together with interest at the Legal Rate) and the CAM Audit expenses, if
34 applicable; or (b) provide Tenant with (i) the reasons for any disagreement by Landlord with the
35 findings of Tenant's CAM Audit, (ii) together with any supporting documentation, and
36 (iii) accompanied by cash payment in the amount of any undisputed overbilling. In the event
37 Landlord fails to respond by either of the foregoing methods, the CAM Audit shall be deemed
38 conclusive and Tenant may, in addition to its other remedies, deduct the full amount of such
39 overbilling from any subsequent Rents coming due under this Lease. In the event Landlord disputes
40 Tenant's CAM Audit and provides the reasons and documentation supporting such claim, the
41 parties shall diligently, within ten (10) business days thereafter, attempt to resolve their differences,
42 and, in failing to do so, the matter may be submitted by either party for Arbitration under the
43 provisions of Section 20.2.3 hereof. In the event Landlord fails to pay Tenant the overbilled amount
44 (together with interest at the Legal Rate) as well as CAM Audit expenses, if applicable, by the
45 Refund Date, or within thirty (30) days of a final arbitration/court order if Landlord disputes the

1 CAM Audit of Tenant's billing, Tenant shall have the right to deduct all unpaid amounts from the
2 Rent coming due from Tenant until Tenant is fully paid.

3 7.4.8. Third Party Audit. If a third party, including, but not limited to, another tenant
4 or occupant in the Shopping Center, audits Landlord's records pertaining to Common Area Charges
5 ("Third Party Audit"), and if any of the results of the Third Party Audit indicate that Tenant has
6 been overcharged for Common Area Charges, Landlord shall promptly refund the total amount of
7 the overcharge to Tenant within thirty (30) days of the conclusion of the Third Party Audit, together
8 with a statement evidencing the reasons for and the calculation of the overcharge. If any of the
9 results of the Third Party Audit indicate that adjustments need to be made to future Annual
10 Statements and to Common Area Charges payable by Tenant in the future, Landlord shall promptly
11 make such adjustments. All Annual Statements delivered to Tenant shall indicate if a Third Party
12 Audit had been conducted on Common Area Charges to which each Annual Statement relates
13 together with a certification of whether overcharges were revealed, and, if so, the amount thereof.

14 8. REAL ESTATE TAXES AND ASSESSMENTS

15 8.1. **Obligation to Pay.**

16 Landlord shall pay all real property taxes and assessments ("Tax" or "Taxes") levied by a
17 government agency against the Shopping Center or smaller Tax parcel which includes the Store (the
18 "Tax Bill") on or before the last day that such Taxes may be paid without penalty, commission,
19 interest or other charge, or such earlier date as will secure the maximum discount, rebate or other
20 reduction of Taxes as may be available. A "Tax parcel" is a single parcel of land for which the
21 relevant taxing authority renders a separate billing. For purposes of this Lease, Taxes shall include
22 "New Taxes" enacted on a "Substitution Basis" as those terms are herein defined. "New Taxes" are
23 those that are enacted following an alteration in the method of real property taxation prevailing as of
24 the Effective Date ("present tax system") that occurs subsequent to the Effective Date, subject,
25 however, to the limitations hereinafter set forth. An "alteration" in the present tax system shall
26 refer to an event whereby (a) the present tax system is abolished, or (b) the present real property
27 taxes or assessments are no longer increased or are reduced or future increases in such taxes or
28 assessments are limited by law. If New Taxes are enacted which are expressly declared by the taxing
29 authority, taxing legislation or legislative history to have been imposed as a result of the above
30 described alteration in the present tax system and in substitution thereof, then such New Taxes
31 based upon such declaration shall be referred to as enacted on a "Substitution Basis" and shall be
32 considered a part of the Taxes payable by Tenant pursuant to this Article 8. The real estate taxes
33 under the present tax system (to the extent they continue to exist after the alteration in the present
34 tax system) plus the New Taxes enacted on a Substitution Basis shall collectively be included in the
35 term "Taxes."

36 By way of example, the following New Taxes shall be considered a part of Taxes provided
37 they are enacted on a Substitution Basis:

- 38 a. a tax allocable to or measured by the area of the Store;
- 39 b. a tax imposed upon or measured by the amount of the rental receipts
40 received by Landlord provided further that (i) the same are in the nature of a gross receipts tax and
41 are not an income or profit tax of any kind, (ii) shall be computed as if the Store was the only

property owned by Landlord, and (iii) such taxes shall be computed strictly upon the annual Minimum Rent and (if taxable) the additional Rent payable by Tenant under this Lease and not an average of Landlord's rental for the Shopping Center as a whole. For purposes of this Article 8, a "gross receipts tax" is one which is imposed upon the gross amount of receipts without any deduction, exclusion or subtraction for any expenses or costs whatsoever and is payable whether or not the taxpayer experiences a profit or a loss and whether or not there remains any taxable income enjoyed by the taxpayer after such deduction, exclusion, expense or cost. "Income" or "profit" taxes are those which are a tax on profit or on taxable income which remains after the subtraction of certain exclusions, deductions, expense or costs allowed by the tax statute or law. The amount of such taxes are dependent upon whether, and to what extent, the taxpayer experiences a profit or loss or enjoys remaining taxable income.

8.2. Tenant's Pro Rata Share.

8.2.1. Payment of Tenant's Pro Rata Share. In addition to the Minimum Rent herein reserved, Tenant shall reimburse Landlord for Tenant's Pro Rata Share (calculated in accordance with Section 8.2.3 hereafter) of the Tax Bill, applicable to each Tax Year or part thereof which falls within the Term. Tenant's payment shall be made within thirty (30) days after receipt by Tenant of (a) a copy of Landlord's Tax Bill, and (b) a statement in writing from Landlord setting forth the amount of Tenant's Pro Rata Share of the Tax Bill and the method of calculation thereof. Tenant's schedule of payments shall be concurrent with Landlord's obligations for payment to the taxing authority; however, Tenant shall have no obligation to pay Tenant's Pro Rata Share of the Tax Bill until Landlord has supplied Tenant the information specified in clauses (a) and (b) above in this Section 8.2.1. Furthermore, Tenant shall not be obligated to pay Tenant's Pro Rata Share of the Tax Bill more than twenty (20) days prior to the last date the Tax Bill is payable without penalty, interest or other fee. In the event Landlord fails to pay the Taxes and provide Tenant with evidence of payment, Tenant may deduct from Rent coming due under this Lease an amount equal to the sum of delinquent Taxes for the Building or at Tenant's option, the entire Shopping Center, and at Tenant's option, pay such amount of delinquent Taxes for the Building or at Tenant's option, the entire Shopping Center to the applicable taxing authority. Should Tenant elect to make the payment of delinquent Taxes, and thereafter Landlord makes such payment to the taxing authority as well, Tenant shall nonetheless be deemed to have fulfilled its payment obligation and the responsibility for obtaining a refund from the taxing authority shall be that of Landlord.

8.2.2. Installments. In the event of tax assessments which may be paid in installments by reason of bonding or otherwise, Landlord shall elect to make payment based upon the longest period of installment payments permitted by the appropriate taxing authority. Tenant shall bear no liability as to installments due following the expiration or earlier termination of this Lease except for prorated amounts due prior to the expiration or earlier termination of this Lease. Tenant shall not be responsible for any interest, late charge or other penalty resulting from Landlord's late payment or non-payment of Taxes, nor any administrative or other charge which may be claimed by Landlord, unless such late payment or non-payment of Taxes is due to Tenant's failure to pay Tenant's Pro Rata Share of Taxes in a timely manner.

8.2.3. Calculation of Tenant's Pro Rata Share. Tenant's Pro Rata Share of the Tax Bill is defined as that fraction of Taxes the numerator of which is the Leasable Floor Area in the Store and the denominator of which is the Leasable Floor Area in the Tax parcel of which the Store is a part; provided, however, in no event shall the denominator of said fraction be less than the

1 Minimum Leasable Floor Area as set forth in Section 1.3.2(b). Such computation shall be made
2 separately for each Tax Year and shall be set forth in reasonable detail as a part of Landlord's
3 statement to Tenant pursuant to Section 7.4.5. The Tax parcel in which the Store is located shall
4 not contain more Common Areas than is consistent with the overall Common Area square footage
5 to building area ratio of the Shopping Center.

6 8.2.4. Partial Year. Should Tenant be in occupancy during only a portion of the first or
7 final Tax Years, Tenant shall be responsible to pay Landlord only for a ratable portion of its Tax
8 obligation, based on the portion of such Tax Year included in the Term of this Lease.

9 8.2.5. Tenant Audit. Upon at least ten (10) days' prior notice, Tenant shall have the
10 right to audit Landlord's or Landlord's agent's records pertaining to Taxes with a representative of
11 Tenant's choice (but not a contingency fee auditor). Landlord shall retain its records regarding
12 Taxes for a period of at least two (2) years following the final billing for each calendar year in
13 question. At any time during such two (2) year period, Tenant may conduct its audit. Any
14 overbilling discovered in the course of such audit shall be refunded to Tenant with interest thereon
15 at the Legal Rate within thirty (30) days of Landlord's receipt of a copy of the audit and Tenant's
16 billing ("Tax Refund Date"). In the event Landlord's overstatement of Tax charges to Tenant
17 exceeds three percent (3%) of the sum previously billed to Tenant by Landlord, Landlord shall
18 reimburse Tenant for all of Tenant's reasonable audit expenses by the Tax Refund Date. In the
19 event Landlord fails to pay Tenant the overbilled amount (together with interest at the Legal Rate),
20 and audit costs, if applicable, by the Tax Refund Date, Tenant shall have the right to deduct all
21 unpaid amounts from Rent coming due from Tenant until Tenant is fully paid.

22 8.3. Exclusions.

23 There shall be excluded from the Taxes to which Tenant contributes any of the following:
24 (a) any increase in Taxes caused by construction in the Shopping Center commenced subsequent to
25 the Effective Date of this Lease until such time as such newly constructed space constitutes
26 Leasable Floor Area; (b) any increase in Taxes caused by a Change of Ownership Assessment as
27 hereinafter defined (except that Landlord may include in Taxes an increase in Taxes caused by a
28 Change of Ownership Assessment that occurs no more than once every five (5) full Lease Years
29 during the Term); (c) income, excess profits, gross profits, estate, single business, inheritance,
30 succession, transfer, franchise, capital or other tax or assessment upon Landlord or the Rent payable
31 under this Lease; (d) bonds and/or assessments which have been or, subsequent to the date hereof
32 are, levied for the purpose of funding the costs of construction for Landlord's development or
33 redevelopment of, all or any portion of the Shopping Center or capital improvements constructed
34 therein or with respect thereto, or any Off-Site Improvements; (e) any taxes or assessments related
35 to the usage (as contrasted with the construction or installation) of any Utilities to the Store or the
36 Shopping Center, such as water or sewer charges included in the Tax Bill; (f) any special
37 (non-general) assessments which are assessed for the benefit of improvements to the Shopping
38 Center rather than for the general community at large; (g) tax increment financing fees, taxes or
39 assessments; and (h) any Taxes assessed against land in the Shopping Center that has not been fully
40 developed as buildings or Common Areas. A "Change of Ownership Assessment" is any increase in
41 the tax assessment of the Shopping Center or Tax parcel (as herein defined) resulting from a change
42 in the ownership or title holding of any property within the Tax parcel under the provisions of any
43 real property tax statute for the state in which the property is located, such as, by way of example,
44 California Revenue and Taxation Code section 60 et. seq. The relevant concepts of California

Revenue and Taxation Code Section 60, et seq. are that: (a) the assessed value of the property is capped (and therefore real property taxes are capped), and (b) upon a change of ownership the value of the property is reassessed to the actual market value of the property notwithstanding the cap.

8.4. Rebates.

Any rebates, refunds, or abatements of Taxes received by Landlord subsequent to Tenant's payment of its Pro Rata Share of the Tax Bill, including, but not limited to, tax increment financing rebates or subsidies received by Landlord from the applicable taxing authority, shall be refunded to Tenant on a ratable basis within thirty (30) days of receipt by Landlord. Any such rebate, refund or abatement realized by Landlord prior to payment by Tenant shall result in an immediate reduction in Tenant's Pro Rata Share of the Tax Bill then due to Landlord.

8.5. Contest.

Tenant shall have such rights to contest the validity or amount of Taxes in the Tax Bill in its own name or in the name of Landlord, in either case with Landlord's full cooperation. In conjunction with any such contest, Landlord shall make available to Tenant all information as Tenant may reasonably request related to a Tax contest, including information required by the Assessor for the taxing authority. Landlord shall provide Tenant with government notices of assessment (or reassessment) within ten (10) business days after Landlord's receipt of such notices. If Tenant declines to contest Taxes, and if Landlord chooses to do so, Landlord shall notify Tenant immediately upon Landlord's filing of any contest. The term "contest" as used in this Section 8.5 means contest, appeal, abatement or other proceeding prescribed by applicable law to obtain a tax reduction or tax refund, howsoever denominated. The net benefit of any contest, after the payment of expenses thereof, shall inure to the benefit of Tenant and all other occupants of the parcel(s) included in the Tax Bill in the same proportions as their respective obligations for Taxes to which the contest relates.

8.6. Separate Assessment.

Notwithstanding Section 8.2.1, Tenant may at its option apply for a separate Tax assessment of the Store, which may also include an allocated portion of Common Areas based on the parking ratio for Tenant's use as required by the governing jurisdiction in which the Store is located. In the event Tenant obtains a separate assessment for the Store, Tenant shall have the right to pay the Taxes thereon directly to the taxing authority in lieu of payment pursuant to Section 8.2.1. If Tenant cannot obtain a separate assessment for the Store, then, at Tenant's option, Tenant's Tax obligation related to the Store shall be determined by reference to the county assessor's work sheets or other appraisal information in the assessor's office reflecting the assessed value of the Store and Tenant shall make payment of Taxes for the Store directly to the taxing authority. If Tenant makes payment of Taxes for the Store directly to the taxing authority pursuant to this Section 8.6, Tenant shall pay Tenant's Pro Rata Share of Taxes on the Common Areas to Landlord pursuant to Section 8.2.1 except as to any part of the Common Area separately assessed to any other occupant. Landlord shall make a fair and reasonable allocation of Taxes between the Common Areas of the Shopping Center and the remainder of the Shopping Center, using any data available from the county assessor's office or other pertinent information in the absence thereof.

9. INSURANCE

9.1. Casualty Insurance.

9.1.1. Special Form Policy. A policy of fire and Casualty Insurance at least as broad as the form of the Insurance Services Offices' Causes of Loss Special Form ("Special Form Policy"). The term "Casualty Insurance" means insurance covering damage to tangible real and personal property.

9.1.2. Landlord Insurance. Commencing on the Delivery Date, as defined in Article 2 hereof, and at all times during the Term, Landlord shall maintain a Special Form Policy insuring against damage to the Shopping Center, including Tenant's leasehold improvements and alterations in the Store, but excluding Tenant's trade fixtures, trade equipment and other personal property in the Store. Further, upon completion of construction of the Shopping Center (exclusive of pads, Outparcels and any phase of development to be completed at a later date) the Special Form Policy shall be obtained with an owner's rating for the Shopping Center based upon a completed project as opposed to a property under development. All Special Form Policy(ies) shall be in the amount of the full replacement cost of the insured improvements, including demolition cost less a deductible of not less than Ten Thousand Dollars (\$10,000). Landlord shall, on the Delivery Date and thereafter upon request of Tenant, provide Tenant with a certificate of such insurance coverage from an insurer licensed to do business within the state in which the Store is located, and which insurer is rated at least A- and VII in Best's Insurance Reports, or equivalent.

9.1.3. Intentionally Deleted.

9.1.4. Tenant's Pro Rata Share.

(a) Tenant shall be responsible to reimburse Landlord for Tenant's Pro Rata Share of the premium for the Special Form Policy described in Section 9.1.1 above, excluding (i) any management or administrative fees, and (ii) earthquake or flood insurance. Tenant shall pay Tenant's Pro Rata Share within thirty (30) days after Tenant's receipt of a statement, certified by an authorized agent of Landlord, indicating the total cost of the premium applicable to the Shopping Center, accompanied by a copy of the premium billing ("Insurance Bill") and the declaration page from Landlord's policy, together with such further information as Tenant may reasonably require to substantiate the amount of such premium and the manner in which the premium and Tenant's Pro Rata Share thereof have been calculated ("Landlord Special Form Information"). Notwithstanding the foregoing, Tenant's schedule of payments shall be concurrent with Landlord's obligations for payment of the premium for the Special Form Policy and Tenant shall not be obligated to pay Tenant's Pro Rata Share of the Insurance Bill more than twenty (20) days prior to the date said premium is due. If Landlord covers the Store with a Special Form Policy which includes property other than the Shopping Center, Landlord shall provide a breakdown indicating the premium portion allocable to the Shopping Center. Tenant's Pro Rata Share of the Special Form Policy premium shall be that fraction of the total premium the numerator of which is the Leasable Floor Area of the Store and the denominator of which is the Leasable Floor Area of the applicable portion of the Shopping Center which includes the Store for which the Insurance Bill was issued by the insurer. In no event, however, shall the denominator of the fraction stated in the preceding sentence be less than the Minimum Leasable Floor Area as set forth in Section 1.3.2(c). In no event shall Tenant's payment to Landlord of Tenant's Pro Rata Share of the Special Form Policy premium exceed that amount which Tenant would have paid for

1 the same or comparable coverage for the Store had Tenant obtained such insurance from its own
2 carrier. Tenant shall not be responsible for any interest, late charge or other penalty resulting from
3 Landlord's late payment or nonpayment of the Special Form Policy premium.

4 (b) In the event Landlord fails to provide the Landlord Special Form
5 Information as required in Section 9.1.4(a) above, and thereafter Landlord fails to provide such
6 information within ten (10) days following Landlord's receipt of written request therefor, Tenant may
7 obtain the same or comparable insurance coverage and deduct from Rent coming due under this Lease
8 an amount equal to the amount of Tenant's Pro Rata Share of the Special Form Policy premium,
9 which sum shall be repaid to Landlord (less the cost of any insurance Tenant carried before Landlord
10 provided the evidence of coverage) upon Landlord's delivery to Tenant of the Landlord Special Form
11 Information. Further, if Tenant receives a notice of cancellation of the Special Form Policy or other
12 evidence indicating that Landlord has failed to maintain the Special Form Policy on the Store, Tenant
13 shall not be responsible for reimbursement under Section 9.1.4(a). In the event Landlord fails to
14 maintain the Special Form Policy on the Store and it is not possible for Tenant to separately insure the
15 Store, Tenant may obtain the Special Form Policy for the entire Shopping Center and deduct all
16 premium amounts related thereto from Rent coming due.

17 (c) Landlord or Landlord's agent shall retain full and detailed records of all
18 costs incurred by Landlord for the Special Form Policy. Copies of said records shall be made available
19 to Tenant upon request and Tenant shall have the right to audit all of such records, including the
20 Special Form Policy, upon ten (10) days' prior notice, with a representative of Tenant's choice (but not
21 a contingency fee auditor). Any overbilling discovered in the course of Tenant's audit shall be
22 refunded to Tenant, together with interest at the Legal Rate, within thirty (30) days of Landlord's
23 receipt of a copy of the audit and Tenant's billing ("Insurance Refund Date"). In the event the
24 overstatement of charges for Tenant's Pro Rata Share of the Special Form Policy premium exceeds
25 three percent (3%) of the sum previously billed to Tenant by Landlord, Landlord shall reimburse
26 Tenant for all reasonable expenses of such audit. In the event Landlord fails to pay Tenant the
27 overbilled amount, together with interest at the Legal Rate and the audit costs, if applicable, by the
28 Insurance Refund Date, Tenant shall have the right to deduct all such amounts from Rent coming due
29 from Tenant until Tenant is fully paid. Landlord shall retain its records regarding all insurance
30 premiums for insurance required to be carried by Landlord under this Lease for a period of at least two
31 (2) years following the final billing for the calendar year in question. At any time during such two (2)
32 year period, Tenant may conduct its audit.

33 9.2. Liability Insurance.

34 9.2.1. Tenant. Tenant shall, at its sole cost and expense, commencing on the Delivery
35 Date, and at all times during the Term, keep in force a policy or policies of commercial general
36 liability insurance, or an endorsement on a blanket commercial general liability insurance policy or
37 policies, naming Landlord as an additional insured, protecting against (except to the extent caused
38 by the negligence or willful act of Landlord or its agents, contractors, employees or representatives
39 and not waived per Section 9.4 hereof) any and all claims and liabilities arising out of injuries to or
40 the death of any persons in the Store, or for property damage in the Store, in the minimum amount
41 of FIVE MILLION DOLLARS (\$5,000,000) combined single limit for any one occurrence.
42 Tenant's policy or policies shall contain a cross-liability endorsement, and shall be with an insurer
43 which is rated at least A- and VII in Best's Insurance Reports, or equivalent.

1 **9.2.2. Landlord.** Commencing on the Delivery Date, and at all times during the Term,
2 Landlord shall (as a Common Area Charge payable by Tenant for any period during the Term that
3 follows the Commencement Date) at all times keep (or cause to be kept) in force a policy or policies
4 of commercial general liability insurance for the Common Areas, or an endorsement on a blanket
5 commercial general liability insurance policy or policies, naming Tenant as an additional insured,
6 protecting against (except to the extent caused by the negligence or willful act of Tenant or its
7 agents, contractors, employees or representatives and not waived per Section 9.4 hereof) any and all
8 claims and liabilities arising out of injuries to or the death of any persons in the Common Area or
9 for property damage in the Common Area, in the minimum amount of FIVE MILLION
10 DOLLARS (\$5,000,000) combined single limit for any one occurrence with a deductible not less
11 than Ten Thousand Dollars (\$10,000). Said policy or policies shall include contractual liability
12 insurance recognizing the liability assumed by Landlord in Section 14.2, contain a cross-liability
13 endorsement, and shall be with an insurer which is rated at least A- and VII in Best's Insurance
14 Reports, or equivalent. Tenant's obligation to pay Tenant's Pro Rata Share of Landlord's insurance
15 (as part of Common Area Charges) shall be conditioned upon Landlord obtaining no fewer than
16 three (3) competitive bids for the liability insurance covering the Common Areas during each Lease
17 Year of the Term.

18 **9.3. Evidence of Insurance.**

19 Landlord and Tenant agree to deliver to the other certificates of insurance evidencing the
20 existence in force of the policies of insurance described in Sections 9.1.1, 9.2.1 and 9.2.2, together
21 with endorsements showing that the parties have been named as additional insureds. Each of the
22 certificates shall provide that such insurance shall not be canceled or materially amended unless at
23 least twenty (20) days' prior written notice of such cancellation or amendment is given to the party
24 designated on such certificate as the holder thereof. Landlord's certificate related to Section 9.2.2
25 shall provide a breakdown of the premium cost related to the Common Area only as distinguished
26 from the buildings and the remainder of the Shopping Center.

27 **9.4. Waiver of Subrogation.**

28 On and after the Delivery Date and throughout the Term, Landlord and Tenant hereby
29 waive and release any and all right to maintain a direct action to recover against the other, including
30 the employees, officers, directors and agents of Landlord and Tenant, for damages and any and all
31 loss (including loss of Rent) to any property located within the Store or the Shopping Center, which
32 damage or loss occurs during a period which is covered or could be covered by a Special Form
33 Policy required under this Lease, and which arises out of the other party's negligence or otherwise
34 tortious acts or omissions, but only to the extent that the cost of repairing such damage or loss is
35 covered by insurance required under this Lease, or would have been covered by insurance proceeds
36 payable under any policy required to be maintained under this Lease, but not so maintained. Each
37 policy of such insurance shall either, (a) contain a waiver of subrogation by the insurer against
38 Tenant and Landlord, as the case may be, or (b) include the name of Landlord or Tenant, as the case
39 may be, as an additional insured, but not as a party to whom any loss shall be made payable. In the
40 event a party is unable to obtain such a waiver, it shall immediately notify the other of this inability.
41 In the absence of such notification, each party shall be deemed to have obtained such waiver of
42 subrogation. Further, Tenant's agreement to indemnify Landlord, and Landlord's agreement to
43 indemnify Tenant under this Lease, are not intended and shall not relieve any insurance carrier of its
44 obligations under policies required to be carried by Tenant or Landlord pursuant to the provisions

of this Lease, to the extent such policies cover, or if carried would have covered the matters subject to the parties' respective indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. This mutual waiver is in addition to any other waiver or release contained in this Lease. The provisions of this Section 9.4 shall not apply to Landlord's obligation to repair and replace any portion of the Store and Tenant's merchandise damaged by roof leaks as specified in Section 11.2.1.

