



108 - Real Estate Transactions for Corporate Counsel

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Faculty Biographies

Allison Elko

Allison Elko is senior counsel with Windstream Communications, in Little Rock, Arkansas, a voice, broadband and entertainment services company operating in 16 states with approximately 3.2 million access lines and \$3.2 billion in annual revenue.

Prior to joining Windstream Communications, Ms. Elko practiced in the real estate department of Hughes & Luce, LLP, in Dallas, representing clients in office and industrial leasing, real estate acquisitions, dispositions and development, and construction financing.

Jason Maxwell

Jason P. Maxwell is the corporate counsel for Hines Advisors Limited Partnership, in Houston. As corporate counsel, he handles a variety of legal matters for the Hines REIT and Hines-Sumisei U.S. Core Office Fund. Hines Advisors is an affiliate of Hines Interests Limited Partnership, which is headquartered in Houston. With offices in 67 U.S. cities and 15 foreign countries, and controlled assets valued at approximately \$16 billion, Hines is presently one of the largest real estate organizations in the world.

Prior to assuming his current position, he was a partner in the corporate and securities section and a member of the National REIT practice at Locke Liddell & Sapp LLP in Dallas.

He is a graduate of the Georgetown University Law Center.

Ann-Lewis Shaw

Ann-Lewis Shaw is general counsel for the Northern Virginia Association of REALTORS® (NVAR), in Fairfax, Virginia, where she provides legal counsel and guidance on a variety of legal issues. She provides oversight for NVAR's arbitration, grievance, and mediation functions, and develops and teaches frequent classes and workshops for NVAR's members. In addition, Ms. Shaw writes a monthly column for the association's magazine, Update, to inform members about legal issues affecting the real estate industry.

Prior to joining NVAR, Ms. Shaw was an associate at a Northern Virginia law firm, where she focused her practice on residential and commercial real estate transactions, real estate title examination, real estate finance, and drafting and negotiation of contracts.

She has taught courses on real estate topics for area real estate brokerages, and continuing education courses for attorneys and title insurance agents. Ms. Shaw is a member of the Virginia State Bar's real property section, and the State Bar of Texas' real estate, probate & trusts section.

Ms. Shaw is a graduate of the University of Texas at Austin (B.A., J.D.).

ACC ANNUAL MEETING

REAL ESTATE TRANSACTIONS FOR CORPORATE COUNSEL

LEASES

I. TYPES OF LEASES – SPECIAL CONSIDERATIONS

- A. Office
- B. Retail
- C. Industrial/Warehouse

II. FREQUENTLY NEGOTIATED PROVISIONS

- A. Issues List
- B. Top 10 Leasing Issues – Sample Provisions
 - 1. Renewal Rights/Renewal Rent – Avoid Agreeing to Agree
 - 2. Insurance – Are You Covered?
 - 3. Repair and Maintenance – Who Does What?
 - 4. Operating Expenses – Caps and Exclusions
 - 5. Alterations – Permitted Non-Structural Improvements
 - 6. Default – Notice and Cure
 - 7. Remedies – Right to Self-Help
 - 8. Assignment and Subleasing – Affiliate and Other Transfers
 - 9. Indemnities – Mutuality
 - 10. Business-Specific Concerns – What Does Rick Want?
- C. Lease Term Sheet

III. SUBLEASES

IV. ESTOPPEL CERTIFICATES

V. GUARANTIES OR GUARANTEES

VI. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

**FREQUENTLY NEGOTIATED PROVISIONS
ISSUES LIST**

NO.	TENANT REQUEST	TYPICAL LANDLORD RESPONSE
1	Operating Expenses – List Specific Exclusions	Generally agreed.
2	Amortization of Capital Items	Generally agreed.
3	Cap on Controllable Expenses	Generally agreed with controllables defined as all Operating Expenses, except (1) taxes, (2) premiums for insurance required to be maintained by Landlord under the Lease, (3) the cost of jointly metered utilities provided to the Project, and (4) expenses incurred in order to comply with the requirements of a governmental authority or applicable law or regulation.
4	Cap on Management Fees	Generally agreed at a reasonable level (e.g. 2% of Base Rent per annum).
5	Repair, Maintenance and Replacement of Roof at Landlord's sole cost and expense as opposed to being included in CAM or Operating Expenses	Generally agreed.
6	Tenant not responsible for Repair or Maintenance of Floor Slab	Generally agreed.
7	Landlord responsible for repair and maintenance of HVAC.	Generally denied if HVAC unit exclusively serves the Premises.
8	Right to Self Insure	A credit issue and subject to Landlord's approval of Tenant's self-insurance program.
9	Fire and Casualty – Date Rebuilding Period from Date of Damage	Generally agreed.
10	Allow Assignment to Affiliates	Generally agreed, but a net worth requirement may be imposed.