9.5. Tenant's Right to Self-Insure.

Notwithstanding anything to the contrary herein contained, provided the Tenant described in Section 1.2.2 (the "Signatory Tenant") maintains a net worth of at least Fifty Million Dollars (\$50,000,000), then the Signatory Tenant shall have the option, either alone or in conjunction with any parent, subsidiaries or affiliates of Signatory Tenant, to maintain self-insurance and/or provide or maintain any insurance required by Signatory Tenant under this Lease under blanket and/or broad form insurance policies maintained by Signatory Tenant or by any such parent, subsidiaries or affiliates of Signatory Tenant, provided the same does not thereby decrease the insurance coverage or limits set forth in this Lease. Any self-insurance shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Lease, including, without limitation, a full waiver of subrogation. If Signatory Tenant elects to so self-insure, then with respect to any claims which may result from incidents occurring during the Lease Term, such self-insurance obligation shall survive the expiration or earlier termination of this Lease to the same extent as the insurance required would survive.

10. UTILITIES SERVICES

Landlord agrees to make available for Tenant's use at the Store the Utilities and Utility lines existing as of the Effective Date. Tenant agrees to pay all use charges for all such Utilities provided to the Store commencing on the Delivery Date and throughout the Term. If Landlord or an affiliated company of Landlord provides some or all of such Utility services, Tenant's obligation to pay for such services shall be the lesser of: (a) commercially reasonable rates charged by regional or local Utility providers; or (b) the same rate paid by Landlord for the same service without profit. At all times during the Term, Tenant shall have the right to contract with any third party of Tenant's choice to provide some or all of the Utility services for the Store. Tenant shall, at Tenant's sole cost and expense, pay for all Utility hookup, connection or impact fees and permits. However, if the Store does not have a separate water meter, Landlord shall provide to Tenant the calculation of Tenant's water usage as prepared by or compiled by the Utility agency which provides water service so as to calculate Tenant's share of the sewer service charges without consideration of the use of water by any other tenant in the Shopping Center. Landlord shall separate out all Utilities and install separate meters for the Store. The Utilities shall be registered by Tenant in Tenant's name. In the event that Landlord is unable to install separate meters, Landlord shall install submeters and shall cause each submeter to be read on a monthly basis, billing Tenant for its proper share. Each such bill shall be accompanied by such supporting information as Tenant may reasonably request and shall be payable within thirty (30) days after Tenant's receipt of the bill (with Tenant to have the right to check the submeters at any time). However, Landlord shall permit Tenant to read each submeter and to bill Landlord an amount equal to the charges not attributable to Tenant, which sum shall be paid by Landlord to Tenant within thirty (30) days after Landlord's receipt of each bill. No administrative or management charge or fee shall be payable by Tenant related to any Utility charges emanating from a meter used in common by Tenant with any other party. Further, in the event of a

meter-sharing arrangement, Tenant may require that the charges emanating from any common meter be allocated, by a reputable Utility engineer reasonably approved by Tenant, among the common users thereof in accordance with usage. Neither party shall have the right to charge the other party any administrative, service or other fee in connection with the reading of the submeters. Tenant shall be entitled to collect, and Landlord shall cooperate with Tenant in collecting, any rebate which is made available by a Utility company for the installation of energy efficient lighting. All Utilities serving the Common Areas shall be separately metered.

11. MAINTENANCE/REPAIR/ENVIRONMENTAL COMPLIANCE

11.1. Maintenance and Repair by Tenant.

Except for Landlord's interior maintenance obligations under Section 11.2, and subject to the terms of Articles 21 and 22, Tenant shall maintain the interior of the Store including any concealed wiring, plumbing, pipes, conduits, Utility systems and lines installed by Tenant in the Store and including any concealed sprinkler system installed by Tenant which exclusively serves the Store, plate glass and exterior doors of the Store, in good repair and condition, reasonable wear and tear excepted. Tenant shall, at its expense, perform or cause to be performed all routine maintenance and servicing of the heating, ventilating, and air conditioning system serving the Store (the "HVAC") in accordance with the terms of a customary air conditioning service contract as performed by reputable service companies in the state in which the Shopping Center is located. However, any repairs to the HVAC beyond routine maintenance and servicing shall be the responsibility of Landlord, including, without limitation, any replacements thereof (other than replacements of noncapital components, such as air filters). A "replacement" as that term is used in this Section 11.1 shall mean that the compressor, condenser, motors, the chiller, duct work or heating/cooling coils must be removed and replaced by new equipment, in the reasonable judgment of Tenant's HVAC consultant. Landlord shall provide to Tenant prior to the Commencement Date a valid assignment, in form satisfactory to Tenant, of all warranties which are available from subcontractors, suppliers, manufacturers, and materialmen for construction of that portion of the Store which is part of Landlord's Work, but which will be Tenant's maintenance responsibility under this Section 11.1.

11.2. Maintenance and Repair by Landlord.

11.2.1. (a) Landlord's Obligations. Landlord shall, at its sole cost and expense (not passed through to Tenant as a Common Area Charge), be responsible for correcting all defects in Landlord's (or Landlord's contractor's) construction of the Store. Further, Landlord, at Landlord's sole cost and expense (not passed through to Tenant as a Common Area Charge) shall maintain, repair and replace, in good and slightly condition consistent with first class shopping centers in the county in which the Store is located, the foundation, floor slab, flooring (to the extent damaged by slab movement or roof leaking), roof (including all structural elements and waterproofing membrane), roofing (including the interior ceiling, walls, floors and merchandise damaged from leaking), roof drainage system, including gutters and downspouts, exterior walls, storefronts (including canopy), all structural portions of the Store, all concealed wiring and plumbing, pipes, sprinkler system (including the monitoring and testing thereof), conduits and Utility systems and lines inside the Store, including in the exterior walls and interior walls of the Store (except those installed by Tenant), and Landlord shall maintain and repair all such wiring, plumbing, pipes, conduits and Utility systems and lines outside the Store, whether exclusively serving the Store or not,

as well as all portions of the Store which are not specifically Tenant's obligation under Section 11.1 above. Landlord shall perform repairs and replacements to the HVAC as required by Section 11.1 hereof. Subject to the Waiver of Subrogation provisions of Section 9.4, Landlord shall maintain and repair any damage or defects in any part of the Store caused by the acts or omissions of Landlord, its agents or contractors regardless of which party has the maintenance obligation under this Article 11.

(b) Notice for Repair. Tenant shall give Landlord notice of the need for those repairs as may be required under the terms of Section 11.2.1(a) above, and Landlord shall proceed forthwith to effect the necessary repairs with reasonable diligence, but in no event later than thirty (30) days after having received Tenant's notice, provided if the nature of the repair is such that it cannot reasonably be completed within such thirty (30) day period, and upon notice to Tenant, Landlord shall have such additional time as is reasonably necessary to complete the repair, provided Landlord commences the repairs within the initial thirty (30) day period and completes the repairs with diligence and continuity. If Landlord fails to repair or maintain the Store within the applicable time period set forth above, Tenant may, in addition to Tenant's other remedies available at law, in equity or under the terms of this Lease, perform the repairs, maintenance or replacements and deduct the cost thereof from the subsequent Rent payment(s) thereafter coming due. In the event of an emergency, Tenant may undertake immediate repairs (without the need for advance notice) which are Landlord's responsibility. If Landlord shall fail to reimburse Tenant for the repair costs incurred by Tenant within thirty (30) days after receipt of Tenant's billing, Tenant may deduct the cost from the subsequent installments of Rent payment(s) thereafter coming due.

11.2.2. Earth Movement. Landlord shall perform, at its sole cost and expense, without reimbursement from Tenant, whether directly or through Reimbursements, any maintenance, repairs, alterations or replacements that shall be required by governmental authority, or insurance requirements, or by the ordinary exercise of due care at any time during the Term as a result of movement or threatened movement or settlement affecting the land under (a) the Store, or (b) any buildings within the Shopping Center, or (c) any portion of the Common Areas in the Shopping Center.

11.2.3. First Year Repairs. Notwithstanding the foregoing provisions of Sections 11.1 and 11.2.1 above, Landlord shall make all repairs, alterations and replacements of Landlord's Work (other than those required as the result of repairs, alterations, replacements, other improvements or installations by Tenant or any subtenant or concessionaire of Tenant or the agents of any of them) which may become necessary for any cause except for Tenant's negligence or willful acts or omissions on or after the Delivery Date and during the first twelve (12) months following the Delivery Date.

11.2.4. Shopping Center Maintenance. Landlord shall, at no cost or expense to Tenant, maintain and repair (or cause to be maintained and repaired) all buildings within the Shopping Center in good condition, consistent with the standards for first class shopping centers in the county in which the Shopping Center is located, including the painting of exterior walls of the buildings on a periodic basis.

11.3. Repairs Required by Governmental Authorities.

11.3.1. Store. After completion of Landlord's Construction Obligations, any repairs, alterations or other improvements to the Store required by governmental authority or insurance

1 rating bureau having jurisdiction because of the particular type of retail use of the Store by Tenant
2 or because of Tenant's Work or other alterations Tenant makes to the Store, shall be performed by
3 Tenant at its sole cost and expense. Any such work, however, which is required to the Shopping
4 Center in general, or to all similar buildings or uses in the area of the Shopping Center, shall be done
5 at the sole cost and expense of Landlord.

6 **11.3.2. Shopping Center.** Landlord warrants that the construction and the proposed use
7 of the Shopping Center's Common Areas and buildings, including Landlord's Construction
8 Obligations (but excluding Tenant's Work and excluding Tenant's particular type or manner of
9 operations of the Store, and excluding specific alterations or improvements Tenant makes to the
10 Store), for retail purposes shall comply with all laws, ordinances, regulations and standards of
11 governmental authorities and insurance rating bureaus having jurisdiction, including, without
12 limitation, Environmental Regulations, as hereinafter defined, and zoning and building codes (all of
13 the foregoing being hereinafter collectively referred to as the "Requirements").

14 **11.3.3. Non-Compliance.** Landlord agrees that if, at any time on or after the Delivery
15 Date, any governmental authorities or insurance rating bureau having jurisdiction shall determine
16 that Landlord's Work to the Store or that the Shopping Center was constructed, or is being
17 operated, in violation of, any Requirement and shall request compliance, with any Requirement or,
18 absent such a request from the governmental authority, if the Store or the Shopping Center is
19 otherwise not in compliance with or is in violation of any Requirement (and provided the violation
20 is not due to Tenant's Work), and if failure to comply shall in any way adversely affect the use of the
21 Store by Tenant or adversely affect any other rights of Tenant under this Lease or impose any
22 obligation upon Tenant not contained in this Lease or shall increase the obligation of Tenant (such
23 as, by way of example, increased insurance costs), Landlord shall, upon receipt of notice thereof, at
24 Landlord's sole cost and expense, cause such repairs, alterations or other work to be done or action
25 to be taken so as to bring about the compliance, or to effect the Requirement requested. If by
26 reason of such failure of compliance or by reason of such repairs, alterations or other work done by
27 Landlord, Tenant shall be deprived of the use or enjoyment of the whole or any part of the Store or
28 the Common Areas, Rent shall abate and in lieu thereof Tenant shall pay Substitute Rent on a per
29 diem basis until compliance with the Requirement is completed.

30 **11.3.4. Zoning.** If at any time the applicable zoning shall not permit the retail sale in the
31 Store of soft goods merchandise customarily sold in Tenant's other stores, Tenant may, without
32 waiving any other rights Tenant may have on account thereof, terminate this Lease by giving
33 Landlord ninety (90) days' prior written notice thereof. If Landlord obtains a change in the zoning
34 to permit the retail sale of the foregoing retail merchandise prior to the expiration of the ninety (90)
35 day period, Tenant's termination shall be of no force or effect.

36 **11.4. Hazardous Material.**

37 **11.4.1. Definition.** As used herein, the term "Hazardous Material" or "Hazardous
38 Materials" shall mean (a) any waste, material or substance (whether in the form of a liquid, a solid, or
39 a gas and whether or not air-borne), which is or is deemed by governmental authority to be a
40 pollutant or a contaminant, or which is or is deemed by governmental authority to be hazardous,
41 toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or which presents a risk, to
42 public health or to the environment, or which is or may become regulated by or under the authority
43 of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes

1 or other governmental restrictions, guidelines or requirements, any amendments or successor(s)
2 thereto, replacements thereof or publications promulgated pursuant thereto ("Environmental
3 Regulations"); (b) petroleum, including crude oil or any fraction thereof; (c) any asbestos or asbestos
4 containing material, (d) any polychlorinated biphenyl; (e) any radioactive material; (f) radon gas; and
5 (g) urea formaldehyde.

6 **11.4.2. Landlord's Warranties and Representations.** Landlord expressly represents and
7 warrants that:

8 (a) To the best of Landlord's knowledge, and except as disclosed to Tenant in
9 the Environmental Report referred to in clause (d) of the Article 2 Delivery Date definition, no escape,
10 seepage, leakage, spillage, discharge, emission, release or disposal of Hazardous Material has occurred
11 within the Store or the Shopping Center to date, and the Store and the Shopping Center, as well as the
12 soil, groundwater and soil vapor within or under the Store and the Shopping Center, are free of
13 Hazardous Material as of the Effective Date, and will be free of Hazardous Material as of the Delivery
14 Date.

15 (b) Landlord shall not use or knowingly permit any Hazardous Materials to be
16 used in the construction of the Store or in connection with the installation of any Utility system or
17 other facility which serves the Store (whether located in the Store or in other portions of the Shopping
18 Center) including by way of example, but not by limitation, the interior of any partition or demising
19 walls, whether structural or otherwise, columns or beams, and all Utility lines, shafts and ducts, HVAC
20 or other equipment. Such Utility systems and other facilities as hereinabove described, whether located
21 in the Store or other portions of the Building or the Shopping Center, shall be collectively referred to
22 as "Support Systems."

23 **11.4.3. Landlord's Responsibilities Prior to the Delivery Date to Tenant.** Prior to the
24 Delivery Date, Landlord shall cause the Store to be inspected, at its sole cost and expense, by a
25 licensed environmental consultant who shall issue a report and certificate relating to the Hazardous
26 Materials content of the Store, including all Support Systems, as described above, wherever located.
27 Landlord shall furnish to Tenant a copy of the consultant's report together with a clearance
28 certificate or other document of release or approval from the consultant, and if applicable from
29 other applicable governmental authority such as health department or Environmental Protection
30 Agency (a "Clearance Certificate") certifying that the Store and Support Systems are free of
31 Hazardous Materials. If Hazardous Materials are found to be present, then Landlord, at its sole cost
32 and expense, shall cause such Hazardous Materials to be removed from the Store or such other
33 property of Landlord (hereinafter referred to as the "Abatement Work"), and Landlord shall
34 complete such removal prior to the Delivery Date. Upon completion of the Abatement Work,
35 Landlord shall furnish Tenant evidence of removal of the Hazardous Material, including copies of
36 the final inspection report together with a Clearance Certificate.

37 **11.4.4. Landlord's Responsibilities After the Delivery Date.** If Hazardous Materials are
38 found to be present in the Store, Support Systems or the Shopping Center at any time after delivery
39 of possession of the Store to Tenant and Tenant reasonably determines that the presence of such
40 Hazardous Materials poses a threat to the health of Tenant's employees or Invitees or will adversely
41 affect Tenant's use of the Store or any necessary Abatement Work will adversely affect Tenant's use
42 of the Store, then Tenant shall have the right to vacate the Store unless the presence of such
43 Hazardous Materials was a result of the acts of Tenant. If Tenant vacates the Store, all Rent shall

1 abate until Landlord's completion of the Abatement Work and delivery of the Clearance Certificate
2 as required below. Landlord shall, at its sole cost and expense, complete such Abatement Work as
3 soon as practicable after the discovery of such Hazardous Materials. Upon completion of the
4 Abatement Work, Landlord shall furnish Tenant with a copy of the Clearance Certificate. During
5 such Abatement Work, Tenant's fixturation or construction period, if applicable (as provided for
6 elsewhere in this Lease), shall be tolled until the Abatement Work is complete and a Clearance
7 Certificate is issued. In the event Landlord is required to undertake Abatement Work, it is
8 understood and agreed that Landlord shall be responsible for the cost of the replacement of all of
9 Tenant's improvements and alterations damaged or destroyed as a result of such Abatement Work.

10 **11.4.5. Tenant's Rights.**

11 (a) Tenant's Awareness of Hazardous Materials. If, at any time, Tenant
12 becomes aware of the presence of Hazardous Materials in the Store, Support Systems and/or the
13 Shopping Center, Tenant may give Landlord written notice to remove and/or abate same and to
14 restore the Store, Support Systems and/or the Shopping Center to a condition which is free of
15 Hazardous Materials, unless the presence of such Hazardous Materials was a result of the acts of
16 Tenant. If within thirty (30) days of receipt of such notice Landlord has not completed the Abatement
17 Work, Tenant may either (i) terminate this Lease upon thirty (30) days' written notice to Landlord, or
18 (ii) undertake all necessary Abatement Work, including the hiring of any contractors and experts
19 Tenant reasonably deems necessary to effect and supervise the Abatement Work. Notwithstanding the
20 foregoing, if the nature of the Abatement Work is such that it cannot reasonably be completed within
21 such thirty (30) day period, Landlord shall have such additional time as is reasonably required to
22 complete the Abatement Work, provided Landlord promptly commences and diligently pursues
23 completion of the Abatement Work.

24 (b) Claim Against Landlord. Tenant shall be entitled to claim from Landlord
25 all consequential damages (including lost profits) arising out of Landlord's breach of any of the
26 provisions of this Section 11.4. Furthermore, if Tenant effects Abatement Work, Tenant shall be
27 entitled to claim from Landlord all costs and expenses associated therewith, including, but not limited
28 to, (i) the Abatement Work, (ii) disposal of Hazardous Materials, (iii) air quality and materials testing,
29 (iv) related consultants' and experts' fees, and (v) fines, fees or costs of any nature whatsoever charged
30 or assessed by any governmental authority or agency regulating and/or supervising such Abatement
31 Work and/or disposal of Hazardous Materials.

32 (c) Reimbursement of Tenant. Landlord shall promptly reimburse Tenant for
33 Tenant's costs and expenses incurred pursuant to Section 11.4.5(b) above within thirty (30) days after
34 Landlord's receipt of copies of Tenant's paid invoices or documentation. In addition to any other
35 remedy which Tenant may have under this Lease, at law or in equity, in the event of Landlord's breach
36 of any of the provisions of this Section 11.4, Tenant shall be entitled (i) to claim from Landlord and to
37 deduct from Rent payable to Landlord hereunder all consequential damages (including lost profits),
38 expenses, costs, fees and fines incurred by it as a result of such breach, and (ii) to extend the Term
39 hereof by a period equal to the time elapsed from the date of Tenant's initial notice to Landlord to the
40 date that the Abatement Work is completed, and during such period, all Rent and other charges
41 payable hereunder shall abate.

42 **11.4.6. Landlord's Indemnity.** Landlord hereby indemnifies Tenant and its successors
43 and assigns, and agrees to hold Tenant and its successors and assigns harmless from and against any

and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever, including, without limitation, attorneys' and consultants' fees and costs, and the costs of cleanup, remediation, Abatement Work, paid, incurred or suffered by, or asserted against, Tenant and/or its successors and/or assigns as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, release or disposal on, under or from the Shopping Center or the improvements thereon of any Hazardous Material, or the breach of any Environmental Regulations to which Landlord or any portion of the Shopping Center is subject, which are the result of the acts of Landlord or Landlord's agents, employees or contractors. Landlord shall be solely responsible for and shall comply with all laws, rules, ordinances or regulations of any governmental authority having jurisdiction over the Store and the Shopping Center with respect to the presence or removal of Hazardous Materials, unless the presence of such Hazardous Materials is the result of the acts of Tenant or Tenant's agents, employees or contractors.

11.4.7. Tenant's Indemnity. Tenant hereby indemnifies Landlord and its successors and assigns, and agrees to hold Landlord and its successors and assigns harmless from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever, including, without limitation, attorneys' and consultants' fees and costs, and the costs of cleanup, remediation, Abatement Work, paid, incurred or suffered by, or asserted against, Landlord and/or its successors and/or assigns as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, release or disposal on, under or from the Store of any Hazardous Material in violation of Environmental Regulations, or the breach of any Environmental Regulations to which Tenant or any portion of the Store is subject which are solely the result of the acts of Tenant or Tenant's agents, employees or contractors. Tenant shall not cause any Hazardous Materials to be released or discharged on, under or from the Store in violation of Environmental Regulations.

11.4.8. Survival. The representations, warranties and indemnities contained in this Article 11 shall survive the termination of this Lease.

12. ALTERATIONS

12.1. Permitted Alterations.

12.1.1. Tenant may make non-structural alterations or improvements to the interior of the Store and signage on the exterior of the Store and its signage on the Shopping Center pylon and monument signs, provided Tenant shall make all such alterations or improvements in a good and workmanlike manner, and in conformity with all laws, ordinances and regulations of public authorities having jurisdiction. Tenant shall not make any alterations to the foundation, roof, or any structural portions of the Store without first obtaining the written approval of Landlord, except as specified in Section 12.2 and except to the extent such alterations are part of the Final Plans (defined in **Exhibit C**) for Tenant's Work. Such approval by Landlord may not be unreasonably withheld, conditioned or delayed and shall be deemed granted if Tenant is not notified in writing of a reasonable basis for withholding such approval within ten (10) days of Tenant's request for approval. Any disapproval shall be supported by a written statement of reasons and suggested

1 revisions to the proposed work that, if incorporated by Tenant, shall constitute the plans as
2 approved without further review by Landlord. Subject to Section 12.1.2 following, all alterations
3 and improvements made to the Store by Landlord or Tenant (other than Store furniture, trade
4 fixtures, equipment and personal property installed by Tenant), shall, at the end of the Term,
5 become Landlord's property, and, at the end of the Term, shall remain in the Store without
6 compensation to Tenant, unless otherwise stated in this Lease to the contrary. With respect to any
7 Tenant repairs or alterations, including the initial Tenant's Work, which require access to the roof of
8 the Store, or require work on or penetrations to the roof of the Store, Tenant shall notify Landlord
9 prior to commencing such work and Tenant shall coordinate any such work with Landlord's roofing
10 contractor (and Landlord's roofing contractor may be present during the performance of such work)
11 so as not to void any roof warranty applicable to the roof of the Store.

12 **12.1.2.** It is further agreed that upon termination of this Lease, Tenant may remove its
13 furniture, fixtures, equipment and personal property, and Landlord will accept the Store, with all
14 alterations made by Tenant, without any obligation upon Tenant to restore the Store to its former
15 condition.

16 **12.2. Communication Equipment.**

17 **12.2.1.** At any time subsequent to the Delivery Date, Tenant shall have the right to place
18 upon the Store one or more so-called "satellite dish(es)" or other similar device(s) and to replace,
19 remove, and repair any such device(s), such as antenna, for the purpose of receiving and sending
20 radio, television, computer, telephone, or other communication signals (collectively, the
21 "Communication Equipment"). Any such installation shall be in accordance with plans and
22 specifications previously approved by Landlord. Such equipment shall be installed in a location or
23 locations substantially shielded from visibility from the principal frontages of the Shopping Center.
24 Tenant shall be responsible for any damage to the Store caused by installing, removing, replacing, or
25 repairing any such device(s). With respect to Tenant's installation, repair or removal of its
26 Communications Equipment on the roof, Tenant shall coordinate such work with Landlord's
27 roofing contractor so Tenant's work shall not void any roof warranty.

28 **12.2.2.** In the event Landlord desires to perform roof repairs and/or roof replacements
29 to the Store and/or the Building or its rooftop equipment in which the Store is located (the "Roof
30 Repairs"), Landlord shall give Tenant at least twenty (20) days' prior written notice of the date
31 Landlord intends to commence such Roof Repairs. Tenant shall, within twenty (20) days following
32 receipt of such notice, undertake such measures as it deems suitable to protect its Communication
33 Equipment from interference by Landlord, its agents, contractors or employees, in the course of any
34 Roof Repairs. Nothing herein shall relieve Landlord of its obligation not to cause any interference
35 with, or damage to, the Communication Equipment, and Landlord shall remain fully responsible for
36 any loss, cost, or claim resulting from any damage to any part of the Communication Equipment
37 arising as a result of the Roof Repairs.

1 **13. NON-DISTURBANCE AND SUBORDINATION/**
2 **ESTOPPEL CERTIFICATES**

3 **13.1. Non-Disturbance and Subordination.**

4 **13.1.1. Existing Loans/Master Lease(s).** Landlord covenants to obtain from each lender
5 whose loan is secured by the Store or the Shopping Center, within sixty (60) days after the execution
6 of this Lease, an executed agreement ("Non-Disturbance Agreement"), in substantially the form set
7 forth in **Exhibit F**. Landlord further covenants to obtain from each lessor whose interest in the
8 Shopping Center is paramount to Landlord's ("Overlessor"), if any, within thirty (30) days after the
9 execution of this Lease, an executed agreement ("Sublease Non-Disturbance Agreement") in the
10 form set forth in **Exhibit F-1**. If Landlord breaches its obligation(s) hereunder, Tenant may
11 terminate this Lease by written notice to Landlord at any time prior to Tenant's receipt of all
12 required Non-Disturbance Agreements, or if Tenant has not terminated this Lease, Tenant may
13 defer payment of Rent pending delivery of said Agreements.

14 **13.1.2. Future Loans.** Tenant shall, within twenty (20) business days after Tenant's
15 receipt of Landlord's request, subordinate this Lease in the future to any first mortgage or deed of
16 trust placed by Landlord upon the Store, the Shopping Center or the Building, with an insurance
17 company, bank or any other lender which customarily provides financing for shopping centers,
18 provided that such lender executes a Non-Disturbance Agreement substantially in the form set forth
19 in **Exhibit F**, which form may include commercially reasonable changes reasonably agreed to by
20 Tenant and such lender.

21 **13.2. Estoppel Certificates.**

22 Within twenty (20) business days after the last to occur of (a) receipt of request therefor,
23 and, if the request is made by Landlord (b) receipt by Tenant of the fee described in Section 13.3
24 below, either party shall deliver to the other a written statement acknowledging (i) the
25 Commencement Date and termination date of this Lease, (ii) that this Lease is in full force and
26 effect (if true), (iii) that this Lease has not been modified (or if it has, stating the dates of such
27 modifications), and (iv) any such other pertinent information which is customary to supply to such a
28 requesting party for purposes of financing or sale (in the case of Landlord's request) or financing,
29 assignment or sublease, or sale (in the case of Tenant's request). Landlord may exercise its right
30 hereunder only in connection with a proposed sale, financing or refinancing of the Shopping Center,
31 and Tenant may exercise its right hereunder only in connection with a proposed assignment or
32 subletting of the Store, or a financing of its furniture, fixtures, equipment or personal property.

33 **13.3. Processing Fees for Non-Disturbance Agreements and Estoppel Certificates.**

34 At the time of the second (2nd) and any subsequent request for a Non-Disturbance
35 Agreement under Section 13.1.2 or an Estoppel Certificate under Section 13.2, the requesting party
36 shall pay to the other, to defray the expenses of processing, the sum of Seven Hundred Fifty Dollars
37 (\$750) for each such Non-Disturbance Agreement or Estoppel Certificate, which sum shall be
38 increased from time to time in direct proportion to increases in Minimum Rent over the amount of
39 Minimum Rent as of the Commencement Date.

14. INDEMNIFICATION

14.1. Tenant Indemnity.

Tenant agrees to hold Landlord harmless from and indemnify and defend Landlord against any and all injury, loss, damage, liability (or any claims related to the foregoing), costs or expenses (including, without limitation, attorneys' fees, reasonable investigation and discovery costs), of whatever nature, to any person or property caused or claimed to be caused by or resulting from any occurrence within the Store on and after the Delivery Date and during the Term, provided nothing contained herein shall require Tenant to indemnify Landlord against matters resulting from the negligence or willful acts or omissions of Landlord or Landlord's employees, agents, or contractors, except to the extent Tenant has waived a claim against Landlord pursuant to Section 9.4 hereof.

14.2. Landlord Indemnity.

Landlord agrees to hold Tenant harmless from and indemnify and defend Tenant against any and all injury, loss, damage, liability (or any claims related to the foregoing), costs or expenses (including, without limitation, attorneys' fees, reasonable investigation and discovery costs), of whatever nature, to any person or property caused or claimed to be caused by or resulting from any occurrence within the Common Area, or any portion of the Shopping Center, on and after the Effective Date of this Lease, provided nothing contained herein shall require Landlord to indemnify Tenant against matters resulting solely from the negligence or willful acts or omissions of Tenant or Tenant's employees, agents or contractors, except to the extent Landlord has waived a claim against Tenant pursuant to Section 9.4 hereof.

15. USE

15.1. Tenant's Business.

Tenant's intended use of the Store shall be as a full line department store including, at its option, the sale of soft goods merchandise, including men's, women's and children's apparel, shoes, accessories, such as jewelry and cosmetics, domestics and linens, health and beauty aids and sundries, housewares, art, pictures, posters, frames, artificial floral, office supplies, sporting goods, furniture and lamps, window and floor coverings, electronics, videos, books, toys, party goods, pet supplies, luggage and packaged foods, and such other items as are sold in Tenant's similarly merchandised stores. Tenant shall not use the Store for a non-retail use except if such non-retail use is limited to no more than twenty-five percent (25%) of the Leasable Floor Area of the Store. The foregoing limitation on non-retail use shall not apply to Tenant's incidental storage or office use within the Store. Tenant's use of the Store shall be subject to the provisions of Section 15.4 and Section 3.2.2.

15.2. Operation.

(a) Except as set forth in Section 15.2(b) below, it is expressly acknowledged by Landlord that this Lease contains no express or implied covenant for Tenant to conduct business in the Store, continuously or otherwise, or (when conducting business in the Store) to operate during any particular hours or to conduct its business in any particular manner. Tenant has the sole right in

1 its unrestricted discretion to decide whether or not to operate in the Store and in what manner to
2 conduct operations, if any.

3 (b) Notwithstanding Section 15.2(a) above, if Landlord timely delivers the Store as
4 provided in Section 5.4 of this Lease, and provided no Commencement Date Reduced Occupancy
5 Period is then in effect, Tenant shall open for business in the Store for at least one (1) day within
6 two hundred ten (210) days after the Commencement Date, subject to delays caused by events of
7 Force Majeure. Except for Tenant's agreement to open the Store as set forth in the preceding
8 sentence, this Section 15.2(b) does not alter or modify the provisions of Section 15.2(a).

9 **15.3. Protection.**

10 Without the prior written consent of Tenant, which consent may be withheld in the absolute
11 and sole discretion of Tenant, no tenant or occupant of the Shopping Center (other than Tenant)
12 may use, and Landlord, if it has the capacity to do so, shall not permit any other tenant or occupant
13 of the Shopping Center to use its premises for the Off Price Sale (as hereinafter defined) of
14 merchandise. For purposes of this Section 15.3, "Off Price Sale" shall mean the retail sale of name
15 brand apparel for men, women and children on an every day basis at prices reduced from those
16 charged by typical full price apparel retailers, such as full price department stores; provided,
17 however, this definition shall not prohibit sales events by a retailer at a price discounted from that
18 retailer's every day price. (As of the Effective Date, examples of Off Price Sale retailers include such
19 retailers as T.J. Maxx, Marshall's, Nordstrom Rack, Goody's, Factory 2U, Burlington Coat,
20 Steinmart, and Filene's Basement.) Notwithstanding the foregoing, Landlord shall not be prohibited
21 from leasing space in the Shopping Center to Bed Bath & Beyond, Best Buy, Borders Books, Circuit
22 City, Comp USA, Cost Plus, Crate & Barrel, Gottschalk's, Linens 'N Things, Miller's Outpost,
23 Office Depot, Old Navy, Oshman's Sporting Goods, Party World, Petco, Sportmart, Men's
24 Warehouse, Sports Authority, and Toys 'R Us. If either of the foregoing provisions is violated
25 ("Protection Violation"), commencing on the first day of the Protection Violation and continuing
26 throughout the period of the Protection Violation, Tenant, in addition to all other remedies available
27 at law or in equity, including injunctive relief, shall have the ongoing right, exercisable by written
28 notice to Landlord, either to terminate this Lease or to pay Substitute Rent within fifteen (15) days
29 after the close of each calendar month. The parties agree that the monetary damages to be suffered
30 by Tenant as a result of a breach by Landlord (or Landlord's tenant(s)) of the provisions of this
31 Section 15.3 are difficult to ascertain and that the payment of Substitute Rent, after negotiation,
32 constitutes the best estimate by the parties of the amount of such damage. If Tenant elects to
33 terminate this Lease as provided in this Section 15.3, this Lease shall terminate on a date indicated
34 by Tenant in its notice of termination, which in no event shall be sooner than thirty (30) nor later
35 than ninety (90) days after the date of Tenant's notice of termination. In the event of termination,
36 Landlord shall be obligated to pay Tenant for the Unamortized Cost of Tenant's leasehold
37 improvements in the Store, which costs Tenant agrees to specify in its notice of termination. If
38 Tenant elects to pay Substitute Rent, (a) such payment of Substitute Rent shall be retroactive to the
39 date any such Protection Violation commenced, and Tenant shall deduct any overpayments of Rent
40 from Rent coming due under this Lease, and (b) at such time as all such Protection Violations cease
41 (the "Cure Date"), Rent shall resume at the rate which would have pertained at the Cure Date had
42 the Protection Violation not occurred. The provisions of this Section 15.3 shall apply to any
43 subsequent Protection Violation.

1 **15.4. Exclusive Uses.**

2 Tenant, and any assignee, subtenant or licensee of Tenant, shall not use the Store for any use
3 which is listed on **Exhibit H** (the "Exclusive Use"), so long as the Exclusive Use is in existence in
4 the Shopping Center. Failure of any Exclusive Use to be operated for a period of twelve (12)
5 consecutive months during the Term shall cause such Exclusive Use to be deleted from **Exhibit H**.
6 With respect to the exclusive use in favor of Safeway, Landlord has delivered to Tenant a waiver in
7 the form attached hereto as **Exhibit H-1**. Any exclusive granted by Landlord which is not listed on
8 **Exhibit H** (the "Unauthorized Exclusive") shall be null and void as against Tenant and any assignee
9 or sublessee of Tenant. Landlord shall indemnify, defend and hold harmless Tenant and any
10 assignee or sublessee against any and all claims by any other occupant of the Shopping Center that
11 Tenant and/or an assignee or sublessee has violated an Unauthorized Exclusive.

12 **15.5. Other Exclusives Not Binding on Tenant.**

13 Except for those Exclusive Uses specifically set forth in **Exhibit H**, neither Tenant nor any
14 of its subtenants or assignees or the use of the Store shall be subject to any exclusives or restrictions
15 granted to or for the benefit of any other tenants or occupants in the Shopping Center or on any
16 Outparcel or adjacent parcel owned by Landlord. Except for those Exclusive Uses specifically set
17 forth in **Exhibit H**, Landlord agrees that it has not entered into a lease or other occupancy
18 agreement with nor shall it lease to or permit occupancy in the Shopping Center by any tenant,
19 subtenant, assignee or other occupant, which has imposed or proposes to impose a restriction on
20 Tenant or Tenant's business. Landlord shall hold Tenant harmless from any claims or damages
21 suffered or claimed to be suffered by Tenant as a result of any breach or alleged breach of
22 Landlord's representation and warranty set forth in this Section 15.5.

23 **16. SURRENDER**

24 **16.1. Condition of Premises.**

25 Upon the expiration or earlier termination of this Lease, Tenant shall surrender possession
26 of the Store to Landlord in broom clean condition, and in good order and repair, reasonable wear
27 and tear and damage by Casualty or condemnation excepted, and with all of Tenant's alterations and
28 leasehold improvements in place. Tenant may remove from the Store Tenant's furniture, fixtures,
29 equipment and personal property. However, Tenant shall have no obligation to remove from the
30 Store or to demolish any alterations or leasehold improvements made to the Store nor to restore the
31 Store to its condition prior to Tenant's use and occupancy thereof.

32 **16.2. Continuance of Possession.**

33 If Tenant shall remain in possession of the Store or any portion thereof after the expiration
34 of the Term, then in the absence of an agreement in writing between the parties, Tenant shall be
35 deemed a tenant at sufferance until acceptance of Rent by Landlord, at which time, Tenant shall
36 become a tenant from month-to-month under the same terms and conditions as existed immediately
37 prior to the expiration of this Lease.

1
2 **17. LANDLORD'S COVENANTS**

3 **17.1. Landlord's Warranty.**

4 Landlord warrants to Tenant that (a) Tenant, while operating in the Store for the use stated
5 in Section 15.1, and subject to the provisions of Section 15.4, will not be in violation of any
6 exclusives, restrictions or other agreements which Landlord may have with other lessees, lenders,
7 governmental authorities or any other parties, and (b) the sale by Tenant of soft goods merchandise
8 customarily sold in Tenant's other stores is not a violation of any zoning or land use restrictions
9 imposed by any governmental body or authority. Landlord shall hold Tenant harmless from any
10 claims or damages suffered or claimed to be suffered by Tenant as a result of any breach or alleged
breach of Landlord's warranties.

11 **17.2. Landlord's Title.**

12 Landlord has provided Tenant with the Title Report. Landlord represents and warrants that:
13 (a) Landlord has lawful title to the Shopping Center and full right to make and execute this Lease;
14 (b) at the time of recording of the Memorandum of Lease, the Shopping Center will be free from all
15 other liens, title exceptions and other encumbrances of any kind whatsoever, except those set forth
16 in **Exhibit I** attached hereto and incorporated by this reference ("Permitted Title Exceptions");
17 (c) none of the Permitted Title Exceptions, including, but not limited to, any easements (i) adversely
18 affect Tenant's access to, or use of the Store, or (ii) alter the boundaries or the configuration of the
19 Common Areas, including, but not limited to, the methods of ingress and egress, from that depicted
20 on the Site Plan; and (d) no other party is required to consent to this Lease as a condition to the
21 effectiveness of this Lease or any of the provisions hereof, including, but not limited to, the consent
22 of any lender or ground lessor relating to the Shopping Center.

23 **17.3. Remedies.**

24 In the event of any violation of any of the covenants made by Landlord in this Article 17,
25 Tenant may give Landlord notice of the violation. If Landlord fails to cure the violation within
26 thirty (30) days of such notice, and if such violation has a material and adverse effect upon Tenant's
27 business operations in the Store or Tenant's interest in this Lease, Tenant may exercise its remedies
28 available at law and in equity, including the right to terminate this Lease by written notice to
29 Landlord.

30 **18. QUIET ENJOYMENT**

31 Landlord represents and warrants that it has full authority to execute and perform this Lease
32 and to grant the subject leasehold estate to Tenant, and that Tenant shall peaceably and quietly have,
33 hold and enjoy the Store with all appurtenances on and after the Delivery Date and during the Term
34 and without any manner of hindrance or interference with its quiet enjoyment, possession and use.

19. ASSIGNMENT/SUBLETTING

19.1. General.

During the full Term of this Lease, including any Option Periods, Tenant shall have the right to assign this Lease, or sublet the Store or any portion thereof (a "Transfer" and the assignee or sublessee thereof is herein "Transferee") with the prior written consent of Landlord which consent shall not be unreasonably withheld or delayed. Tenant agrees that the use of the Store by any Transferee shall not be substantially the same as the primary use of any other retailer in the Shopping Center operating from in excess of ten thousand (10,000) square feet of Leasable Floor Area. Landlord's failure to respond within thirty (30) days of Tenant's written request for consent to a proposed Transfer shall be deemed Landlord's consent. If Landlord denies consent to any proposed Transfer, Landlord shall specify in writing the reasons for Landlord's denial of consent. Tenant shall have the right to operate departments within the Store by means of subleases, licenses or concession agreements without Landlord's consent. Except as provided in Section 19.2, in the event that Tenant should intend to seek a Transferee for the entire Store, then prior to making the Store available for any such Transfer, Tenant shall first give Landlord written notice of its intention to do so ("Transfer Notice"), which notice shall include (a) a statement of the Unamortized Cost of Tenant's leasehold improvements to the Store, and (b) a proposed Lease termination date which date shall not be sooner than ninety (90) nor later than four hundred thirty-five (435) days following the date of the Transfer Notice ("Tenant's Termination Date"). If Tenant issues a Transfer Notice to Landlord, Landlord may terminate this Lease, provided, however it must do so by written notice ("Recapture Notice") given to Tenant within thirty (30) days after the date of the Transfer Notice ("Recapture Election Period"). Landlord's Recapture Notice shall be accompanied by Landlord's payment to Tenant of the Unamortized Costs as set forth in the Transfer Notice. In the event Landlord gives Tenant a Recapture Notice within the Recapture Election Period, this Lease shall terminate as to all obligations accruing on and after the Tenant's Termination Date designated by Tenant in the Transfer Notice, unless Tenant rescinds the Transfer Notice by written notice to Landlord given within twenty (20) days following receipt of the Recapture Notice. If Landlord does not give a Recapture Notice within the Recapture Election Period as provided for by this Section 19.1, then at anytime thereafter Tenant may Transfer the entire Store, subject to the provisions of this Section 19.1. Landlord's recapture right described herein shall not apply to a transfer to a Related Entity pursuant to Section 19.2.

19.2. Related Entity.

A Transfer to a "Related Entity" shall not constitute a Transfer under the terms of this Lease. The term "Related Entity" means: a corporation or other entity with which Tenant may merge or consolidate; or to which Tenant sells at least five (5) stores; or any parent, affiliate or subsidiary of Tenant; or an affiliate or subsidiary of Tenant's parent.

19.3. Stock.

The sale of stock by Tenant or by any shareholder of Tenant shall not constitute a Transfer under the terms of this Lease.

1 **19.4. Release of Liability.**

2 In the event of a Transfer of this Lease, Tenant and Tenant's guarantor, if any, shall remain
3 liable; provided, however, if Tenant's assignee (or any subsequent assignee) has a "net worth" (as
4 hereinafter defined) of at least FIFTY MILLION DOLLARS (\$50,000,000), Tenant and Tenant's
5 guarantor, if any, shall be released from further liability under this Lease. "Net Worth" shall mean
6 the book net worth of the assignee determined from the audited statement of the most recent fiscal
7 year balance sheet immediately preceding the Transfer.

8 **19.5. Landlord Notice to Assignee.**

9 Landlord, when giving notice to any Transferee of this Lease related to any default
10 hereunder, shall simultaneously give notice thereof to Tenant, who may cure said default at any time
11 during the notice period; and in the event that Tenant shall cure the default, Tenant shall be
12 subrogated to all rights and remedies of Landlord as against the Transferee related to the default and
13 shall have the right at its election to recover possession of the Store from the defaulting Transferee,
14 to cancel and revoke the Transfer, and to be restored by Landlord to its leasehold estate hereunder.
15 The foregoing provisions shall not apply if Tenant and Tenant's guarantor, if any, have been
16 released from liability following a Transfer.

17 **19.6. Restriction on Landlord's Right to Assign.**

18 Landlord shall not assign this Lease prior to the Commencement Date except to an assignee
19 by an assignment which satisfies the following criteria: (a) all shareholders or partners of Landlord
20 have at least a fifty-one percent (51%) interest in the assignee, (b) Landlord continues as the
21 managing agent and developer of the Shopping Center, and (c) Landlord performs all of its
22 obligations and duties under this Lease which are conditions precedent to this Lease becoming
23 effective.

24 **20. DEFAULTS/DISPUTE RESOLUTION/ATTORNEYS' FEES**

25 **20.1. Defaults.**

26 **20.1.1. Tenant's Default.**

27 (a) Breach. The occurrence of either of the following shall constitute a default
28 by Tenant pursuant to this Lease: (i) a failure by Tenant to pay Rent within ten (10) business days after
29 Tenant's receipt of written notice from Landlord specifying such failure; or (ii) a failure by Tenant to
30 perform obligations pursuant to this Lease, other than as specified in (i) above, within thirty (30) days
31 after Tenant's receipt of written notice from Landlord specifying such failure; however, such thirty (30)
32 day period may be extended for such period of time as may be reasonably required to perform the
33 obligation provided: (A) such obligation cannot be reasonably performed within thirty (30) days after
34 such notice; (B) Tenant commences efforts to cure the default within thirty (30) days after receipt of
35 Landlord's notice of default; and (C) Tenant diligently pursues completion of the obligation. Tenant's
36 withholding, deducting or offsetting of, or failure to pay Rent pursuant to a bona fide dispute between
37 Landlord and Tenant shall not be deemed a default by Tenant under the provisions of this Lease.

1 (b) Insolvency. If Tenant makes an assignment for the benefit of creditors, or
2 if any proceedings are commenced under the provisions of the Bankruptcy Act whereby Tenant seeks
3 to be, or would be, discharged of its debts, or the payment of its debts are sought to be delayed, this
4 Lease shall be governed by the provisions of the Federal Bankruptcy Act.

5 (c) Prohibition Against Landlord Accelerating Rent. Except as provided in
6 Section 20.1.1(f) below, Tenant shall have no obligation to pay Rent until the date it would otherwise
7 be due in the absence of Tenant's default. Landlord shall have no right to accelerate Rent which would
8 become due except as provided in Section 20.1.1(f).

9 (d) Personal Property Waiver. Landlord waives such liens, if any, to which it
10 may have a right with respect to the merchandise, furniture, trade fixtures and other personal property
11 of Tenant located on or about the Store, and Landlord shall from time to time execute such documents
12 as Tenant may reasonably request to acknowledge such waiver.

13 (e) Landlord's Remedy for Improper Offset. Certain provisions of this Lease
14 grant to Tenant the right to offset specified amounts against, or to deduct such amounts from, Rent or
15 other charges payable under this Lease. The exercise by Tenant of any such right or Tenant's
16 withholding of any disputed amount of Rent or other sum shall not constitute a default under this
17 Lease by Tenant unless and until (i) an arbitrator per Section 20.2.3 shall determine by means of a final
18 award that such right to offset, deduct, or refusal to pay has been exercised improperly by Tenant, and
19 (ii) following the entry of such award, and within thirty (30) days after receipt by Tenant from Landlord
20 of a bill in the amount determined by such award to have been improperly offset, deducted, or
21 withheld by Tenant, Tenant shall fail to pay such amount to Landlord, together with interest thereon at
22 the Legal Rate retroactive to the date that the offset or deduction was taken by Tenant.

23 (f) Landlord Remedies Upon Tenant Default. Upon the occurrence of any
24 default by Tenant pursuant to the terms of Section 20.1.1(a), above, Landlord shall have, in addition to
25 any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct,
26 separate and cumulative), the option to pursue any one or more of the following remedies, each and all
27 of which shall be cumulative and nonexclusive.