NO.	TENANT REQUEST	TYPICAL LANDLORD RESPONSE
11	Merger or Consolidation not Deemed an Assignment of Lease	Generally agreed.
12	Right to Assign or Sublease	Generally denied, except subject to Landlord's prior approval (not to be unreasonably withheld, conditioned or delayed).
13	Profit Share of Excess Rents from Assignment or Subletting	Generally denied.
14	Deletion of Landlord's Recapture Right on Assignment or Subletting	Generally agreed.
15	Permission to Make Alterations	Generally agreed, but Landlord's prior approval is required for alterations other than those that are non-structural in nature, do not affect the Building systems, are not visible from the exterior of the Premises and do not exceed a certain dollar amount in the aggregate per calendar year.
16	Right to Remove Tenant Improvements at end of Term	Generally agreed, subject to restoration obligations (excluding ordinary wear and tear and damage by casualty or condemnation).
17	Notice and Cure Right - Monetary Default	Generally agreed, but limited to 10 days on no more than two occasions during any lease year.
18	Cure Period for Non-Monetary Default	Generally agreed, but limited to 30 days.
19	Right to "Go Dark"	Truly depends on the type of space leased. Generally denied in the retail setting, but more available in an office or industrial development.
20	No Lock Out Remedy for Landlord	Can depend on state law. Most landlords are hesitant to enforce lock-out rights due to high risk of suit.

NO.	TENANT REQUEST	TYPICAL LANDLORD RESPONSE
21	Grace Period for Late Payment Fee	Generally agreed.
22	Self-Help Right Without Right of Offset	Generally agreed only in emergency context. Larger tenants have more success with this request.
23	Self-Help Right with Right of Offset	Generally denied.
24	Landlord Duty to Mitigate	Generally denied, but may already be required by state law.
25	Make Indemnification Provision Mutual	Generally agreed.
26	Environmental Indemnity or Representation	Generally denied. Very limited if offered.
27	Renewal Right	Generally agreed, but determination of renewal rates is heavily negotiated.
28	Right of Revocation of Renewal Notice	Generally denied.
29	No Security Deposit	Business point based on financials and credit.
30	Right to Install Back-Up Generator	Generally agreed, subject to approval of location and appropriate screening.
31	Signage	Deal specific based on Tenant's proportionate share of space.
32	Outdoor Storage	Generally agreed, subject to approval of location and appropriate screening.
33	Lower Holdover Rate	Generally agreed. 125% - 150% is common.

NO.	TENANT REQUEST	TYPICAL LANDLORD RESPONSE
34	Designated Parking Spaces	Site specific, but generally agreed within reason.
35	Right of First Offer	Depends on Tenant's negotiating leverage.
36	Expansion Option	Generally agreed, depending on logistics and subject to rights of existing tenants.
37	Installation of Rooftop Telecommunications or Other Equipment	Generally agreed, subject to use of Landlord's contractor and Landlord's approval of plans.
38	Right to Early Occupancy	Generally agreed with Lease terms governing (except that no Base Rent is charged).
39	Penalty for Late Delivery	Generally denied. Need strong negotiation leverage for this issue.
40	Construction Warranty	May be agreed for new construction, but limited to a defect in materials or workmanship in the initial construction of the Leasehold Improvements that is discovered and reported to Landlord within the first 12-month period of the Lease Term.
41	Right to Draw Against Construction Allowance	Deal specific.
42	Audit Right	Generally agreed with respect to Operating Expenses. Limited to normal business hours and once per year.
43	Right to Protest Taxes	Generally denied, but a large tenant may succeed in obtaining the right.
44	Landlord Liable for Discontinuance or Interruption of Utility Service	Generally denied, but Landlord may agree to equitable abatement of rent and a termination right after a certain number of consecutive days without service.
45	Automatic termination of the Lease if condemnation renders the Premises "untenantable"	Generally agreed.

NO.	TENANT REQUEST	TYPICAL LANDLORD RESPONSE
46	Right to Contest Mechanics Liens and Post Bond	Generally agreed.
47	Broaden Force Majeure – Make Mutual	Generally agreed.
48	Right to Qualify Estoppel Certificates	Generally agreed.
49	Deletion of Relocation Right or Reimbursement of Relocation Costs	Generally agreed.
50	Subordination of Landlord's Lien or Deletion of Landlord's Lien	Generally agreed. A credit issue.
51	Landlord Obligated to Deliver SNDA	Generally agreed.
52	Confidentiality	Generally agreed.

SAMPLE LEASE

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into this ___ day of _____, 20___, by and between _____ ("Landlord") and _____ ("Tenant").