28 (i) Terminate this Lease, in which event Tenant shall immediately
29 surrender the Store to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any
30 other remedy which it may have for possession or arrearages in rent, lawfully enter upon and take
31 possession of the Store and lawfully expel or remove Tenant and any other person who may be
32 occupying the Store or any part thereof, without being liable for prosecution or any claim or damages
33 therefor; and Landlord may recover from Tenant the following:

34 (A) The worth at the time of award of any unpaid rent which
35 has been earned at the time of such termination; plus

36 (B) The worth at the time of award of the amount by which
37 the unpaid rent which would have been earned after termination until the time of award exceeds the
38 amount of such rental loss that Tenant proves could have been reasonably avoided; plus

39 (C) The worth at the time of award of the amount by which
40 the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such
41 rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Store or any portion thereof for a new tenant, whether for the same or a different use, and any commercially reasonable special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 20.1.1(f) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 20.1.1(f)(i)(A) and (B), above, the "worth at the time of award" shall be computed by allowing interest at the Legal Rate. As used in Section 20.1.1(f)(i)(C), above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

20.1.2. Landlord's Default.

(a) Breach. Except for a violation by Landlord of express provisions of this Lease which require specific notice provisions which are shorter or longer than thirty (30) days (which notice provisions shall control over the provisions of this Section 20.1.2(a)), the occurrence of the following shall constitute a default by Landlord pursuant to this Lease: Landlord's failure to perform any of its obligations under this Lease, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default; however, such thirty (30) day period may be extended for such period of time as may be reasonably required to perform the obligation (not to exceed ninety (90) days after Landlord's receipt of such notice) provided: (i) such obligation cannot be reasonably performed within thirty (30) days after such notice; (ii) Landlord commences efforts to cure the default within thirty (30) days after receipt of Tenant's notice of default; and (iii) Landlord diligently pursues completion of the obligation.

(b) Remedies.

(i) General. In the event of Landlord's default, in addition to availing itself of any other remedies available at law and in equity, Tenant may, at its option, upon written notice to Landlord, terminate this Lease, or may incur any expense necessary to perform the obligation of Landlord specified in such notice and deduct such expense from the Rent or other charges coming due, provided that in any one (1) month, Tenant shall not deduct an amount in excess of fifty percent (50%) of the monthly installment of Minimum Rent and Reimbursements due ("Monthly Offset Cap") except: (A) where authorized by a court of competent jurisdiction; or (B) where authorized by Arbitration; or (C) where Tenant obtains a judgment in any legal proceeding (including Arbitration) in any of which events Tenant shall have the unrestricted right to deduct from the Rent or Rental next coming due. In addition, if the Monthly Offset Cap is insufficient to reimburse Tenant for the full amount owing to Tenant by the end of the then applicable Term, then the Monthly Offset Cap shall be adjusted such that Tenant is reimbursed the full amount owing to Tenant by the end of the then applicable Term. The foregoing Monthly Offset Cap shall not apply to or limit Tenant's right to offset the amount of the Unamortized Cost of Tenant's leasehold improvements from any sums owing to Landlord if Landlord fails to timely pay such Unamortized Costs in accordance with the express

provisions of this Lease nor shall the Monthly Offset Cap limit Tenant's right to defer, offset or abate Rent pursuant to other express provisions of this Lease.

(ii) Interruption of Utility Service. In addition to the remedies described above, in the event Tenant is prevented from using the Store, or any material portion thereof, to conduct its normal retail operations for a period exceeding three (3) consecutive business days as a result of the interruption of any Utility service ("Utility Interruption") to the Store which is required to be provided by the terms of this Lease, then the provisions of this Section 20.1.2(b)(ii) shall apply. Tenant shall promptly deliver to Landlord notice of the interruption (the "Interruption Notice") of such condition. If the Utility Interruption was caused by Landlord, Landlord shall have five (5) days after receipt of the Interruption Notice to cure the Utility Interruption caused by Landlord. If Landlord fails to cure the Utility Interruption caused by Landlord within five (5) days after delivery to it of the Interruption Notice, then Rent applicable to the Store shall be abated from the date of the Interruption Notice until the date when such failure is cured. If the Utility Interruption was not caused by Landlord, Landlord shall have thirty (30) days after receipt of the Interruption Notice to cure the Utility Interruption and if Landlord fails to cure the Utility Interruption within thirty (30) days after the Interruption Notice, regardless of whether Landlord did or did not cause the Utility Interruption, then Rent shall be abated from the date of the Interruption Notice until the date such failure is cured. If the Utility Interruption shall not be cured within one hundred twenty (120) days after Landlord's receipt of the Interruption Notice, then Tenant, regardless of whether Landlord did or did not cause the Utility Interruption, upon notice to Landlord after expiration of such period, may terminate this Lease, which termination shall be deemed effective upon Tenant's vacation of the Store. In the event Tenant terminates this Lease because of a Utility Interruption caused by Landlord, Landlord shall pay Tenant the Unamortized Cost of Tenant's leasehold improvements within thirty (30) days of Tenant's Termination Notice. Notwithstanding anything to the contrary contained in this Section 20.1.2(b)(ii), Tenant shall have no right to abate Rent or terminate this Lease for a Utility Interruption caused by Tenant or its agents, employees or contractors.

20.2. Alternative Dispute Resolution Process.

20.2.1. Means of Resolution. In the event that any controversy or dispute ("Dispute") shall arise under this Lease and in the event that the parties have been unable to resolve such Dispute within thirty (30) days, the Dispute shall be resolved as provided in this Section 20.2. All Disputes, the monetary value of which exceeds Fifty Thousand Dollars (\$50,000), or which involve an equitable remedy, shall first require the utilization of Mediation as provided in Section 20.2.2 below. All Disputes, the monetary value of which is Fifty Thousand Dollars (\$50,000) or less shall be settled by Arbitration as discussed in Section 20.2.3 below.

20.2.2. Mediation. The parties shall first try in good faith to settle the Dispute by mediation pursuant to the provisions as set forth below. Either party may initiate Mediation. The party commencing the Mediation shall first give a written notice (a "Mediation Notice") to the other party setting forth the nature of the Dispute. The Mediation shall be administered by the American Arbitration Association under its Commercial Mediation Rules, except to the extent that this Section 20.2.2 is inconsistent therewith, in which event this Section 20.2.2 shall govern and prevail. If the parties cannot agree on the selection of a Mediator within twenty (20) days after receipt of the Mediation Notice, the Mediator shall be selected in accordance with the American Arbitration Association procedure. If the Dispute or any part thereof has not been resolved by mediation as provided above within sixty (60) days after receipt of the Mediation Notice, or if a party fails to

1 participate in Mediation, then at the option of either party by written notice, the Dispute shall be
2 determined by suit or action in court, unless it is a matter for Arbitration as described in
3 Section 20.2.1 above.

4 **20.2.3. Arbitration.** Either or both parties may initiate the Arbitration process. The
5 party initiating the Arbitration process shall first give a written notice (an "Arbitration Notice") to
6 the other party setting forth the nature of the Dispute. The Arbitration shall be administered by the
7 American Arbitration Association in accordance with its Commercial Arbitration Rules, except to
8 the extent that this Section 20.2.3 is inconsistent therewith, in which event this Section 20.2.3 shall
9 govern and prevail. Judgment upon the award rendered by the Arbitrator may be entered in any
10 court of competent jurisdiction. Unless otherwise agreed to by the parties, the matter shall be
11 submitted to one (1) Arbitrator and shall be heard in the state in which the Store is located. If the
12 parties cannot agree on the selection of an Arbitrator within ten (10) days after the initiation of the
13 Arbitration process, the Arbitrator shall be selected in accordance with the American Arbitration
14 Association procedure, which selection shall be binding on the parties. The Arbitrator shall resolve
15 the controversy in accordance with applicable law and the terms and conditions of this Lease. The
16 Arbitrator shall allow the parties reasonable opportunities for pre-hearing document exchange and
17 other pre-hearing discovery of evidence as determined by the arbitrator in his or her discretion. The
18 determination of the Arbitrator shall be final, binding and conclusive upon the parties.

19 **20.2.4. Costs of Mediation and/or Arbitration.** The costs of the Mediation and/or
20 Arbitration shall be shared equally between the parties, provided, however, that such costs along
21 with all other costs and expenses, including attorneys' fees, shall be subject to award in full or in part
22 by the Mediator and/or Arbitrator in the Mediator and/or Arbitrator's discretion to the prevailing
23 party.

24 **20.2.5. Confidentiality.** Except as otherwise required by law, the parties, Mediator
25 and/or Arbitrator agree to keep confidential and not disclose to third parties any information or
26 documents obtained in connection with the Mediation and/or Arbitration process, including the
27 resolution of the Dispute.

28 **20.3. Unlawful Detainer.**

29 Landlord agrees not to file, prosecute, or maintain any proceeding for eviction, unlawful
30 detainer, or termination of this Lease against Tenant (and any such proceeding shall be null and
31 void) (a) during the Alternative Dispute Resolution process as set forth in Section 20.2, and/or (b) in
32 the event of a bona fide dispute between the parties with respect to any alleged default by Tenant or
33 any provision of this Lease, including, without limitation, Tenant's non-payment of Rent pursuant to
34 Tenant's right to withhold, deduct or offset Rent in accordance with this Lease; provided during the
35 pendency of any Alternate Dispute Resolution process or in the event of a bona fide dispute
36 between the parties, the portion of the amount claimed by Landlord which is undisputed shall be
37 paid by Tenant and provided any disputed portion which is withheld by Tenant shall be subject to
38 the Offset Limit.

39 **20.4. Attorneys' Fees.**

40 **20.4.1. Third Party Litigation.** If either party becomes a party to any litigation (including
41 Arbitration) concerning this Lease, the Store or the Shopping Center by reason of any act or

omission of the other party or its authorized representatives, and not by its own act or omission or that of its authorized representatives, the other party shall be liable to that party for reasonable attorneys' fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

20.4.2. Actions Between the Parties. If either party commences an action against the other party arising out of or in connection with this Lease, or in the event of an Alternative Dispute Resolution proceeding between the parties relating to this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, costs of suit, investigation costs and discovery costs, including costs of appeal. When this Lease imposes upon a party an obligation to indemnify the other, the indemnification obligation shall include the obligation to pay the indemnitee's reasonable attorneys' fees, costs and disbursements, whether the indemnitee be the plaintiff or defendant.

21. CASUALTY

21.1. Definitions.

21.1.1. Casualty. An event, or act of God, such as fire, windstorm, flood, earthquake, riot, civil commotion, strike, perils or other matters which are unforeseen and unpredictable, whether insured or uninsured, which causes damage or destruction to the Store or the Shopping Center.

21.1.2. Casualty Date. The date of the occurrence of a Casualty.

21.1.3. Permitted Repair Period. A period of two hundred forty (240) days following the Casualty Date.

21.1.4. Restoration (sometimes referred to herein as "Restore"). Restoration, rebuilding or repairs due to a Casualty under Section 21.2 of this Lease or due to a Taking under Section 22.1 of this Lease.

21.2. Insured Casualty.

If the Store is damaged or destroyed by a Casualty insured against or that Landlord is obligated to insure against under this Lease, to the extent that Restoration cannot reasonably be completed within the Permitted Repair Period, as reasonably determined by Landlord (and Landlord shall deliver notice to Tenant of such determination within thirty (30) days of the Casualty Date), Tenant may, at its option, terminate this Lease as of the Casualty Date by notice to Landlord within forty-five (45) days after the Casualty Date. If Tenant does not so terminate this Lease, or if Restoration to the Store may be completed within the Permitted Repair Period, then this Lease shall not terminate, and Landlord shall diligently proceed to Restore the Store to substantially the condition as existed immediately prior to the Casualty, and Landlord shall diligently pursue such Restoration to completion. If the Restoration is not completed within the Permitted Repair Period, Tenant may terminate this Lease by written notice to Landlord at any time prior to the Redelivery Date. All Rent payable hereunder shall abate from the Casualty Date to the earlier of (a) sixty (60) days following the Redelivery Date (but only if the Redelivery Date falls on a Permitted Delivery Day, and if the Redelivery Date does not fall on a Permitted Delivery Day, the sixtieth (60th) day

1 following the next Permitted Delivery Day); or (b) the date on which Tenant again opens for
2 business in the Store (in either case the "Recommencement Date"); provided that if Tenant
3 continues to do business in the Store during the period of Restoration, Tenant's total obligation for
4 Rent shall be to pay Substitute Rent within fifteen (15) days after the close of each calendar month.

5 **21.3. Uninsured Casualty.**

6 If the Store is damaged or destroyed by a peril not covered by the standard form of Special
7 Form Policy or not covered by any other insurance maintained by Landlord (hereinafter collectively
8 referred to as an "Uninsured Casualty") and the cost of the Restoration of the Store as reasonably
9 determined by Landlord exceeds by more than Fifty Thousand Dollars (\$50,000) ("Threshold
10 Amount") the amount of insurance proceeds available (i.e., net of any applicable deductible) to
11 Landlord, Landlord shall have the option to elect not to Restore the Store and to terminate this
12 Lease on at least ninety (90) days' prior written notice to Tenant. Tenant may elect to pay the
13 difference between the cost of Restoration (less available insurance proceeds) and the Threshold
14 Amount (which amount Landlord shall be required to contribute for purposes of Restoration) (the
15 "Difference"), subject to Tenant's Reimbursement defined below, by delivering written notice of
16 such election, together with payment of such Difference to a Stakeholder as defined in Section 21.6
17 hereof, if any, to Landlord within sixty (60) days after delivery of Landlord's notice of election to
18 terminate this Lease. Upon receipt of such notice and confirmation of payment by Tenant of the
19 Difference to the Stakeholder, if any, the Landlord termination shall be deemed rescinded and
20 Landlord shall pay the Threshold Amount to the Stakeholder and shall proceed with the Restoration
21 of the Store. If Tenant elects to pay the Difference, Tenant shall be entitled to reimbursement of
22 the amount of the Difference paid by Tenant up to a maximum reimbursement of Two Hundred
23 Thousand Dollars (\$200,000) ("Tenant's Reimbursement") which reimbursement shall be made by
24 way of Tenant's offset from the Rent coming due under this Lease in the amount of Ten Thousand
25 Dollars (\$10,000) per month until the amount of Tenant's Reimbursement is recovered in full. The
26 Monthly Offset Cap shall not apply to Tenant's Reimbursement. If Landlord elects to terminate this
27 Lease under this Section 21.3 and Tenant does not elect to pay the Difference, this Lease shall
28 terminate as of the date set forth in Landlord's notice of election to terminate this Lease. If this
29 Lease is not terminated under this Section 21.3, all Rent payable hereunder shall abate from the
30 Casualty Date to the Recommencement Date; provided that if Tenant continues to do business in
31 the Store during the period of Restoration, Tenant's total obligation for Rent shall be to pay
32 Substitute Rent within fifteen (15) days after the close of each calendar month.

33 **21.4. End of Term Casualty.**

34 Notwithstanding any provision in this Article 21 to the contrary, Landlord shall not be
35 required to Restore any Casualty to the Store occurring during the final eighteen (18) months of the
36 Term if the cost of such Restoration is greater than One Hundred Fifty Thousand Dollars
37 (\$150,000) unless, within thirty (30) days after receipt of Landlord's notice to Tenant that it intends
38 not to effect Restoration, Tenant exercises in writing any next immediately succeeding Option to
39 extend the Term given Tenant hereunder. If Tenant does not elect to exercise the next immediately
40 succeeding Option so as to extend the Term, Tenant shall so notify Landlord within thirty (30) days
41 of Landlord's notice of election not to Restore, and, thereupon, this Lease shall terminate effective
42 as of the Casualty Date.

1 **21.5. Shopping Center Casualty.**

2 In the event that the Store is not damaged or destroyed by a Casualty, but other buildings in
3 the Shopping Center, or the Building, excluding the Store, or if any of the Common Areas, are
4 damaged or destroyed by a Casualty, whether or not insured against (collectively a "Shopping Center
5 Casualty"), Landlord shall promptly remove all rubble and debris resulting from such damage or
6 destruction, and Landlord shall promptly Restore the damaged buildings in the Shopping Center as
7 well as the Common Areas as nearly as possible to the condition the same were in immediately prior
8 to such damage or destruction. Notwithstanding anything to the contrary contained herein, and
9 regardless of the extent of damage, Landlord shall promptly remove all rubble and debris so that the
10 Common Areas are usable. Except as otherwise expressly stated in this Section 21.5, the provisions
11 of Sections 21.1 through 21.4 shall apply to a Shopping Center Casualty. If the damage to the
12 Common Areas shall render the whole or any part of the Store unsuitable for Tenant's use, all Rent
13 payable hereunder shall abate from the Casualty Date to the Recommencement Date; provided that
14 if Tenant continues to do business in the Store during the period of Restoration, Tenant's total
15 obligation for Rent shall be to pay Substitute Rent within fifteen (15) days after the close of each
16 calendar month.

17 **21.6. Insurance Proceeds.**

18 Insurance proceeds for damage or destruction to the Store ("Proceeds"), if under One
19 Hundred Thousand Dollars (\$100,000), shall be paid directly to Landlord, subject to the terms of
20 any applicable Non-Disturbance Agreement. If in excess of such amount, all of the Proceeds shall
21 be deposited with Lender (as hereinafter defined), provided Lender agrees to apply the Proceeds in
22 the manner described herein. As used in this Section 21.6, the term "Lender" means the holder of
23 indebtedness secured by a first lien upon the Shopping Center, whether the interest creating such
24 lien be denominated as a mortgage, deed of trust, security agreement, vendor's lien or otherwise, but
25 only if Lender is a financial institution, such as a bank, savings and loan, insurance company, or
26 other entity regularly engaged in making loans secured by shopping center real property. If Lender
27 does not so agree, or there is no Lender, then the Proceeds shall be deposited with a bank, trust
28 company, or title insurance company designated by Tenant and approved by Landlord, for the use
29 of the Proceeds as provided in this Section 21.6. The Lender, if it agrees, or such other qualified
30 party so designated to hold and disburse the proceeds is herein referred to as the "Stakeholder."
31 Stakeholder shall disburse the Proceeds to the party performing Restoration upon certification by
32 the architect in charge of Restoration that the amounts requested have been paid in connection with
33 such Restoration or shall be due to contractor, subcontractors, materialmen, architects, suppliers or
34 other persons who have rendered services or have furnished materials for such Restoration, and
35 upon completion of such Restoration, the remaining balance of any Proceeds shall be paid to
36 Landlord upon demand.

37 **21.7. Tenant Repair.**

38 If Landlord is obligated to Restore the Store under the terms of this Article 21 but does not
39 commence Restoration as soon as practicable after the Casualty, or does not continue the
40 Restoration of the Store thereafter with reasonable dispatch, Tenant, upon thirty (30) days' prior
41 notice to Landlord, subject to the terms of any applicable Non-Disturbance Agreement, shall have
42 the right to Restore the Store at Landlord's sole cost and expense. If Tenant elects to Restore,
43 subject to the terms of any applicable Non-Disturbance Agreement, Landlord shall promptly pay to

1 Tenant any insurance proceeds relating to the Casualty and shall assign to Tenant all Proceeds held
2 by Stakeholder as provided in Section 21.6 and shall so instruct the Stakeholder in writing. In
3 addition, all Rent shall abate as described in Section 21.2 above; provided that if Tenant continues to
4 do business in the Store during the period of Repair, Tenant's total obligation for Rent shall be to
5 pay Substitute Rent within fifteen (15) days after the close of each calendar month. Further,
6 Landlord shall reimburse Tenant upon demand for any cost or expense incurred by Tenant for such
7 Restoration (not including any amount by which the cost and expense of Restoration is increased by
8 any change or changes made by Tenant) in excess of Proceeds received by Tenant plus interest at
9 the Legal Rate. Until Tenant has been fully reimbursed for such costs and expenses, Tenant may
10 deduct the same from any payments of Rent or other charges due hereunder to Landlord. If at the
11 expiration of the Term, Tenant has not been fully reimbursed, Tenant shall have the right to extend
12 the Term for any period of time (but not in excess of twenty-one (21) years) selected by Tenant
13 which is less than or equal to the period which shall enable Tenant to recover such cost and expense
14 plus interest at the Legal Rate from Rent due hereunder. During such extension, Rent shall be
15 imputed as being that in effect in the month immediately preceding such extension. The remedy
16 stated hereinabove shall be cumulative with any other remedy available to Tenant at law or in equity
17 or under the terms of this Lease, including the right to collect the full amount of any such advance
18 from Landlord immediately.

19 **21.8. Waiver of Statute.**

20 The parties waive such rights of Lease termination as are granted to them under the laws of
21 the state wherein the Store is located, it being their agreement that the rights of termination in the
22 event of Casualty, as set forth herein, shall be exclusive.

23 **21.9. Laws.**

24 If applicable governmental laws and regulations prohibit the Restoration of any damage to
25 the Store or Common Areas, either party may elect to terminate this Lease effective thirty (30) days
26 after the delivery to the other party of written notice of the election to terminate. Notwithstanding
27 anything in this Article 21 to the contrary, if applicable laws and regulations require seismic,
28 disability access, life safety or other retrofitting as a condition to Restoration and the costs of same
29 exceed Landlord's insurance Proceeds, and if Tenant does not elect to pay Landlord the Difference,
30 then Landlord shall have the right to elect to terminate this Lease effective thirty (30) days after
31 delivery to Tenant of written notice to terminate.

32 **21.10. Tolling of Term.**

33 During the period between Landlord's completion of Landlord's Restoration obligations and
34 the Recommencement Date, Tenant and Tenant's employees, agents and contractors shall have the
35 right to enter upon the Store for the purpose of erecting, constructing, or installing such
36 improvements, alterations, fixtures, equipment and furniture as Tenant deems necessary for
37 resuming business in the Store. In the event Rent shall completely abate for any period pursuant
38 to the provisions of this Article 21, the Term shall toll for the period of such abatement, in which
39 event, the monthly installments of Rent following the end of the period of such abatement shall
40 recommence and thereafter continue at the same Rent rate that was in effect at the time of such
41 abatement; the remaining scheduled increases of Minimum Rent shall be postponed for the period
42 of such abatement to reflect such tolling, the expiration date of the then applicable Term (whether

1 the Initial Term or any Option Period) and the commencement and expiration dates of any
2 subsequent Option Periods shall be extended for the period of such abatement, as shall be the
3 deadline dates for notices exercising Option Periods. Any period of tolling shall be added to the
4 calculation of the Initial Term (or any then current Option Period, as the case may be) for purposes
5 of the calculation of the Expiration Date. For example, if the Term of this Lease is tolled under the
6 provisions of this Section 21.10 for a period of four (4) months, and the tolling occurs during the
7 Initial Term, then the definition of Initial Term in Section 1.5.1 shall be: "From the
8 Commencement Date through the January 31 next following the expiration of one hundred
9 twenty-four (124) months thereafter."

10 **21.11. Effect of Termination.**

11 Upon termination of this Lease pursuant to this Article 21, (a) each of the parties shall be
12 thereby released from all further obligations and duties to the other party as of the Casualty Date,
13 except for items and liabilities which have theretofore accrued and be then unpaid, and (b) Landlord
14 shall promptly refund to Tenant all unearned Rent and other amounts prepaid by Tenant under this
15 Lease.

16 **21.12. Tenant's Right of First Offer.**

17 The provisions of this Article 21 to the contrary notwithstanding, if this Lease is terminated
18 in accordance with this Article 21, and Landlord elects to rebuild the Store or a substantially similar
19 building in the Shopping Center within three (3) years after the Casualty Date, Landlord shall, before
20 marketing space in such building to any person or entity, first offer space in such building to Tenant
21 on terms no less favorable than those for which Landlord will market such space on the open
22 market (the "First Offer Terms"). Tenant shall have sixty (60) days from receipt of the Landlord's
23 First Offer Terms to accept Landlord's First Offer Terms by written notice to Landlord.

24 **22. CONDEMNATION**

25 **22.1. Taking.**

26 A "Taking" means any governmental act, condemnation proceeding, moratorium, initiative,
27 or referendum whereby Landlord or Tenant is divested of ownership or any of the incidents thereof,
28 or any transfer in lieu thereof, and physical possession is taken by the governmental or condemning
29 authority. In the event Tenant does not terminate this Lease as provided in Section 22.2 following,
30 Landlord shall promptly and diligently Restore the Store, Common Areas, or other space, as the case
31 may be, to as near their condition as existed prior to such Taking as is reasonably possible. During
32 the course of such Restoration, if Tenant is not operating in the Store, all Rent shall abate from the
33 date of the Taking to the Recommencement Date. If Tenant continues to do business in the Store
34 during the period of Restoration, Tenant's total obligation for Rent shall be to pay Substitute Rent
35 within fifteen (15) days after the close of each calendar month. When Restoration is complete,
36 Tenant's total obligation for Minimum Rent shall be adjusted as provided in Section 3.7 in the event
37 the size of the Store is reduced. When Restoration is complete, if the size of the Store is not
38 reduced, but the size of the Common Areas within the Control Area is reduced and the operation of
39 the Store is materially and adversely affected, Minimum Rent shall thereafter be reduced to an
40 amount calculated by multiplying the Minimum Rent stated in this Lease by a fraction the numerator

of which is the fair market rental value of the Store immediately following the Taking and the denominator of which is the fair market rental value of the Store immediately prior to the Taking.

22.2. Right to Terminate.

Tenant may terminate this Lease upon written notice to Landlord in the event of any one or more of the following Takings:

22.2.1. A Taking of any portion of or interest in the Store;

22.2.2. Any Taking of the Common Areas if the number of parking spaces in the Control Area is reduced by more than five percent (5%), or access to the Store is materially impaired, or access to the Shopping Center is materially impaired;

22.2.3. Any Taking of any portion of the Shopping Center which materially impairs the operation of Tenant's business; or

22.2.4. Any Taking of twenty percent (20%) or more of the Leasable Floor Area of the Shopping Center (not including the Store in either the numerator or denominator of such calculation).

22.2.5. Landlord shall promptly notify Tenant of any Taking. Tenant's termination must be exercised by written notice to Landlord given within sixty (60) days following the date of Tenant's receipt of Landlord's notice of the occurrence of such Taking (as defined in Section 22.1).

22.3. Claims.

Nothing herein contained shall prevent Landlord and Tenant from prosecuting claims in any condemnation proceedings or otherwise for the value of their respective interests, as well as any damages. Notwithstanding anything to the contrary contained herein, if this Lease is terminated, Landlord shall pay to Tenant from any Landlord award an amount equal to the Unamortized Cost of any leasehold improvements to the Store and Tenant's moving expenses (less any amount recovered by Tenant with respect to same). If this Lease is not terminated pursuant to a Taking, Landlord shall pay to Tenant the amount of the Unamortized Cost of any leasehold improvements made to the Store by Tenant which shall have been taken or rendered unusable, and not restored (less any amount recovered by Tenant with respect to same).

22.4. Waiver.

The parties waive such rights of Lease termination as may be granted them in the event of condemnation by the laws of the state wherein the Store is located, it being their agreement that the rights of termination set forth in this Lease shall be exclusive.

23. MECHANIC'S LIENS

Landlord and Tenant shall prevent any mechanic's, materialman's or other liens against the Store in connection with any labor, materials or services furnished or claimed to have been furnished. If any such lien shall be filed against the Store, the party through whom the lien arose will cause the same to be discharged within thirty (30) days of the filing of the lien, provided,

1 however, that either party may contest any such lien, so long as the enforcement thereof is stayed by
2 bonding or otherwise expunging the lien from the official property records in the jurisdiction.

3 24. SIGNS

4 24.1. Governmental Approval and Compliance.

5 All signs shall be subject to approval by local governmental authority. Landlord shall
6 cooperate fully with Tenant and assist Tenant in Tenant's efforts to obtain approval for Tenant's
7 signs as shown on **Exhibit J** ("Tenant's Signs") and made a part hereof, from the local
8 governmental authority. Landlord's approval for a change to Tenant's signage on the exterior of the
9 Store or Tenant's sign panels on the Shopping Center's pylon or monument signs shall not be
10 required if such change is in connection with a corporate-wide and/or multi-store signage change
11 program by Tenant, however, such change shall be subject to the approval of the local governmental
12 authority, if required, and shall be subject to any applicable conditions set forth in the existing
13 Safeway Lease. Landlord approves of all Tenant's Signs shown on **Exhibit J**. Pursuant to the
14 Safeway Waiver attached as **Exhibit H-1**, Safeway has approved the height of Tenant's storefront as
15 set forth on **Exhibit J**.

16 24.2. Building Signs.

17 Tenant may erect and maintain Tenant's Signs upon the exterior walls of all sides of the
18 Store including the west wall of the Store, as specified on **Exhibit J**. Tenant's Signs shall be
19 included by Landlord in the sign criteria for the Shopping Center. Tenant's Signs, including
20 Tenant's signage on any sign structure(s) provided by Landlord, shall be fabricated, installed and
21 maintained by Tenant at its sole cost and expense and, at Tenant's election, shall be of no less sign
22 area than the largest sign of any other tenant or occupant in the Shopping Center.

23 24.3. Pylon or Monument Signs.

24 Landlord shall, at its sole cost and expense, construct, maintain and repair the
25 pylon/monument sign structure(s) specified in the Site Plan and **Exhibit J** upon which Tenant may
26 install and maintain Tenant's sign panels. In the event any other tenant or occupant of the
27 Shopping Center has its sign panels on more than one (1) pylon and/or monument sign, then
28 Tenant shall also be allowed to place its sign panel on such additional pylon and/or monument
29 signs, subject to approval by local governmental authority. Landlord shall cooperate fully with
30 Tenant and assist Tenant in obtaining all permits to install Tenant's sign panels on Landlord's
31 pylon/monument sign structure(s) as specified on **Exhibit J**. The size and location of the panels
32 shall be as specified in **Exhibit J** attached hereto (i.e., in the location previously occupied by the
33 Emporium). Tenant shall pay for the expense of installing and maintaining its sign panels on the
34 pylon/monument sign structure(s). Utility charges for the pylon sign(s) on which Tenant places its
35 sign panels shall be a Common Area Charge.

36 24.4. Temporary Signs.

37 During the period of construction described in Section 5.1, Tenant shall have the right to
38 construct temporary signage adjacent to and/or on the Store and at the perimeter of the Shopping
39 Center indicating the anticipated opening of the Store for business. Additionally, Tenant may,

1 through the thirtieth (30th) day following the opening of the Store for business, advertise such new
2 business by means of banners, flags and other signage attached to the Store.

3 25. NOTICE

4 Any notice to be given in connection with this Lease shall reference (a) this Lease, (b) the
5 store number which has been assigned to the Store by Tenant (if known to Landlord), and (c) the
6 location of the Store. The notice shall be served (a) personally, or (b) by certified mail, return
7 receipt requested, or (c) by reputable courier service which provides written evidence of delivery,
8 addressed to Landlord as specified in Section 1.2.1 and addressed to Tenant as specified in
9 Section 1.2.2 (or to such other address as requested by either party in writing), or (d) by telephone
10 facsimile upon which the date and time of transmission is machine imprinted to the number
11 specified in Section 1.2.1 as to Landlord and as specified in Section 1.2.2 as to Tenant. Copies of
12 any notices sent to Tenant (addressed to Tenant as specified in Section 1.2.2) shall also be sent to
13 Bartko, Zankel, Tarrant & Miller, 900 Front Street, Suite 300, San Francisco, CA 94111, Attention:
14 Ross Notices. All notices given in the manner specified herein shall be effective upon actual receipt
15 or upon refusal to accept delivery.

16 Either party, by written notice to the other, may designate two (2) additional parties to
17 receive copies of notices. Any notice party to this Lease may change its address or location for
18 service of notices, for themselves or any of their respective designees by written notice.

19 26. GENERAL CONDITIONS

20 26.1. Partial Invalidity.

21 If any term, covenant, condition, provision or restriction of this Lease is held by a Court of
22 competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof
23 shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

24 26.2. Relationship of Parties.

25 Nothing contained in this Lease shall be deemed or construed by the parties hereto or by
26 any third person to create the relationship of principal and agent, or of partnership, or of joint
27 venture, or of any other association between the parties other than Landlord and Tenant, or to
28 prevent Landlord or Tenant from entering into ventures in direct competition with the Shopping
29 Center, or the Store.

30 26.3. Time.

31 Time is of the essence in the performance of each provision of this Lease.

32 26.4. Waiver.

33 The waiver of the performance of any term, covenant, condition, provision or restriction of
34 this Lease by Landlord or Tenant shall not be construed as a waiver of any subsequent breach of the
35 same term, covenant, condition, provision or restriction. The various rights, options, elections,
36 powers and remedies of the parties contained in this Lease shall be construed as cumulative and no

one of them exclusive of any other or of any legal or equitable remedy which either party might otherwise have in the event of a breach by the other, and the exercise of one right or remedy by a party shall not in any way impair its right to any other right or remedy.

26.5. Partial Months.

For purposes of computing dates for expirations, Option Periods, Rent adjustments or cancellations (except for those dates specifically designated herein), any partial month at the commencement of the Term shall be disregarded.

26.6. Consent.

Unless a different standard is otherwise specifically stated, wherever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

26.7. Gender.

Words of gender used in this Lease shall be deemed to include other genders, and singular and plural words shall be deemed to include the other, as the context may require.

26.8. Governing Law.

This Lease shall be construed in accordance with and governed by the laws of the state wherein the Store is located, except as otherwise required by mandatory provisions of law.

26.9. Due Authority.

If Tenant or Landlord is a corporation, partnership, limited liability company, trustee or other entity, each individual executing this Lease on behalf of said entity (in his/her representative capacity only) represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the entity and that this Lease is binding upon the entity.

26.10. No Prior Agreements.

It is understood that there are no oral agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements or representations and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. There are no other representations or warranties between the parties, and all reliance with respect to representations is solely upon the representations and agreements contained in this Lease. This Lease may be modified or amended only by an agreement in writing signed by the parties hereto.

26.11. Entry by Landlord.

Upon reasonable prior notice, in no event to be less than ten (10) business days (except in the case of a bona fide emergency, in which event, no prior written notice shall be required, but prior verbal notice shall be required promptly confirmed in writing thereafter), Landlord may enter

the Store during Tenant's business hours for purposes of inspection, to show the Store to prospective purchasers and lenders, or to perform maintenance and repair obligations imposed upon Landlord by this Lease. All maintenance, repairs or replacements by Landlord to the interior of the Store or using the interior of the Store or maintenance, repairs or replacements to any portion of the Shopping Center that will create dust, noise, vibration or other material disturbance of Tenant's use of the Store shall be performed only during hours that the Store is not open to the public. Should Landlord unreasonably interfere with Tenant's business by such entry, Rent shall equitably abate in an amount reasonably determined with reference to the nature, extent and duration of the deprivation of Tenant's business in connection with Landlord's entry into the Store.

26.12. Neutral Interpretation.

Landlord and Tenant agree that this Lease has been freely negotiated and that in the event a dispute arises with respect to the meaning or interpretation of any provision of this Lease, no presumption, inference or conclusion shall be drawn against the party that drafted the provision in question.

26.13. Force Majeure.

As used in this Lease, the term "Force Majeure" means delay resulting from causes beyond a party's reasonable control such as strikes, walkouts or other labor disputes; acts of God; inability to obtain labor, materials or merchandise; judicial orders; war; riot or civil commotion; fire or casualty; governmental restrictions, regulations or controls (hereinafter "governmental matters") excluding from "governmental matters" planning and building permits. The party obliged to perform shall give prompt notice to the other as soon as reasonably possible after the onset of such delay stating the cause and an estimate of the duration thereof. If, as a result of an event of Force Majeure, either party shall be delayed or hindered or prevented from the performance of any act required hereunder (other than the making of payments) within the time period set forth herein, the performance of such act shall be excused for the period of delay not to exceed sixty (60) days, and the period of performance of such act shall be extended for a period equivalent to the period of such delay [not to exceed sixty (60) days], unless a provision of this Lease expressly states that Force Majeure is not applicable, such as, for example and without limitation, the calculation of the Permitted Delivery Day and the Automatic Termination Date. Financial inability to perform shall not constitute an event of Force Majeure.

26.14. Successors in Interest.

The terms, conditions and covenants herein contained shall inure to the benefit of and be binding upon the heirs, assigns and other successors in interest to the parties hereto, except as otherwise provided in this Lease.

26.15. Memorandum of Lease


This Lease shall not be recorded. However, a Memorandum of Lease shall be executed, in recordable form, by both parties concurrently herewith. Either party may record the same at its own cost and expense.

1 **26.16. Real Estate Brokers**

2 Landlord and Tenant each represents and warrants to the other party that it has not
3 authorized or employed, or acted by implication to authorize or employ, any real estate broker or
4 salesman to act for it in connection with this Lease, other than Seattle Pacific Realty ("Brokers"),
5 who shall be paid by Landlord at the rate of Two Dollars (\$2) per square foot of Leasable Floor
6 Area in the Store (not to exceed Sixty Thousand Dollars (\$60,000), fifty percent (50%) upon
7 Tenant's commencement of construction of Tenant's Work and fifty percent (50%) upon Tenant
8 opening the Store for business. Landlord and Tenant shall each indemnify, defend and hold the
9 other party harmless from and against any and all claims by any other real estate broker or salesman
10 whom the indemnifying party authorized or employed, or acted by implication to authorize or
11 employ, to act for the indemnifying party in connection with this Lease. Further, in the event
12 Landlord fails to pay the Brokers within ten (10) days of the date that such commission is due to be
13 paid, Tenant, at its option, may pay the Brokers' fees and deduct the same from Rent as it comes
14 due.

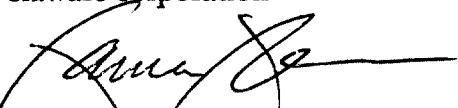
15 **26.17. Intentionally Deleted.**

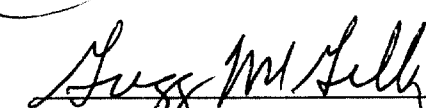
LANDLORD:
JEFFERSON SQUARE OF KLAMATH, LLC,
an Oregon limited liability company

By: 
Its: MANAGING MEMBER

By: _____
Its: _____

TENANT:
ROSS STORES, INC.,
a Delaware corporation

By: 
Its: James Fassio
Sr. Vice President

By: 
Its: Gregg McGillis
Vice President, Real Estate

1 State of California)

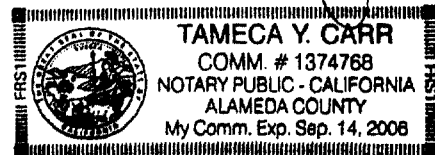
2 County of Alameda)

3 On 4/7/04 before me, James,
4 a Notary Public, personally appeared James Fassio and Gregg McGillis, personally known to me (or
5 proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
6 subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
7 his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the
8 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

9
10 WITNESS my hand and official seal.
11

James
Notary Public

12
13
14 State of Oregon)
County of Klamath)



15
16 On April 1, 2004 before me, Lisa Weatherby,
17 a Notary Public, personally appeared Walter Seput,
18 personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
19 whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
20 executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
21 the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
22 instrument.
23

24
25 WITNESS my hand and official seal.
26
27

Lisa Weatherby
Notary Public



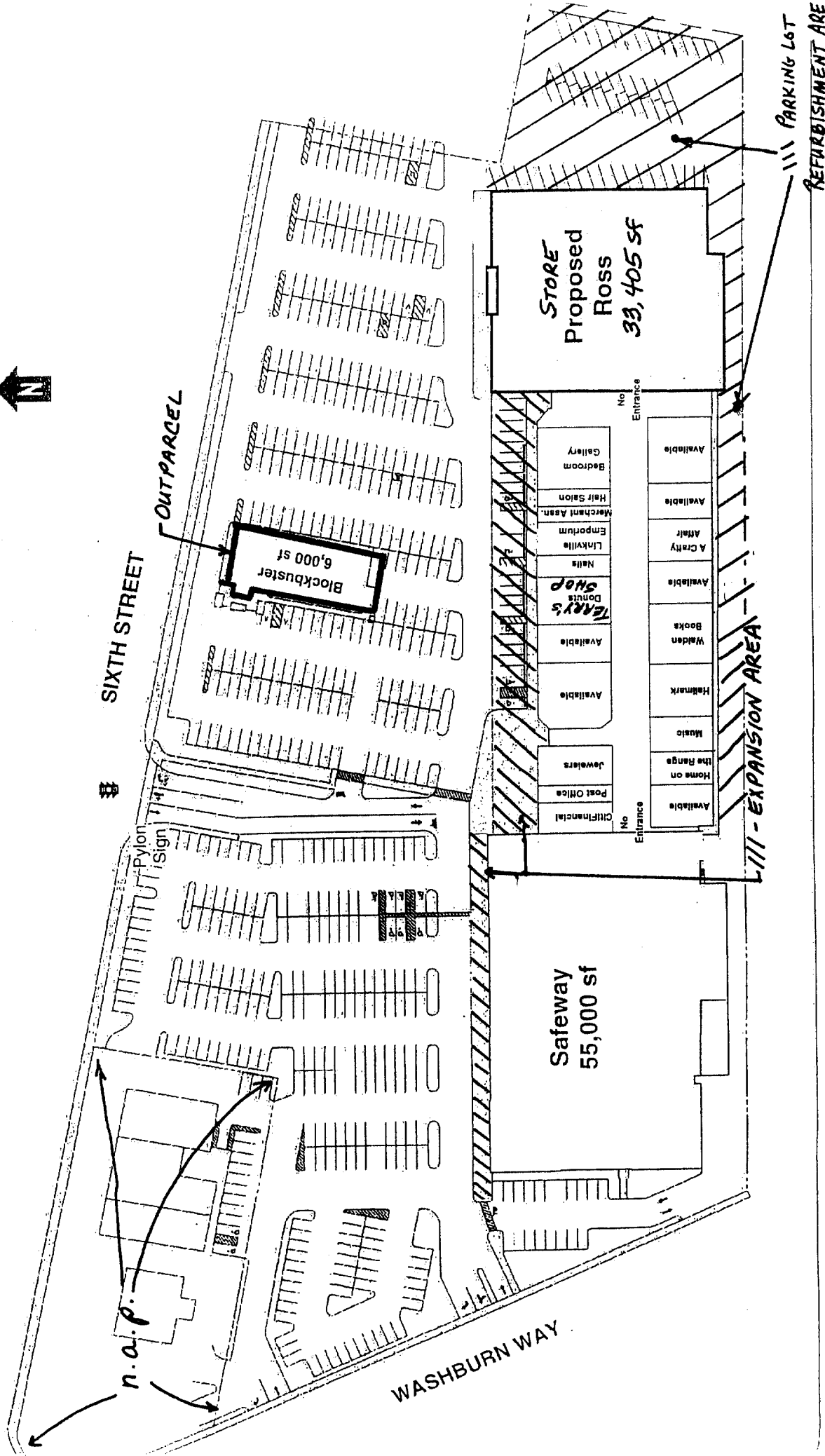
EXHIBIT A
LEGAL DESCRIPTION OF THE SHOPPING CENTER

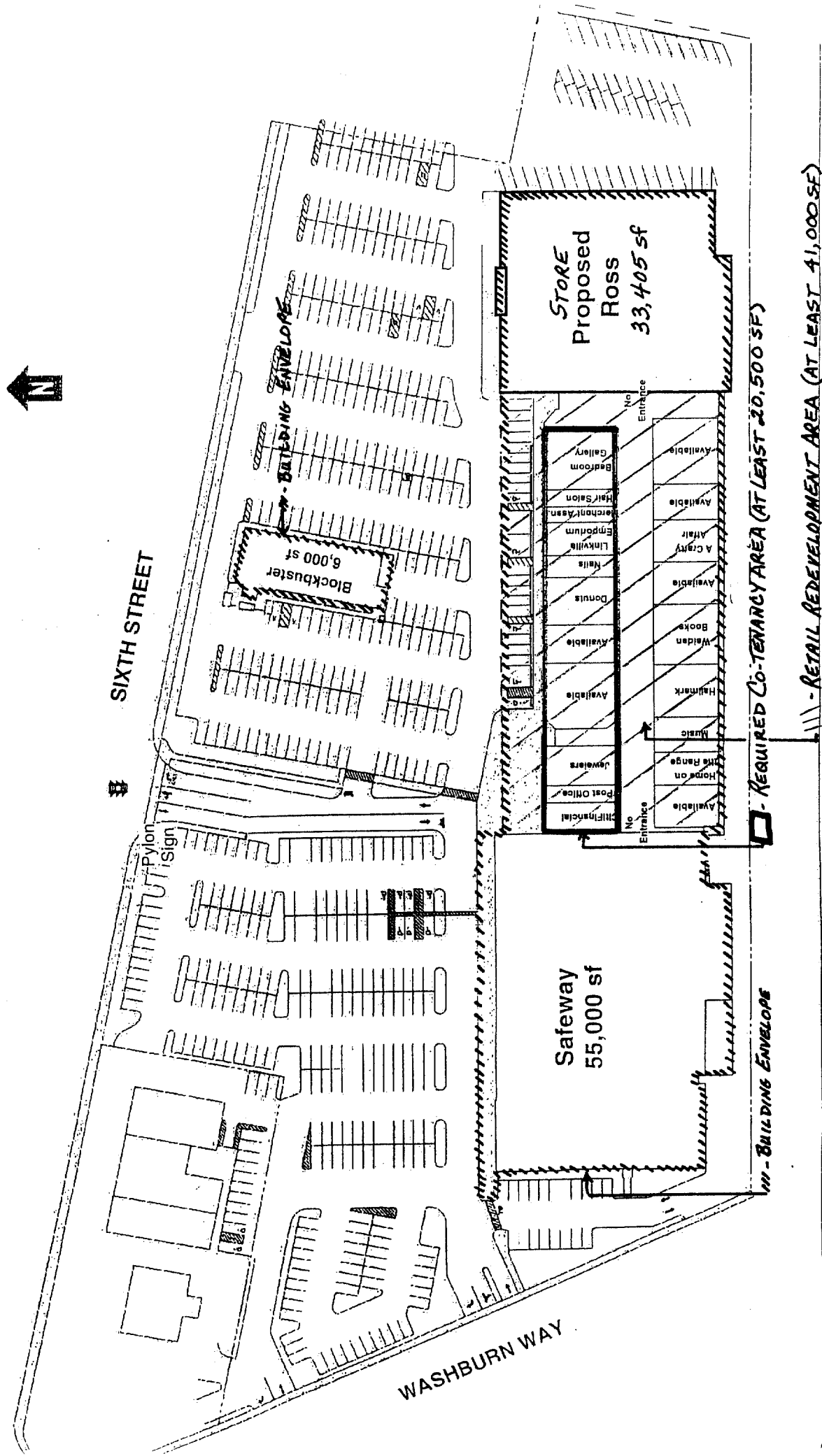
A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South 00 degrees 00' 30" East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55° 52' 30" East, at Engineers Station 9 + 17.42 feet on Washburn Way and Engineers Station 16 + 14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineers Station 9 + 65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16 + 41.99 feet; thence South 55° 52' 30" East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South 55 degrees 52' 30" East parallel to said centerline 795.36 feet; thence at right angles South 34 °07' 30" West, 204.00 feet; thence South 55° 52' 30" East parallel to Sixth Street 145.00 feet; thence at right angles South 34° 07' 30" West, 183.80 feet, more or less, to Northerly right way line of the Oregon, California and Eastern Railroad; thence North 66° 57' 30" West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North 00° 00' 30" West along said right of way line 503.39 feet; thence South 55° 52' 30" East, 306.22 feet; thence North 34° 07' 30" East, 160.00 feet to the true point of beginning.

Tax Account No.: 3909-003BC-00900-000

Key No.: 526087





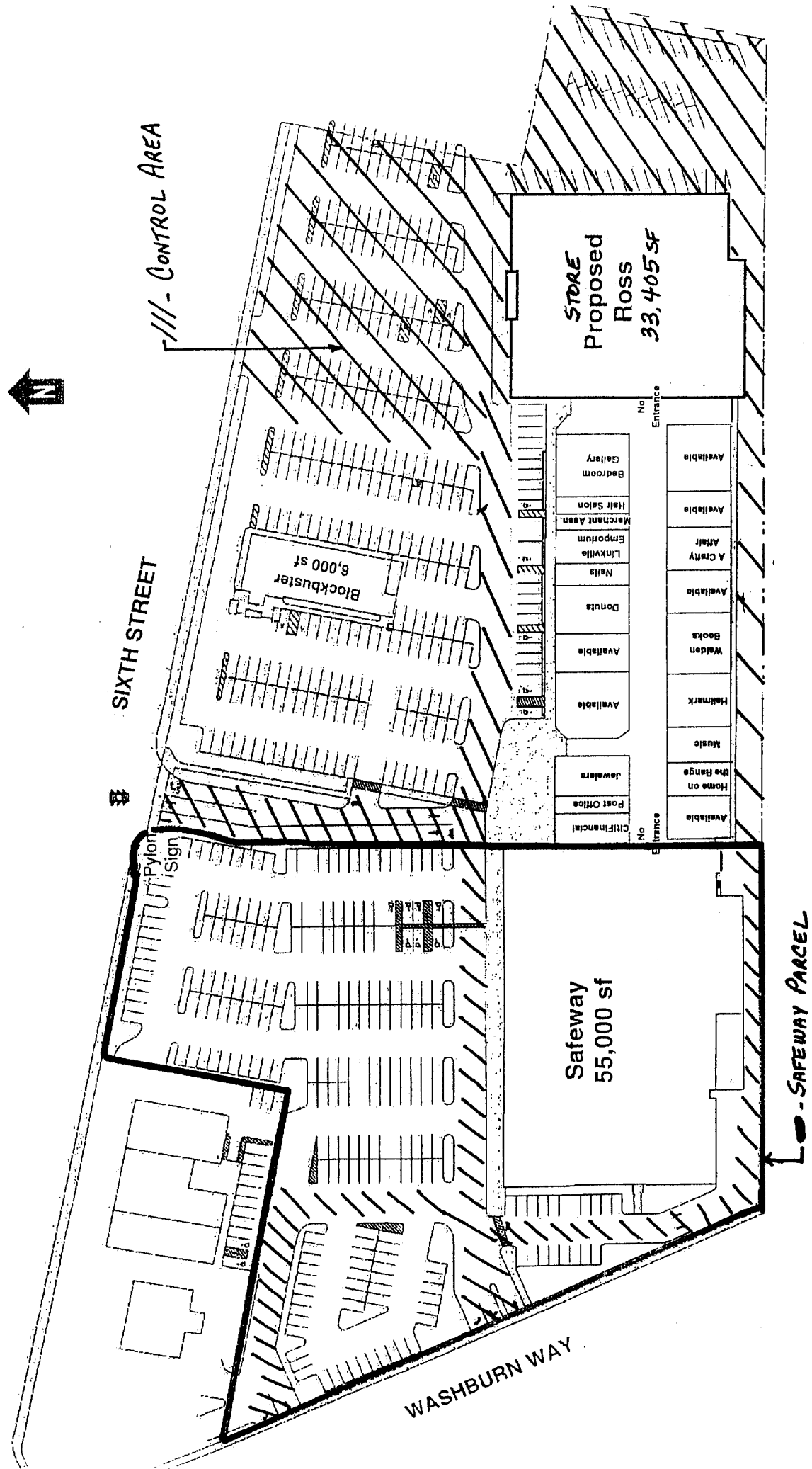


EXHIBIT C

ROSS BUILT CONSTRUCTION OBLIGATIONS OF TENANT (LANDLORD PAYS NO CONSTRUCTION COSTS)

1. **Description of Work.** To effect completion of the work described in the Final Plans (hereinafter called the "Work" or the "Improvements"), Landlord authorizes Tenant to act as construction supervisor. The duties of Tenant as construction supervisor shall include the obligation to arrange, contract (in Tenant's name) and pay for the furnishing of all labor and materials to construct and complete in a good, expeditious, workmanlike and substantial manner the Improvements. In its capacity as construction supervisor, Tenant shall supervise and direct all Work, using its best skill and attention. Tenant shall be solely responsible for all construction means and methods, techniques, sequences and procedures, and for coordinating all portions of the Work. All Work shall be performed in accordance with this Agreement. Delegation to Tenant of the obligation to construct the Improvements in no way constitutes a waiver of Landlord's ownership rights in the Improvements as provided in Section 12.1 of the Lease.

2. **Preliminary Plans.** Tenant shall deliver to the Landlord a set of plans and specifications (hereinafter the "Preliminary Plans") for the improvements within ninety (90) days after the date of execution of the Lease. In the event a proceeding for a Land Entitlement Permit is required, the time for delivery of the Preliminary Plans shall be extended by the period required for acquisition of such entitlement permit in accordance with Section 6 below.

3. **Final Plans.** Within fifteen (15) days following the date the Preliminary Plans are delivered to Landlord by Tenant, Landlord shall, in writing, approve or disapprove said plans, which approval may not be unreasonably withheld. The sole reasonable ground for Landlord's disapproval of Preliminary Plans, or any part thereof, shall be that the Improvements described are of such a special purpose and nature that a subsequent tenant in the same business as Tenant could not reasonably use the Improvements for its own purposes or that the exterior elevations of the Store are not consistent with the storefront elevations set forth on Exhibit J to the Lease. Preliminary Plans approved by both Landlord and Tenant are hereinafter referred to as "Final Plans." Any disapproval must be accompanied by a specific description of the revisions Landlord would require in order to approve the Preliminary Plans, which revisions must be reasonable. In the event the Preliminary Plans are disapproved by Landlord, Tenant shall incorporate into the Preliminary Plans the suggested revisions received from the Landlord, and shall resubmit such revised Preliminary Plans to Landlord within thirty (30) days following receipt of Landlord's notice of disapproval; Landlord shall have fifteen (15) days thereafter in which to approve or disapprove the same, and in the event Landlord disapproves the same, such disapproval shall be on reasonable grounds stated in writing. In lieu of adopting Landlord's suggested revisions, Tenant may negotiate with Landlord for modifications of suggested revisions within the ensuing thirty (30) day period. If the parties cannot agree on the Final Plans, the Lease may be terminated by either party by written notice to the other at any time following expiration of the thirty (30) day period following Landlord's disapproval, except, however, that Landlord shall not have the right to terminate if its approval of the Preliminary Plans has been unreasonably withheld, or disapproval of the Preliminary Plans has not been on

reasonable grounds. In the event Landlord fails to disapprove the Preliminary Plans or Tenant's revisions thereto, in writing, or fails to state the reasons for disapproval or disapproves the same on unreasonable grounds within the fifteen (15) day time period set forth above, then such Preliminary Plans or revisions thereto shall be deemed approved.

4. Site Plan. Any site plan included in the Final Plans shall conform generally to Exhibit B of the Lease. The Store shall contain approximately the number of square feet as set forth in the Lease.

5. Approvals and Permits.

(a) Upon approval of the Final Plans by both parties, Tenant shall forthwith make application to all appropriate governmental agencies for all necessary building permits, licenses and other grants for authority which may be required in connection with the construction of the Improvements (hereinafter collectively the "Building Permit"). Upon issuance of the Building Permit, a final initialed and dated set of plans reflecting all governmentally required changes shall be delivered to Landlord.

(b) Tenant shall have ninety (90) days from the date the Preliminary Plans are approved by both parties in which to obtain the Building Permit. If the Building Permit is not obtained (including the inability to obtain any required variance from such governmental authority) within the ninety (90) day period, Tenant, at its sole option, may terminate the Lease upon written notice to Landlord. If the Building Permit is not obtained, within two hundred seventy (270) days from the date the Preliminary Plans are approved by both parties hereto, either party may terminate the Lease thereafter by written notice to the other.

6. Land Entitlement Permits. Should it be necessary for Landlord to obtain a Land Entitlement Permit (as defined hereinbelow) of any sort, the time for preparation of Preliminary or Final Plans shall be extended by the time reasonably required to obtain such Land Entitlement Permit. If the Landlord, despite its best efforts, is unable to obtain a Land Entitlement Permit (including the inability to obtain any required variance from the appropriate governmental authority) prior to February 1, 2005, either party may terminate the Lease upon written notice to the other at any time thereafter. Tenant shall prepare such plans and specifications as may be reasonably required for the processing of such Land Entitlement Permit for the Store only. The term "Land Entitlement Permit" as used herein shall include without limitation by enumeration an environmental impact report or statement or its equivalent, a zoning change or variance, an architectural or design review approval, general plan change, planned unit development approval or its equivalent, subdivision approval or its equivalent, or any other approval pertaining to the Work or use or general design of the Store and Improvements as opposed to the structural integrity of the Improvements.

7. Access to Premises. Tenant's architect at all times shall have access to the Store during construction for purposes of inspection.

8. Painting of Exterior of Store. In the event Tenant elects, in its sole discretion, to paint the exterior of the Store as part of the initial Tenant's Work, Tenant agrees that the paint color shall be architecturally compatible with the balance of the Shopping Center. Tenant

acknowledges that Landlord is not obligated to paint the exterior of the Store as part of Landlord's Construction Obligations (defined in the Lease).

EXHIBIT D PROHIBITED USES

SAFeway LEASE

14.2.1. To safeguard Landlord's and Tenant's interest in a clean, quiet environment, free of obnoxious odors, and to ensure adequate parking for customers, Landlord and Tenant covenant and agree that (i) each shall permit only the sale of retail goods and provision of retail services within the Shopping Center, except for industrial, manufacturing, warehouse or office uses that are incidental to the provision of retail goods and services; (ii) each shall not permit any use which creates a nuisance, materially increases noise, noxious emissions or dust, or endangers health and safety of persons at the Shopping Center; (iii) each shall not permit car washes, gas stations or dry cleaners with an on-premises plant; (iv) each shall not permit any second hand, thrift stores or mortuaries; (v) each shall not permit any use involving a Hazardous Substance, except as may be customary in neighborhood shopping centers, similar in size and tenant mix to the Shopping Center; (vi) each shall not permit the displaying, repairing, renting, leasing or sale of any motor vehicle, boat or trailer; (vii) each shall not permit any business with drive-up or drive-through lanes; (viii) each shall not permit the operation of any training or educational facility within three hundred feet (300') of any wall defining the limit of the Leased Premises, (ix) Landlord shall not permit the operation of any restaurant (including any take-out, fast-food, cafeteria or full service sit-down restaurant) within 250 feet measured from the main customer entrance, and (x) each shall not permit the use or operation of any portion of the Shopping Center for the purpose of any entertainment or recreational facility. As used herein "training or educational facility" includes, without limitation, a beauty school, barber college, place of instruction, or any other operation catering primarily to students or trainees rather than to customers, but excludes employee training by Shopping Center tenants incidental to the conduct of their businesses within the Shopping Center. As used herein, "entertainment or recreational facility" includes, without limitation, a theater, carnival, bowling alley, skating rink, amusement center, electronic or mechanical games arcade (except as an incidental use to a retail business), child care facility, pool or billiard hall, betting parlor, bingo parlor, health or aerobic spa or studio, martial arts studio, gymnasium, massage parlor, pornographic shop, adult book store, nightclub, dance hall, tavern, cocktail lounge, any facility serving alcoholic beverages, excepting only from this prohibition a full service restaurant serving alcoholic beverages as an incidental part of its food service operation (which restaurant nevertheless shall be subject to the restriction contained in item (ix) of this Section) or other place of public or private amusement. The restriction against restaurants within 250 feet from the main customer entrance of the Leased Premises does not apply to the existing Terry's Donuts operation.

ACKNOWLEDGEMENT OF COMMENCEMENT

This Acknowledgement is made as of November 24, 2004, with reference to that certain Sub-Lease Agreement [hereinafter referred to as the "Lease"] dated March 31, 2004 between **JEFFERSON SQUARE OF KLAMATH FALLS, LLC.**, "Landlord", therein, and **ROSS STORES, INC.**, as Lessee".

The undersigned hereby confirms the following:

1. The Delivery Date (as described in said Lease) occurred on 05/01/04.
2. In accordance with the provisions of said Lease, the commencement date 11/27/04 (210 Days after the Delivery Date), and unless sooner terminated, the original term thereof expires on 01/31/2015.
3. The Agreed Size of the Store is 30,187 square feet.
4. The notice date for the exercise of the first option is on or before 08/03/2014 (180 days prior to termination).

LANDLORD:

JEFFERSON SQUARE OF KLAMATH, LLC
an Oregon limited liability company

By: 
Its: Walter Seput
Managing Member

TENANT:

ROSS STORES, INC.,
a Delaware corporation

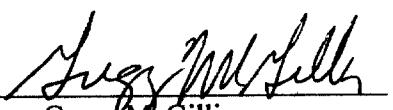
By: 
Its: Gregg McGillis
Vice President, Real Estate

EXHIBIT E
ACKNOWLEDGMENT OF COMMENCEMENT

This Acknowledgment is made as of _____, 20__ with reference to that certain lease (hereinafter referred to as the "Lease") dated _____, 20__ between **JEFFERSON SQUARE OF KLAMATH, LLC**, as "Landlord" therein, and **ROSS STORES, INC.**, as "Tenant."

The undersigned hereby confirms the following:

1. The Delivery Date (as described in said Lease) occurred on _____.

2. In accordance with the provisions of said Lease the commencement date of the term is _____, and that, unless sooner terminated, the original term thereof expires on _____.

3. The Agreed Size is _____ square feet.

4. The notice date for the exercise of the first option is on or before _____, 20__.

LANDLORD:
JEFFERSON SQUARE OF KLAMATH,
LLC, an Oregon limited liability company

TENANT:
ROSS STORES, INC.,
a Delaware corporation

By: _____
Its: _____

By: _____
James Fassio
Its: Sr. Vice President

By: _____
Its: _____

By: _____
Gregg McGillis
Its: Vice President, Real Estate

EXHIBIT F

RECORDING REQUESTED BY

Ross Stores, Inc.

AND WHEN RECORDED MAIL TO:

Bartko, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, CA 94111
Attn.: Theani C. Louskos, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: Klamath Falls, OR

1
2
3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is
4 effective as of this ____ day of _____, 20__, by and between _____ (the "Lender"),
5 ROSS STORES, INC., a Delaware corporation (the "Tenant") and JEFFERSON SQUARE OF
6 KLAMATH, LLC, an Oregon limited liability company (the "Landlord").

7
8 **RECITALS**

9 A. Lender is the holder of indebtedness secured by a lien or liens upon, the real property
10 described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A"
11 property and improvements thereon is hereinafter referred to as the "Shopping Center." The instruments
12 creating such lien or liens whether they be denominated as being "mortgage," "deed of trust," "deed to
13 secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments
14 modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter
15 collectively referred to as being the "Mortgage."

16 B. Tenant has executed, or will execute, a certain lease with Landlord, dated for reference
17 purposes on _____, for all or a portion of the Shopping Center, which portion (the
18 "Premises") is more particularly set forth in said lease. Said lease and all amendments and modifications
19 thereto are herein collectively referred to as the "Lease."

20 C. Tenant has requested that Lender agree not to disturb Tenant's possessory rights under the
21 Lease in the event that Lender should foreclose on the Mortgage, provided that Tenant is not in default
22 of the Lease.

1 D. The parties desire to establish certain rights and obligations with respect to their
2 respective interests by means of this Agreement.

3
4 **AGREEMENTS**

5 NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein
6 contained, and intending to be legally bound by hereby agree as follows:

7 1. Subject to the terms and conditions of this Agreement, and for so long as this Agreement
8 remains binding upon Lender, the Lease shall be, in accordance with the terms and conditions hereof,
9 subordinate to the lien of the Mortgage and all voluntary and involuntary advances made thereunder.

10
11 2. Lender approves of the Lease.

12
13 3. Provided that Tenant is not in default so as to permit the Landlord to terminate the Lease
14 or Tenant's right to possession of the Premises, Lender or the purchaser at a foreclosure sale pursuant to
15 any action or proceeding to foreclose the Mortgage, whether judicial or non-judicial, or Lender pursuant
16 to acceptance of a deed in lieu of foreclosure or any assignment of Landlord's interest under the Lease,
17 in the exercise of any of the rights arising, or which may arise, out of the Mortgage or in any other
18 manner: (i) shall not disturb or deprive Tenant in or of its use, quiet enjoyment and possession (or its
19 right to use, quiet enjoyment and possession) of the Premises, or of any part thereof, or any right, benefit
20 or privilege granted to or inuring to the benefit of Tenant under the Lease (including any right of renewal
21 or extension thereof); (ii) shall not terminate or affect the Lease; (iii) shall recognize Tenant's rights,
22 benefits and privileges under the Lease; and, (iv) shall recognize the leasehold estate of Tenant under all
23 of the terms, covenants, and conditions of the Lease for the remaining balance of the term of the Lease
24 with the same force and effect as if Lender were the Landlord under the Lease. Lender hereby
25 covenants that any sale by it of the Shopping Center pursuant to the exercise of any rights and remedies
26 under the Mortgage or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder.
27 However, in no event shall Lender be:

28 (a) Liable for any act or omission of Landlord arising prior to the date Lender takes
29 possession of Landlord's interest in the Lease or becomes a mortgagee in possession, except to the
30 extent such act or omission is of a continuing nature, such as, for example, a repair obligation;

31 (b) Liable for any offsets or deficiencies which the Tenant might be entitled to assert
32 against the Landlord arising prior to the date Lender takes possession of Landlord's interest in the Lease
33 or becomes a mortgagee in possession, except to the extent that Lender has received the benefit of the
34 act of the Tenant giving rise to the right of deduction, such as, for example, relief of an obligation that
35 would otherwise have been paid by Lender as Landlord;

36 (c) Bound by any payment of rent or additional rent made by Tenant to Landlord for
37 more than one month in advance, which payment was not required under the terms of the Lease;

1 (d) Bound by any amendment or modification of the Lease executed after the date of
2 this Agreement which: (i) increases Landlord's obligations or reduces Tenant's obligations under the
3 Lease; and, (ii) is made without Lender's prior written consent (except to the extent that the Lease may
4 specifically contemplate any amendment or modification thereof).

5
6 4. In the event of the termination of the Mortgage by foreclosure, summary proceedings or
7 otherwise, and if Tenant is not in default under the terms and conditions of the Lease so as to permit the
8 Landlord thereunder to terminate the Lease, then, and in any such event, Tenant shall not be made a
9 party in the action or proceeding to terminate the Mortgage unless not to do so would be
10 disadvantageous procedurally to Lender, in which case, such joinder of Tenant as a party shall not
11 extinguish or interfere with any rights of Tenant under the Lease, nor shall Tenant be evicted or moved
12 or its possession or right to possession under the terms of the Lease be disturbed or in any way interfered
13 with, and, subject to the provisions of this Agreement, Tenant will attorn to Lender or any other party
14 which obtains title to the Shopping Center pursuant to any remedy provided for by the Mortgage or
15 otherwise, such attornment to be effective and self-operative without the execution of any other
16 instruments on the part of any party, and the Lease shall continue in full force and effect as a direct Lease
17 from Lender or such party to Tenant under all the terms and provisions of the Lease (including any rights
18 to renew or extend the term thereof). In the event of such attornment, Lender shall be deemed to have
19 assumed and shall assume the performance of all of the affirmative covenants of Landlord occurring
20 under the Lease from and after the time Lender becomes Landlord and until such time as such
21 obligations are assumed by a bona fide purchaser.

22
23 5. Tenant hereby confirms that the Lease is in full force and effect.

24
25 6. Nothing contained in this Agreement shall be deemed to reduce or abrogate any rights of
26 Tenant to cure any default of the Landlord under the Lease in accordance with and subject to the
27 provisions of the Lease and/or to deduct from rental such amounts which Tenant may be entitled to so
28 deduct under the provisions of the Lease.

29
30 7. Unless and until Lender or any subsequent purchaser succeeds to the interest of Landlord
31 under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease.

32
33 8. If Landlord executes and delivers to Lender an Assignment of Leases and Rents
34 conveying the rent under the Lease upon an event of default by Landlord under the Mortgage, after
35 receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease should
36 be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to Landlord under the
37 Lease. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender
38 hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses,
39 losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance
40 of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such
41 notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance

1 with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the
2 existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted
3 solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party
4 thereto.

5
6 9. Lender shall use the proceeds of any insurance recovery or condemnation award for the
7 purposes stated in the Lease.

8
9 10. No modification, amendment, waiver or release of any provision of this Agreement or of
10 any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any
11 purpose whatsoever unless in writing and duly executed by the party against which the same is brought
12 to be asserted.

13
14 11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto
15 and their respective heirs, legal representatives, successors and assigns, including without limitation, the
16 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
17 foreclosure or at a sale under power of sale.

18
19 12. In the event any one or more of the provisions contained in this Agreement shall for any
20 reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and
21 of no further force or effect.

22
23 13. This Agreement shall be governed and construed according to the laws of the state where
24 the Shopping Center is located.

25
26 14. Provided that Tenant is not in default under the Lease, Lender shall not institute any
27 litigation naming Tenant as a defendant for the purpose of foreclosing or otherwise terminating Tenant's
28 leasehold interest in the Shopping Center or the Premises unless Tenant is required to be named in such
29 litigation by law, and then only for the purpose of complying with the applicable foreclosure statute and
30 so long as Tenant's failure to defend against any such action shall not result in a waiver of its rights to
31 continued possession under the Lease as set forth in this Agreement. The term "Lender" as used herein
32 shall include any successor-in-interest to the Lender (including a purchaser at foreclosure or sale in lieu
33 thereof).

34
35 15. To be effective, any notice or other communication given pursuant to this Agreement
36 must be in writing and sent postage paid by United States registered or certified mail with return receipt
37 requested. Rejection or other refusal to accept, or inability to deliver because of changed address of
38 which no notice has been given, will constitute receipt of the notice or other communication. For
39 purposes hereof, Lender's address is:

Jefferson Square Mall
Klamath Falls, OR
Store No. 817
6061.589/282084.1

1
2
3
4
5 Attn.:
6
7

8 and Tenant's address is:

9 Ross Stores, Inc.
10 8311 Central Avenue
11 Newark, CA 94560-3433
12 Attn.: Real Estate Legal Notice Department
13
14

15 and Landlord's address is:

16
17 Jefferson Square of Klamath, LLC
18 501 Damont
19 Klamath Falls, OR 97601
20 Attn.: Walter Seput
21
22

23 At any time(s), each party may change its address for the purposes hereof by giving the
24 other party a change of address notice in the manner stated above.
25

26 16. This Agreement (a) contains the entire understanding of Lender and Tenant regarding
27 matters dealt with herein (any prior written or oral agreements between them as to such matters being
28 superseded hereby), (b) can be modified or waived in whole or in part only by a written instrument
29 signed on behalf of the party against whom enforcement of the modification or waiver is sought, and (c)
30 will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

31
32 17. In the event of any litigation arising out of the enforcement or interpretation of any of the
33 provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable
34 attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall be that party
35 who obtains substantially the relief sought in the action.

36
37 18. In the event the Lease is terminated as a result of Landlord's bankruptcy or
38 reorganization, whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the
39 ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the

1 Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this
2 Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement
3 agreement documenting that the Lease has been reinstated as between Lender (as Landlord) and Tenant
4 and that the terms and conditions thereof shall be as stated in the Lease, subject to the provisions of this
5 Agreement.

6 IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of
7 the day and year first written above.

TENANT:
ROSS STORES, INC.,
a Delaware corporation

LENDER:

By: _____
Gregg McGillis
Its: Vice President, Real Estate

By: _____
Its: _____

By: _____
Its: _____

LANDLORD:
JEFFERSON SQUARE OF KLAMATH,
LLC, an Oregon limited liability company

By: _____
Its: _____

By: _____
Its: _____

8

9

1
State of California)
) ss.
County of Alameda)

2
3 On _____ before me, _____,
4 a Notary Public, personally appeared Gregg McGillis, personally known to me (or proved to me on the
5 basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and
6 acknowledged to me that he executed the same in his authorized capacity, and that by his signature on
7 the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

8
9 WITNESS my hand and official seal.

10

Notary Public

11
12 State of _____)
) ss.
County of _____)

13
14 On _____ before me, _____, a Notary
15 Public, personally appeared _____,
16 personally known to me or (proved to me on the basis of satisfactory evidence) to be the person(s) whose
17 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
18 same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
19 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

20 WITNESS my hand and official seal.

21

Notary Public

1 State of _____)
2 _____) ss.
3 County of _____)

4 On _____ before me, _____, a Notary
5 Public, personally appeared _____,
6 personally known to me or (proved to me on the basis of satisfactory evidence) to be the person(s) whose
7 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
8 same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
9 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

10 WITNESS my hand and official seal.
11

12 Notary Public
13

EXHIBIT F-1

RECORDING REQUESTED BY

Ross Stores, Inc.

AND WHEN RECORDED MAIL TO:

Bartko, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, CA 94111
Attn.: Theani C. Louskos, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT
[MASTER LESSOR]
LOCATION: Klamath Falls, OR

1
2
3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement")
4 is effective this ____ day of _____, 20____, by and between
5 _____, a _____ (the "Master
6 Lessor"), ROSS STORES, INC., a Delaware corporation ("Tenant") and JEFFERSON SQUARE
7 OF KLAMATH, LLC, an Oregon limited liability company ("Landlord").

8 RECITALS

9 A. Under that certain Lease Agreement, dated _____ (the "Master
10 Lease"), Master Lessor is the lessor and Landlord is the lessee with respect to the real property
11 described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit
12 "A" property and improvements thereon are hereinafter collectively referred to as the "Shopping
13 Center."

14 B. Tenant has executed, or will execute, a certain lease with Landlord, dated for
15 reference purposes on _____, for all or a portion of the Shopping Center, which
16 portion (the "Premises") is more particularly set forth in said lease. Said lease and all amendments
17 and modifications thereto are herein collectively referred to as the "Lease." Capitalized terms used
18 herein without definition shall have the meaning ascribed to them in the Lease.

19 C. Tenant has requested that Master Lessor agree not to disturb Tenant's possessory
20 rights under the Lease in the event that Landlord defaults under the Master Lease and Master Lessor
21 becomes the landlord under the Lease, provided that Tenant is not in default under the Lease.

22 D. The parties desire to establish certain rights and obligations with respect to their
23 respective interests by means of this Agreement.

EXHIBIT F-1

AGREEMENTS

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein contained, hereby agree as follows:

1. Subject to the terms and conditions of this Agreement, the Lease shall be, in accordance with the terms and conditions hereof, subordinate to the Master Lease.

2. Master Lessor represents and warrants to Tenant that: (i) Master Lessor is the "Landlord" or "Lessor" under the Master Lease; (ii) Master Lessor is the sole holder of fee simple title to the Shopping Center; (iii) Master Lessor has the full right and authority to enter into this Agreement; (iv) the Master Lease is in full force and effect and represents a valid lease of the entire Shopping Center; (v) a copy of the fully executed Master Lease and each of the amendments thereto referred to above in the Recitals hereto are true and correct, and there are no other amendments, modifications or additions to the Master Lease, written or oral; (vi) neither Master Lessor nor Landlord are in default under any terms or conditions of the Master Lease; (vii) the current term of the Master Lease expires by its own terms on [TBD]; and (viii) Landlord currently has [TBD] options of [TBD] years each to extend the term of the Master Lease.

3. Master Lessor consents to the Lease and the leasing of the Premises to Tenant. Further, Master Lessor: (i) consents to Tenant's construction of the improvements reflected in Exhibit C of the Lease and all alterations and modifications required in connection therewith; (ii) consents to Tenant's erection and maintenance, at its sole expense (except as otherwise provided in the Lease), of all signage reflected in Exhibit J of the Lease, including the locations thereof as depicted in such Exhibit; (iii) consents to Tenant's installation of Communication Equipment pursuant to Section 12.2 of the Lease and agrees to the terms of Section 12.2.2 of the Lease relating to roof repairs and Tenant's Communication Equipment.

4. Master Lessor and Tenant agree that neither of them has any liability to the other by reason of any default by Landlord under the Master Lease, and that their only liability to each other with respect to Tenant's use of the Premises is as expressly provided herein. Furthermore, Tenant has no liability to Master Lessor under the Lease or otherwise until the expiration or earlier termination of the Master Lease and Master Lessor's assumption of the Lease, pursuant to Paragraph 5 of this Agreement. Nothing contained herein or in the Lease shall release Landlord from its obligations under the Master Lease.

5. Provided that Tenant is not in default so as to permit Landlord to terminate the Lease or Tenant's right to possession of the Premises, and notwithstanding any contrary provisions in the Master Lease, Master Lessor (i) shall not disturb or deprive Tenant in or of its use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Premises, or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Tenant under the Lease (including any right of renewal or extension thereof); (ii) shall not terminate or

EXHIBIT F-1

1 affect the Lease; (iii) shall recognize Tenant's rights, benefits and privileges under the Lease; and,
2 (iv) shall recognize the leasehold estate of Tenant under all of the terms, covenants, and conditions
3 of the Lease for the remaining balance of the Term of the Lease with the same force and effect as if
4 Master Lessor were the Landlord under the Lease. Master Lessor hereby covenants that any sale by
5 Master Lessor of the Shopping Center pursuant to the exercise of any rights and remedies under the
6 Master Lease or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder.
7 However, in no event shall Master Lessor be:

8 (a) Liable for any act or omission of Landlord arising prior to the date Master
9 Lessor takes possession of Landlord's interest in the Lease except to the extent such act or omission
10 is of a continuing nature, such as, for example, a repair obligation;

11 (b) Liable for any offsets or deficiencies which Tenant might be entitled to assert
12 against Landlord arising prior to the date Master Lessor takes possession of Landlord's interest in
13 the Lease, except to the extent that Master Lessor has received the benefit of the act of Tenant
14 giving rise to the right of deduction, such as, for example, relief of an obligation that would
15 otherwise have been paid by Master Lessor as Landlord;

16 (c) Bound by any payment of rent or additional rent made by Tenant to
17 Landlord for more than one (1) month in advance, which payment was not required under the terms
18 of the Lease;

19 (d) Bound by any amendment or modification of the Lease executed after the
20 date of this Agreement which: (i) increases Landlord's obligations or reduces Tenant's obligations
21 under the Lease; and, (ii) is made without Master Lessor's prior written consent (except to the extent
22 that the Lease may specifically contemplate any amendment or modification thereof).

23
24 6. In the event of the termination or expiration of the term of the Master Lease for any
25 reason whatsoever, and if Tenant is not in default under the terms and conditions of the Lease so as
26 to permit the Landlord thereunder to terminate the Lease, Tenant shall not be made a party in the
27 action or proceeding to terminate the Master Lease. Further, Tenant shall not be evicted or moved
28 or its possession or right to possession of the Premises under the terms of the Lease be disturbed or
29 in any way interfered with. Subject to the provisions of this Agreement, Tenant will attorn to
30 Master Lessor or any other party which retains or obtains title to the Shopping Center (without the
31 encumbrance of the Master Lease) pursuant to any remedy provided for by the Master Lease or
32 otherwise. Such attornment shall be effective and self-operative without the execution of any other
33 instruments on the part of any party, provided that Master Lessor notifies Tenant thereof, and, in all
34 events, the Lease shall continue in full force and effect, subject to the terms of this Agreement, as a
35 direct Lease between Master Lessor (or such party) and Tenant under all of the exact and verbatim
36 terms and provisions of the Lease (including any rights of Tenant to renew or extend the Term
37 thereof), without the necessity for executing any new lease. In the event of such attornment, Master
38 Lessor shall be deemed to have assumed and shall assume the performance of all of the affirmative
39 covenants of Landlord occurring under the Lease from and after the time Master Lessor becomes
40 the landlord and until such time as such obligations are assumed by a bona fide purchaser, if any.

EXHIBIT F-1

7. Tenant hereby confirms that the Lease is in full force and effect. The parties hereto agree that, as between Landlord and Tenant, all of the provisions of the Lease shall be superior and paramount to the Master Lease. In the event of any inconsistency between the provisions of the Master Lease and the provisions of the Lease, as between Landlord and Tenant, the provisions of the Lease shall supersede and prevail. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Master Lease, the terms of this Agreement shall supersede and prevail and, accordingly, the provisions of the Master Lease as they apply to the Premises, are amended to the extent necessary to reconcile such conflicts or inconsistencies. Notwithstanding anything to the contrary elsewhere in this Agreement, the terms and provisions of the Lease are not to be incorporated herein except as expressly provided in this Agreement.

8. Nothing contained in this Agreement shall be deemed to reduce or abrogate any rights of Tenant to cure any default of Landlord under the Lease in accordance with and subject to the provisions of the Lease and/or to deduct from rental such amounts which Tenant may be entitled to so deduct under the provisions of the Lease.

9. Unless and until Master Lessor or any subsequent purchaser succeeds to the interest of Landlord under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease. Landlord shall also perform Landlord's obligations and duties and shall comply with all of the terms, covenants and conditions of the Master Lease which are binding upon Landlord. Master Lessor, Landlord and Tenant agree that, in the event of a default by Landlord under the Master Lease, Tenant shall have the right, but not the obligation, to cure Landlord's default under the Master Lease, and to pursue against Landlord any remedies available under the Lease, and at law or in equity.

10. If, under the provisions of the Master Lease or the Lease, Master Lessor is entitled to receive rent due under the Lease in the event of a default by Landlord under the Master Lease, after receipt of notice from Master Lessor to Tenant (at the address set forth below) that rents under the Lease should be paid to Master Lessor, Tenant shall thereafter pay to Master Lessor all monies thereafter due to Landlord under the Lease. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord and Master Lessor hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Master Lessor in accordance with the provisions hereof. Any dispute between Master Lessor (or any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Master Lease, shall be dealt with and adjusted solely between Master Lessor (or any subsequent purchaser) and Landlord, and Tenant shall not be made a party thereto.

11. Master Lessor shall use the proceeds of any insurance recovery or condemnation award for the purposes stated in the Lease.

EXHIBIT F-1

12. On and after the date of the Lease, and throughout the Term of the Lease, Master Lessor and Landlord shall not enter into any cancellation, termination, amendment or modification of the Master Lease (a "Master Lease Amendment") without Tenant's prior written consent, which consent shall not be unreasonably withheld. However, Tenant's withholding of such consent shall be deemed reasonable, among other reasons, if the proposed Master Lease Amendment will: (i) conflict with the provisions of the Lease; or (ii) increase Tenant's obligations and/or reduce Landlord's obligations under the Lease; or (iii) reduce Tenant's rights and/or increase Landlord's rights under the Lease; (iv) reduce Tenant's rights under the Master Lease which Tenant is privileged to enjoy by reason of its tenancy and rights under the Lease; or (v) materially and adversely affect Tenant's use of the Store or Tenant's use of the Common Areas of the Shopping Center.

13. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against which the same is brought to be asserted.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, including, without limitation, the covenants of Master Lessor herein shall be specifically binding upon any purchaser of the Shopping Center.

15. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and of no further force or effect.

16. This Agreement shall be governed and construed according to the laws of the state where the Shopping Center is located.

17. Provided that Tenant is not in default under the Lease, Master Lessor shall not institute any litigation naming Tenant as a defendant or otherwise terminating Tenant's leasehold interest in the Shopping Center or the Premises unless Tenant is required to be named in such litigation by law, and only so long as Tenant's failure to defend against any such action shall not result in a waiver of its rights to continued possession under the Lease as set forth in this Agreement. The term "Master Lessor" as used herein shall include any successor-in-interest to Master Lessor.

18. To be effective, any notice or other communication given pursuant to this Agreement must be in writing and sent by postage paid by United States registered or certified mail with return receipt requested. Rejection or other refusal to accept, or inability to deliver because of a changed address of which no notice has been given, will constitute receipt of the notice or other communication. For purposes hereof, Master Lessor's address is:

Jefferson Square Mall
Klamath Falls, OR
Store No. 817
6061.589/282085.1

EXHIBIT F-1
Page 5

03/29/04

EXHIBIT F-1

and Tenant's address is:

Ross Stores, Inc.
8311 Central Avenue
Newark, CA 94560-3433
Attn.: Real Estate Legal Notice Department

and Landlord's address is:

Jefferson Square of Klamath, LLC
501 Damont
Klamath Falls, OR 97601
Attn.: Walter Seput

At any time(s), each party may change its address for the purposes hereof by giving the other party a change of address notice in the manner stated above.

19. If Master Lessor or Landlord delivers a notice to the other party of the other party's default under the Master Lease, the notifying party shall also concurrently deliver a copy of such notice to Tenant.

20. This Agreement (a) contains the entire understanding of Master Lessor, Landlord and Tenant regarding the matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby), (b) can be modified or waived in whole or in part only by a written instrument signed on behalf of the party against whom enforcement of the modification or waiver is sought, and (c) will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

21. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall be that party who obtains substantially the relief sought in the action.

22. In the event the Lease is terminated as a result of Landlord's bankruptcy or reorganization, whereby Master Lessor retains or obtains fee title to the Shopping Center (without the encumbrance of the Master Lease), Master Lessor agrees that the Lease shall remain in effect as

EXHIBIT F-1

1 between Master Lessor (as landlord) and Tenant, subject to the terms of this Agreement, and, upon
2 Tenant's written request, Master Lessor and Tenant agree to execute a reinstatement agreement
3 documenting that the Lease has been reinstated as between Master Lessor (as landlord) and Tenant
4 and that the terms and conditions thereof shall be as stated in the Lease, subject to the provisions of
5 this Agreement.

6
7 23. The parties hereto covenant and agree that they shall execute such other and further
8 documents as are or may become necessary to carry out the objectives of this Agreement.

9 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed
10 as of the day and year first written above.

TENANT:
ROSS STORES, INC.,
a Delaware corporation

MASTER LESSOR:

_____,
a _____

By: _____
Gregg McGillis
Its: Vice President, Real Estate

By: _____
Its: _____

By: _____
Its: _____

LANDLORD:
JEFFERSON SQUARE OF KLAMATH,
LLC, an Oregon limited liability company

By: _____
Its: _____

11

EXHIBIT F-1

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State of California _____)
) ss.
County of Alameda _____)

On _____ before me, _____,
a Notary Public, personally appeared Gregg McGillis, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his authorized capacity, and that
by his signature on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Notary Public

State of _____)
) ss.
County of _____)

On _____ before me, _____,
a Notary Public, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT F-1

1

State of _____)
County of _____) ss.

2

3

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5

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10

On _____ before me, _____,
a Notary Public, personally appeared _____,
personally known to me or (proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

11

12

WITNESS my hand and official seal.

13

Notary Public

**EXHIBIT G
DELIVERY NOTICE**

1. The "Lease"
Landlord: Jefferson Square of Klamath, LLC
Tenant: Ross Stores, Inc.
Location: Klamath Falls, OR
Lease Dated: March 31, 2004
2. All terms used herein shall be as defined in the Lease.
3. Date of this Notice: April 1, 2004
4. Ross Store #: 817
Project Address: SEC Washburn Way and S. 6th Street
5. Pursuant to Section 5.4 of the Lease, this shall constitute the "Delivery Notice":
 - (a) The "Delivery Date," shall occur on: May 1, 2004
 - (b) Landlord acknowledges that all the requirements specified in Article 2. "Delivery Date," will be satisfied by the date specified in subparagraph (a). above.

**JEFFERSON SQUARE OF KLAMATH, LLC,
an Oregon limited liability company**

By: [Signature]
(Title) Manager

Dated: April 1, 2004

**EXHIBIT G
DELIVERY NOTICE**

1. The "Lease"
Landlord: Jefferson Square of Klamath, LLC
Tenant: Ross Stores, Inc.
Location: Klamath Falls, OR
Lease Dated: _____
2. All terms used herein shall be as defined in the Lease.
3. Date of this Notice: _____
4. Ross Store #: 817
Project Address: SEC Washburn Way and S. 6th Street
5. Pursuant to Section 5.4 of the Lease, this shall constitute the "Delivery Notice":
 - (a) The "Delivery Date," shall occur on: _____.
 - (b) Landlord acknowledges that all the requirements specified in Article 2, "Delivery Date," will be satisfied by the date specified in subparagraph (a), above.

**JEFFERSON SQUARE OF KLAMATH, LLC,
an Oregon limited liability company**

By: _____
(Title)

Dated: _____

EXHIBIT H EXCLUSIVE USES

SAFEWAY LEASE

15. COMPETITIVE BUSINESS.

15.1. Competitive Business Expectation.

15.1.1. Landlord recognizes that Tenant is entering into this Lease and is foregoing other opportunities to locate its business in other locations based on the expectation ("Tenant's Expectation") that, except as set forth in Section 15.2, Tenant will be the sole seller in the Shopping Center of (i) food for off-premises consumption, (ii) alcoholic beverages for off-premises consumption, (iii) pet foods, and (iv) merchandise which, under the laws of the State of Oregon, is required to be dispensed by or under the supervision of a registered or licensed pharmacist, ("prescription pharmacy merchandise"). Landlord further recognizes that (i) Tenant is making considerable investments in fixtures, equipment, merchandise, personnel, and advertising, (ii) Tenant is investing its business reputation in the Leased Premises which reputation will be adversely affected if Tenant's sales volume from the Leased Premises ("Tenant's Sales") is significantly less than the level planned by Tenant, (iii) the addition of other businesses to the Shopping Center which sell food for off-premises consumption, alcoholic beverages for off-premises consumption, pet foods, and/or prescription pharmacy merchandise, except as permitted in Section 15.2, will result in a reduction of Tenant's Sales and thus impair the benefit of the bargain for which Tenant negotiated in entering into this Lease, and (iv) Tenant's agreement to pay rent and to assume all other economic obligations of this Lease are predicated upon Tenant's Expectation.

15.2. Landlord's Competitive Business Covenant.

15.2.1. In recognition and consideration of Tenant's Expectation, Landlord covenants that, except as provided hereinafter in this Section 15.2, (i) Tenant shall have the sole and exclusive right in the Shopping Center to sell food for off-premises consumption, alcoholic beverages for off-premises consumption, pet foods, and prescription pharmacy merchandise and (ii) no store other than Tenant's store shall sell, or be permitted by Landlord to sell, food for off-premises consumption, alcoholic beverages for off-premises consumption, pet foods, and/or prescription pharmacy merchandise. Notwithstanding the preceding sentence, the provisions of this Section 15.2 shall not be deemed to prohibit a restaurant (fast food or sit-down) from selling alcoholic beverages and/or food prepared on premises for off-premises consumption. In addition to the provisions of Section 15.3, Tenant shall have the right to enforce its rights under the provisions of this Section 15.2 against the owner, tenant, or occupant of any other store in the Shopping Center if the store violates Tenant's exclusive right under this Section 15.2 or the store violates the restriction set forth in this Section 15.2 against the sale of food for off-premises consumption, alcoholic beverages for off-premises consumption, pet food, or prescription pharmacy merchandise.



March 5, 2004

VIA FAX AND U.S. MAIL

Ross Stores, Inc.
Attention: Marilyn Teghtmeyer
8311 Central Avenue
Newark, CA 94560-3433

Re: Safeway – Jefferson Square Mall; Klamath Falls, OR
Ross Stores, Inc. ("Ross")

Dear Ms. Teghtmeyer:

Safeway Inc. ("Safeway") has been advised that Ross is interested in leasing from Jefferson Square of Klamath, LLC ("Landlord") approximately 33,405 square feet of floor area ("Ross Store") in the Jefferson Square Mall Shopping Center in Klamath Falls, Oregon ("Shopping Center"). Pursuant to Section 15.2 of that certain Ground Lease dated February 16, 2000 executed by and between Safeway and Landlord, Safeway has the sole and exclusive right to sell food for off premises consumption ("Food Exclusive"). This letter is to confirm that the Food Exclusive granted to Safeway in Section 15.2 of the Ground Lease will not prohibit the sale of food for off premises consumption by Ross or a successor, assignee or subtenant of Ross provided that (1) such entity is then operating as a general merchandiser (defined below), (2) the sales area devoted to the sale of food for off premises consumption shall not exceed 2,500 square feet, and (3) the general merchandiser shall only be permitted to sell (a) non-perishable, pre-packaged foods such as but not limited to, crackers, cereal, cookies, potato chips and canned vegetables and fruits, and (b) liquid dairy products and ice cream. For purposes hereof, the term "non-perishable" shall in no event be deemed to include any fresh and/or frozen food including, without limitation, meat, poultry and seafood (whether processed or not) or produce. For purposes of this letter, a general merchandiser means a retail store primarily devoted to the sale of soft goods having a merchandise mix comparable to that of a national or major chain such as Ross, Target or J.C. Penney containing at least 12,500 square feet of sales area.

Further, Safeway has no objection to the height of the Ross Store as depicted on the proposed elevation prepared by Bill Moore and Associates, sheet S1 dated January 20, 2004.

This letter agreement may be executed in any number of counterparts. All of the counterparts together form one and only one agreement.

If the terms set forth herein are satisfactory to you, please acknowledge your agreement by signing, dating and returning an executed copy of this letter agreement to Safeway at the address set forth above (Attn: Dana Waller).

Very truly yours,

SAFEWAY INC.,
a Delaware corporation

By: 
Its: Assistant Vice President

By: 
Its: Assistant Secretary

FORM APPROVED 

ACKNOWLEDGED AND AGREED AS OF
THIS 9th DAY OF MARCH, 2004.

ROSS STORES, INC.
a Delaware corporation

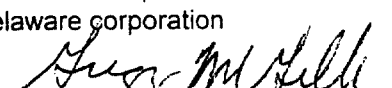
By: 
Its: VIRGINIA FOSTER



EXHIBIT H-1

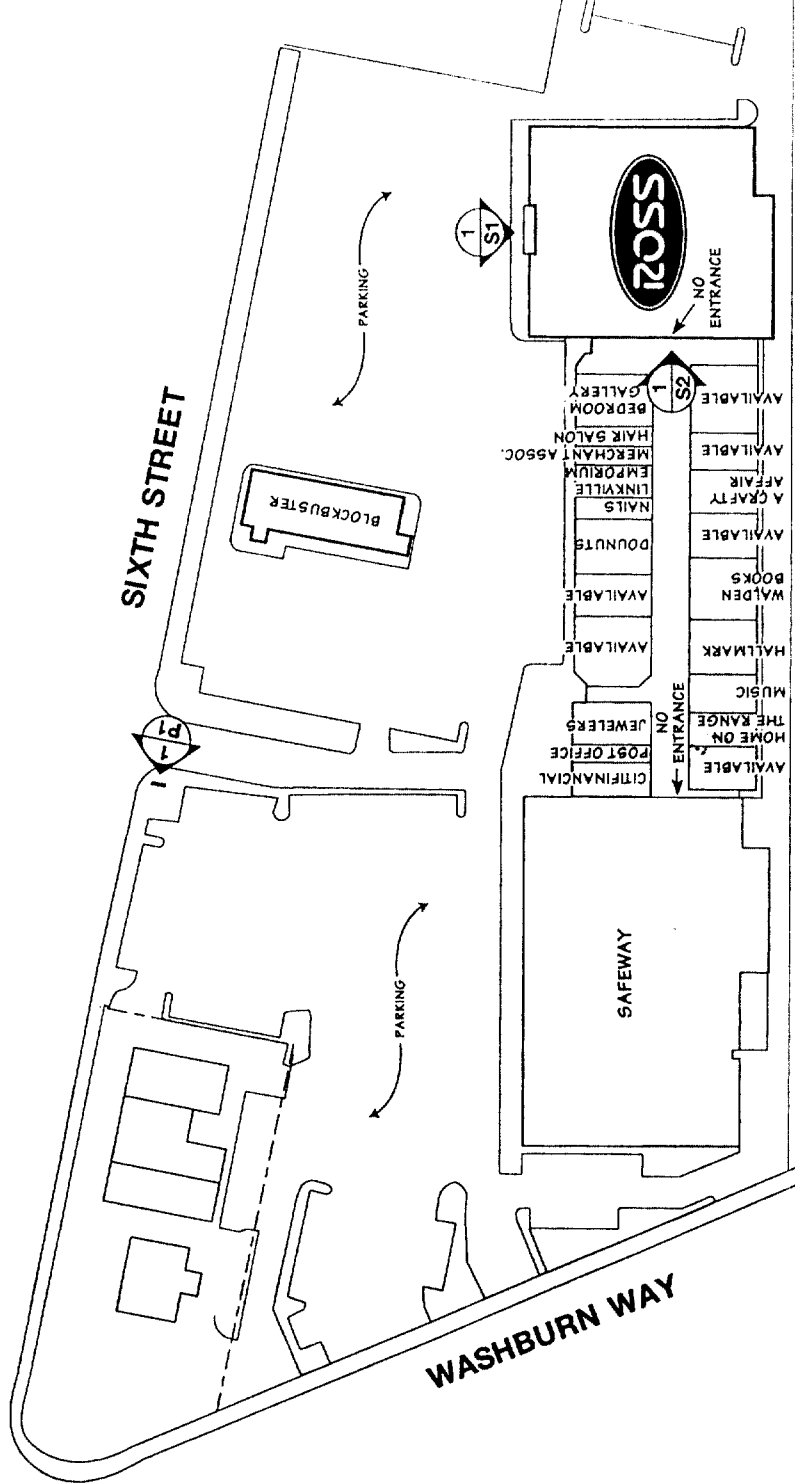
EXHIBIT I
PERMITTED TITLE EXCEPTIONS

ROSS STORES, INC. ("Tenant"), agrees to take its leasehold interest subject only to the following items and exceptions stated in the Commitment for Title Insurance issued by AmeriTitle, dated January 5, 2004, for the subject location in Klamath Falls, Oregon:

Exceptions numbered 6 through 21.

However, with respect to the leases listed on exceptions numbered 12, 13, 14, 16, and 20, Tenant does not accept or agree to be subject to any provisions of such leases, except to the extent expressly set forth in the Lease between Tenant and JEFFERSON SQUARE OF KLAMATH, LLC.

With respect to exceptions numbered 18 and 19, Tenant agrees to take its leasehold interest subject to said exceptions, subject to Tenant's receipt of a Non-Disturbance Agreement, pursuant to Section 13.1.1 of the Lease.



SITE PLAN
NOT TO SCALE

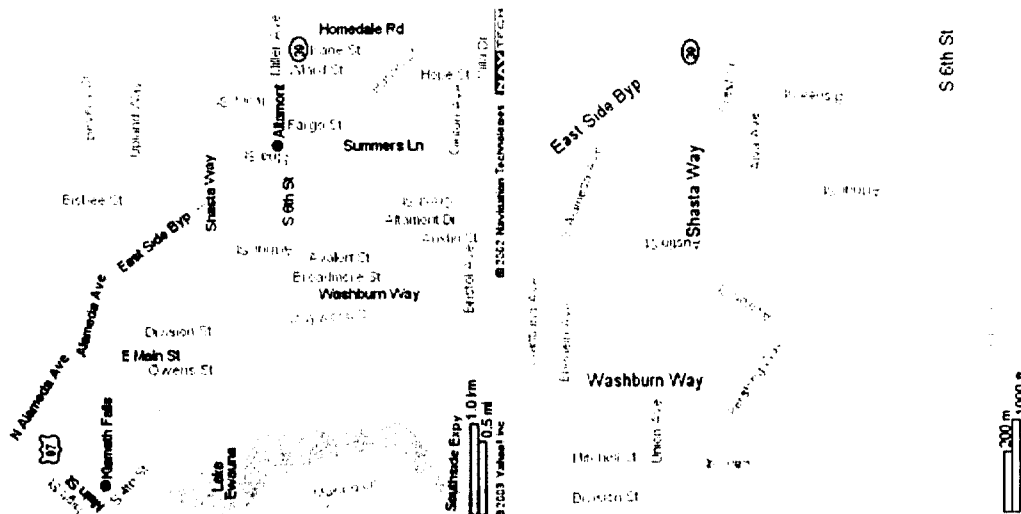
SHEET
K
13 AUG 03

#817 KLAMATH FALLS
Jefferson Square Mall
SEC Washburn Way & sixth St.
Klamath Falls, OR



bill moore & associates
(510) 526-0296 fax 526-6092
1007 Solano Ave. P.O. Box 4132 Grants, OR 97630

REVISED
10 MAR 04



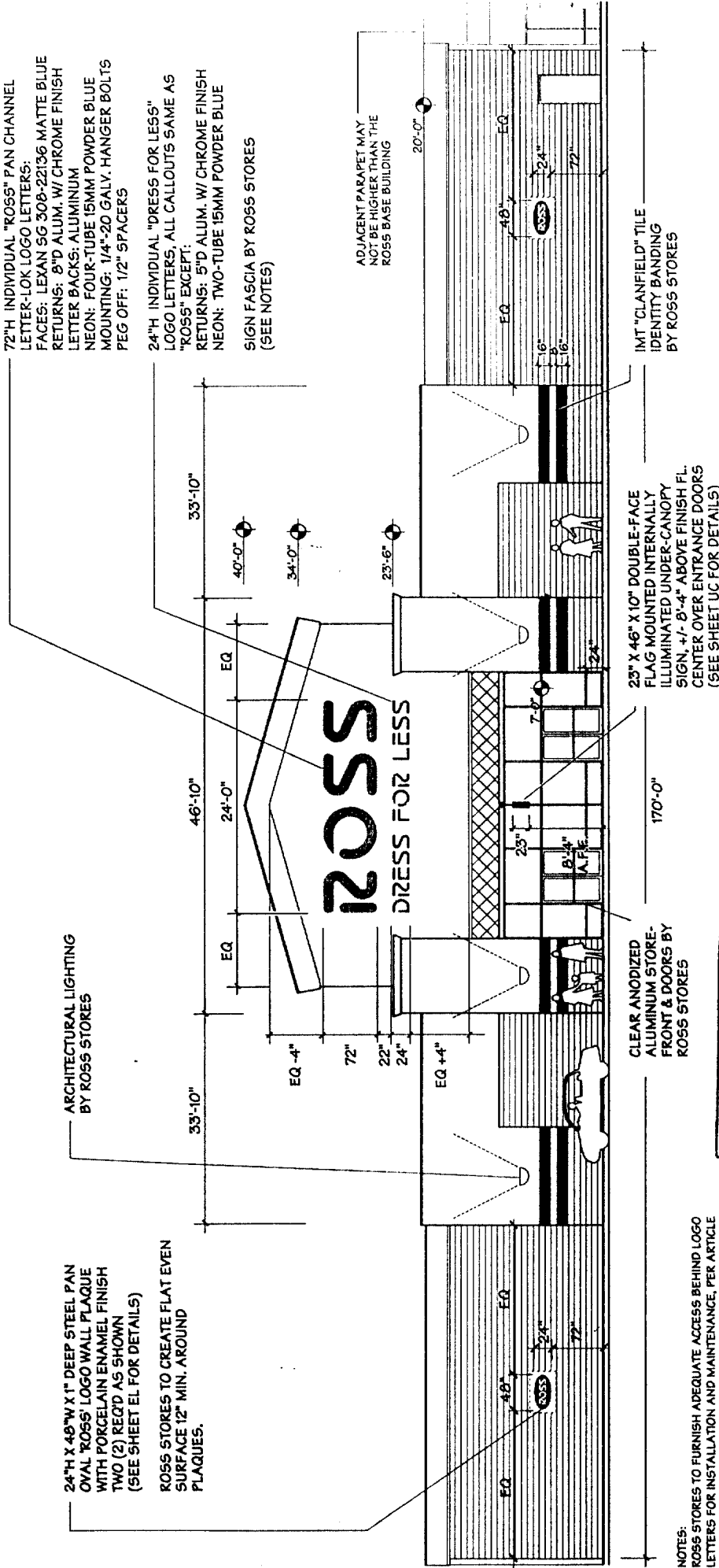
VICINITY MAP
NOT TO SCALE

EXHIBIT

Page 1 of 6

72"H INDIVIDUAL "ROSS" PAN CHANNEL
LETTER-LOK LOGO LETTERS:
FACES: LEXAN SG 308-22136 MATTE BLUE
RETURNS: 8"D ALUM. W/ CHROME FINISH
LETTER BACKS: ALUMINUM
NEON: FOUR-TUBE 15MM POWDER BLUE
MOUNTING: 1/4"-20 GALV. HANGER BOLTS
PEG OFF: 1/2" SPACERS

24"H INDIVIDUAL "DRESS FOR LESS"
LOGO LETTERS, ALL CALLOUTS SAME AS
"ROSS" EXCEPT:
RETURNS: 5"D ALUM. W/ CHROME FINISH
NEON: TWO-TUBE 15MM POWDER BLUE
SIGN FASCIA BY ROSS STORES
(SEE NOTES)



1 NORTH • SIXTH ST • ELEVATION

SCALE: 3/32" = 1' - 0"

EXHIBIT
J
Page 2 of 6

NOTES:
ROSS STORES TO FURNISH ADEQUATE ACCESS BEHIND LOGO
LETTERS FOR INSTALLATION AND MAINTENANCE, PER ARTICLE
600 OF THE 1993 N.E.C.

ROSS STORES TO SUPPLY TWO (2) 20 AMP 120V ISOLATED SIGN
CIRCUITS (DIRECTLY CONNECTED TO ELECTRICAL PANEL WITH NO
COMMON GROUNDS OR COMMON NEUTRALS, WITH # 10 WIRE
MIN.) AND JUNCTION BOXES TO AREA BEHIND SIGN LETTERS
CONNECTED TO THE ENERGY MANAGEMENT SYSTEM.

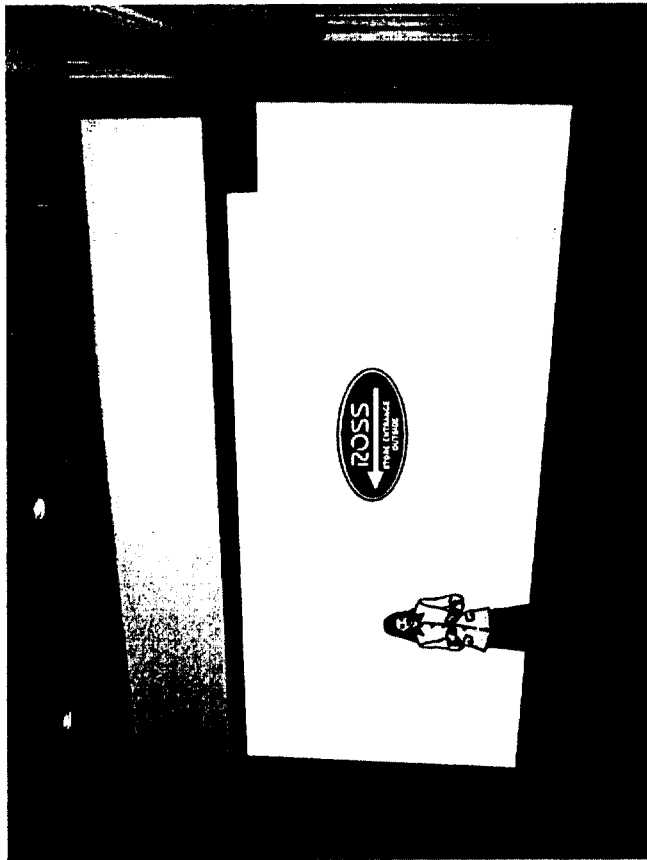
IF SIGN BACKGROUND IS E.I.F.S., ROSS STORES TO PROVIDE AT
LEAST 1/2" THICK PLYWOOD BACKING MINIMUM OF 12" AROUND
SIGN AREA. SIGN BACKGROUND TO BE FREE OF JOINTS &
REVEALS.

SIGN BACKGROUND FOR THE ROSS DRESS FOR LESS SIGN(S)
LETTERS IS TO BE OF A LIGHT COLOR (MINIMUM 80% L.R.V.) TO
PROVIDE HIGH CONTRAST AND VISIBILITY FOR THE BLUE SIGN,
SUCH AS SHERWIN WILLIAMS DOVER WHITE. ALL COLORS ARE
SUBJECT TO ROSS STORES, INC. REVIEW AND APPROVAL.

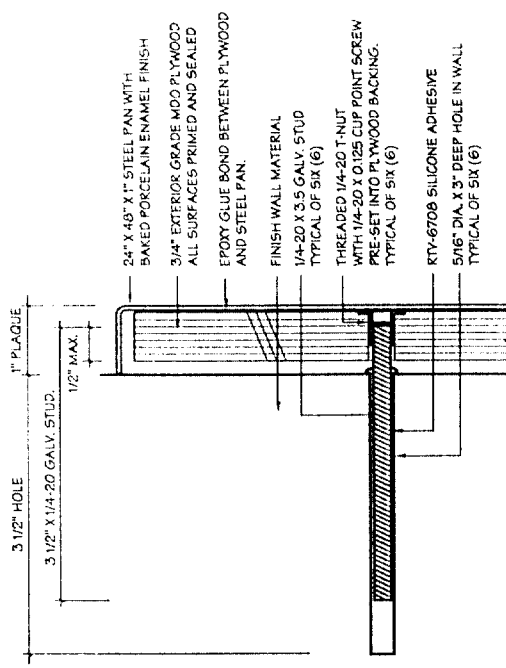
bill moore & associates
(510) 526-0296 fax 526-6092
1001 redwood ave. p.o. box 4151 alhambra, ca 91706

#817 KLAMATH FALLS
Jefferson Square Mall
SEC Washburn Way & Sixth St.
Klamath Falls, OR

SHEET
S1
28 JAN 04



1 WEST • INTERIOR MALL • ELEVATION
NOT TO SCALE



SECTION AT MOUNT
NOT TO SCALE



2 PLAQUE • DETAIL
NOT TO SCALE

NOTES:
SIGN BACKGROUND TO BE FREE OF JOINTS & REVEALS.
SIGN BACKGROUND FOR THE 'ROSS' SIGN(S) IS TO BE OF A LIGHT COLOR (MINIMUM BOX L.R.V.) TO PROVIDE HIGH CONTRAST AND VISIBILITY FOR THE BLUE SIGN, SUCH AS SHERWIN WILLIAMS DOVER WHITE. ALL COLORS ARE SUBJECT TO ROSS STORES, INC. REVIEW AND APPROVAL.

bma
bill moore & associates
(510) 526-0296 fax 526-6092
1087 solano ave. s.e. box #113 albany, ca 94706

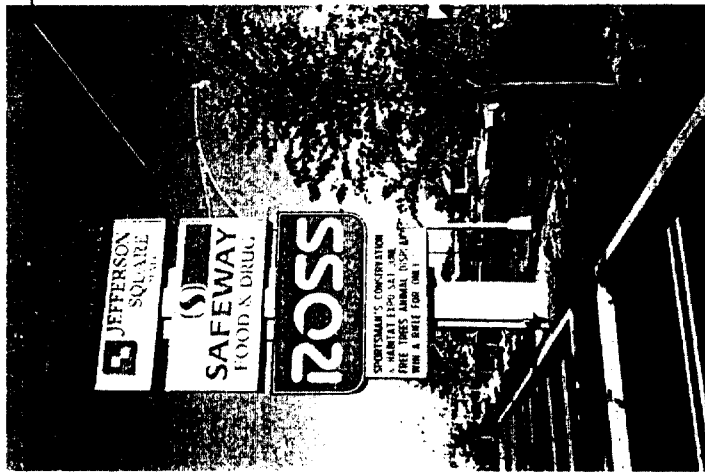
REVISED



#817 KLAMATH FALLS
Jefferson Square Mall
500 Washburn Way & Sixth St.
Klamath Falls, OR

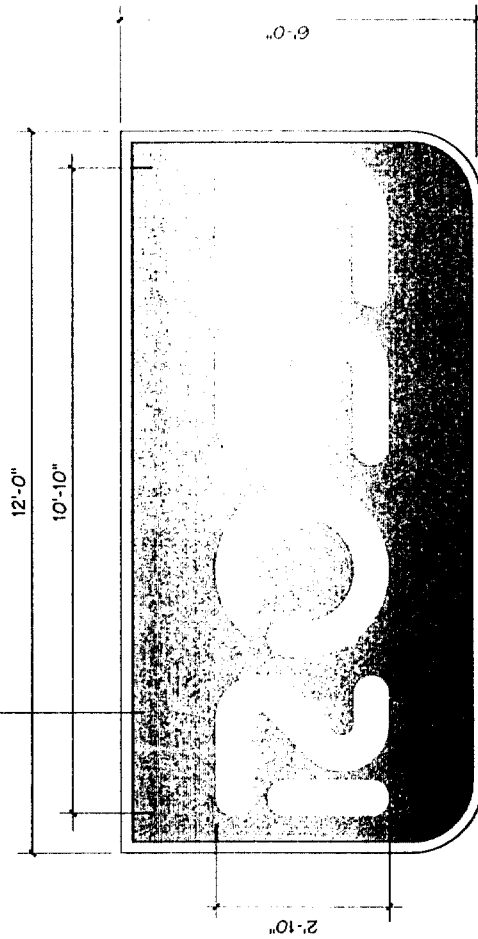
SHEET
S2
10 MAR 04

EXHIBIT
J
Page 3 of 6



PYLON WITH INTERNALLY
ILLUMINATED CABINETS
BY LANDLORD.
SEE NOTES

ROSS TENANT FACE:
6'-0" X 12'-0" SOLAR GRADE L732B
WHITE LEXAN PANEL (BY LANDLORD)
FIRST SURFACE DECORATED WITH
3M 3632-157 SULTAN BLUE VINYL -
CUT AND WEED OUT 3/4" "ROSS"
TO REVEAL WHITE.
(TWO FACES REQUIRED)



A REPLACEMENT FACE LAYOUT

SCALE: 1/2" = 1'-0"

1 D/F PYLON SIGN • SIXTH ST. • PHOTORENDERING

NOT TO SCALE

NOTES:

SEE SHEET K FOR PYLON SIGN POSITIONS
LANDLORD TO PROVIDE AND MAINTAIN PYLON STRUCTURE,
FINISHES, BLANK FACES, LIGHTING AND ELECTRICAL SERVICE
BILL MOORE & ASSOC. TO PROVIDE SCANNABLE "ROSS DRESS
FOR LESS" LOGO TYPE TO SIGN CONTRACTOR
SIGN CONTR. TO VERIFY EXACT FACE DIMENSIONS STRUCTURE
AND LIGHTING CONDITIONS, AND TO PROVIDE BMA WITH LOGO PLOT
(PROOF) PRIOR TO FABRICATION AND PHOTOS OF FINISHED DISPLAY

EXHIBIT
J
Page 4 of 6

REVISED

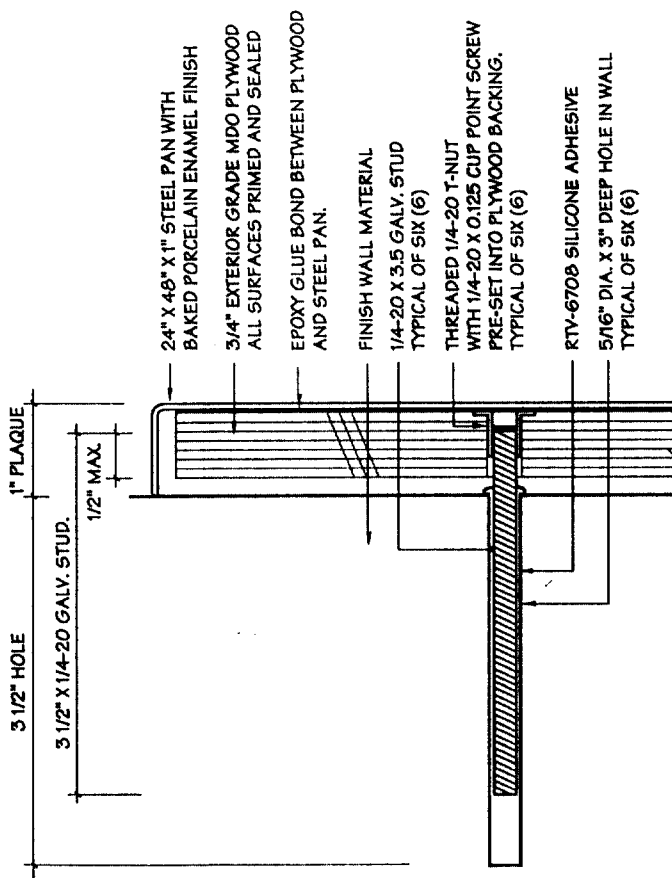
bma
bill moore & associates
(510) 526-0296 fax 526-6092
1007 adams ave. Bldg. 4113 Alameda, CA 94606



#817 KLAMATH FALLS
Jefferson Square Mall
SEC Washburn Way & sixth St.
Klamath Falls, OR

SHEET
P1
5 MAR 04

INSTALLATION INSTRUCTIONS: DRILL SIX (6) 5/16" DIA. X 3 1/2" DEEP HOLES INTO WALL AS PER PATTERN. SCREW 1/4-20 GALV. STUDS INTO BACK OF PLAQUE UNTIL THEY CONTACT CUP POINT SCREW (DO NOT OVER TIGHTEN). FILL HOLES IN WALL AND COAT ALL-THREAD WITH RTV-6708 SILICONE ADHESIVE. MOUNT PLAQUE ONTO WALL PUSHING STUDS INTO HOLES UNTIL PLAQUE IS FLUSH AGAINST WALL SURFACE.



SECTION AT MOUNT

SCALE: 3/4" = 1"

EXHIBIT

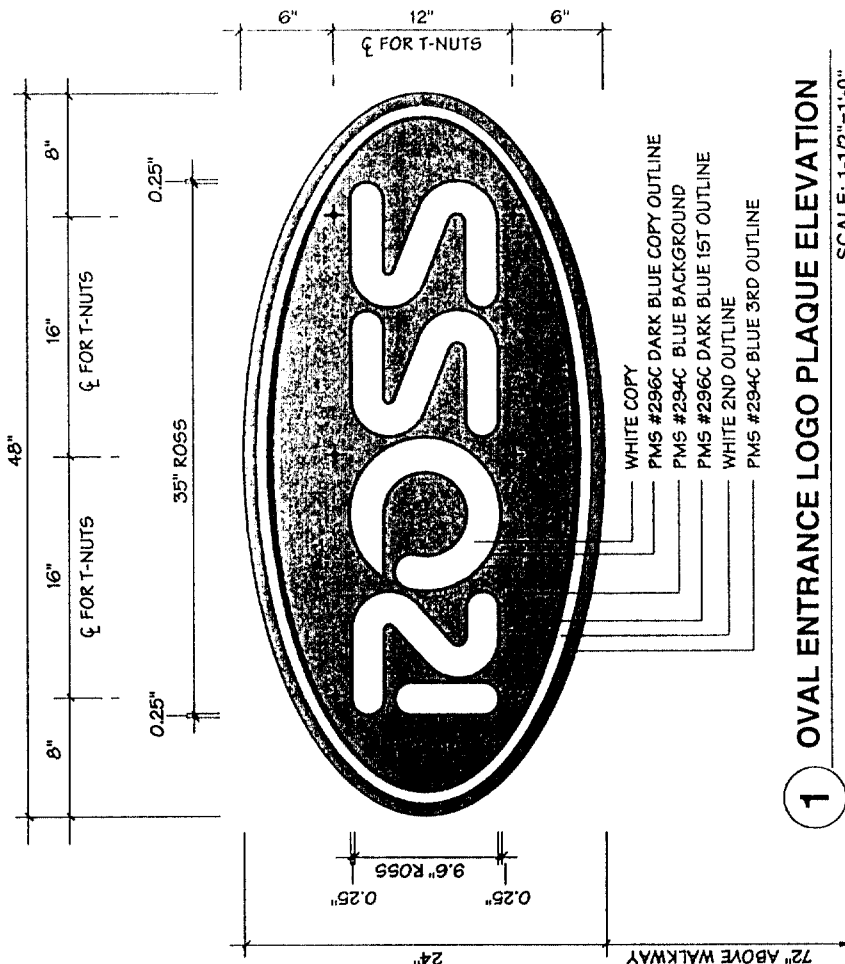
Page 5 of 6

NOTES:

SEE SHEET S1 FOR PLAQUE LOCATIONS

BILL MOORE & ASSOCIATES TO SUPPLY PLAQUES, HARDWARE AND INSTALLATION PATTERNS.

MOUNTING DETAIL MAY VARY ACCORDING TO TYPE OF WALL CONSTRUCTION; LANDLORD TO VERIFY CONDITIONS AND PROVIDE FLAT EVEN SURFACE 12" MINIMUM AROUND WALL PLAQUE LOCATION(S).



1 OVAL ENTRANCE LOGO PLAQUE ELEVATION

SCALE: 1-1/2"=1'-0"

bma
bill moore & associates
(510) 526-0296 fax 526-6092
1017 Lawrence Ave. P.O. Box 1152 Astoria, OR 97103

REVISED

#817 KLAMATH FALLS

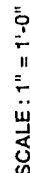
Jefferson Square Mall
SEC Washburn Way & sixth St.
Klamath Falls, OR



SHEET

EL

10 FEB 03



24 FEB 03

Page 6 of 6