WHEREAS, Landlord is the owner of certain real property and improvements as are hereinafter defined; and

WHEREAS, Tenant desires to lease the real property and improvements from Landlord.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises set forth herein, Landlord and Tenant agree as follows:

1. **Premises.** Landlord hereby leases unto Tenant certain real property located at _____ in the city of _____, county of _____, state of _____ which is more particularly described as approximately _____ square feet (and _____ square feet of mezzanine, basement or storage space at no charge) shown hatched in Exhibit "A" attached hereto ("Premises"). The Premises is located within a shopping center known as _____ ("Shopping Center"). The Shopping Center is shown hatched on Exhibit "A-1" attached hereto. As used in this Lease, Tenant's "Pro-Rata Share" shall mean the percentage obtained by dividing the square footage of the Premises by the total square feet in the Shopping Center. Tenant's Pro-Rata Share is ___%. In the event the square footage of the Premises or the Shopping Center changes, Tenant's Pro-Rata Share shall be adjusted accordingly.

2. **Term.** The initial term of this Lease shall commence on the Effective Date (as hereinafter defined) and shall terminate _____ (__) full calendar months after the later of (a) the date that Tenant accepts possession of the Premises or (b) the date that Tenant receives all permits, variances, and governmental approvals necessary to construct and operate Tenant's store in the Premises ("Initial Term"). Tenant shall have the right but not the obligation to renew this Lease for _____ (__) additional terms of _____ (__) years each ("Renewal Term(s)") by delivering written notice of the exercise thereof to Landlord no sooner than twelve (12) months, but not later than nine (9) months before the expiration of the Term. During the Renewal Terms, this Lease shall continue upon the same terms, covenants and conditions as in the Initial Term except that the rental due Landlord during the Renewal Terms shall be as set forth in Section 3. If the Rent Commencement Date (as hereinafter defined) and Lease expiration date are not known at the time of execution of this Lease, within thirty (30) days after the Rent Commencement Date, the parties shall confirm in writing the Effective Date, Rent Commencement Date, and the Lease expiration date. "Term" as used herein shall mean and refer to the Initial Term and any Renewal Terms.

3. **Rental.** Beginning _____ (__) days after the later of (a) the date that Tenant accepts possession of the Premises or (b) the date that Tenant receives all permits, variances, and governmental approvals necessary to construct and operate Tenant's store in the Premises ("Rent Commencement Date"), Tenant shall pay to Landlord on the first day of each calendar month the sum of _____ (\$__) as base rental for the Premises through the Initial Term. If the Rent Commencement Date is other than the first day of a calendar month, the rent for the first month shall be prorated and shall be tendered to Landlord on the first day of the following calendar month. **In the event Tenant renews this Lease as provided for in Section 2 of this Lease, the monthly base rent during the Renewal Term(s) shall be as follows: ____ (\$__) during the first Renewal Term; ____ (\$__) during the second Renewal Term; and ____ (\$__) during the third Renewal Term.**

[Alternative Language:

(a) The monthly base rent payable during each such Renewal Term shall be the prevailing rental rate, at the commencement of such Renewal Term, for space of equivalent quality, size, utility and location in _____, taking into account all relevant factors including, but not limited to, the length of the Renewal Term and the credit standing of Tenant ("Market Rate"), determined in accordance with subsection (d) below; provided, however, that monthly base rent payable during any year of such Renewal Term shall in no event be less than the base rent payable hereunder during the last year prior to the commencement of such Renewal Term;

(b) Tenant shall have no further renewal options unless expressly granted by Landlord in writing; and

(c) Landlord shall lease to Tenant the Premises in their then-current condition.

Tenant's renewal rights shall terminate if (i) this Lease or Tenant's right to possession of the Premises is terminated, (ii) Tenant assigns any of its interest in this Lease or sublets any portion of the Premises, or (iii) Tenant fails to timely exercise a renewal option, time being of the essence with respect to Tenant's exercise thereof.

(d) Upon notification from Tenant of the exercise of a renewal option, Landlord shall within ten (10) days thereafter notify Tenant in writing of the proposed Market Rate applicable to the Renewal Term in question; Tenant shall, within five (5) days following receipt of such notice from Landlord, notify Landlord in writing of the acceptance or rejection of the proposed Market Rate. If Tenant fails to respond to Landlord's designation of Market Rate within said five (5)-day period, Tenant shall be deemed to have accepted Landlord's designation of Market Rate for all purposes. In event of rejection by Tenant, the Market Rate for the Renewal Term in question shall be determined as follows:

(i) Within ten (10) days following notification of Tenant's rejection, Landlord and Tenant shall each appoint an appraiser. Any appraiser appointed hereunder (whether by a party hereto or by an appraiser so appointed, as hereinafter provided) shall be impartial, have an office in _____ County, shall have at least ten (10) years' experience as a real estate appraiser of warehouse/industrial buildings in the _____ County area (or shall have at least ten (10) years' experience in leasing warehouse/industrial space in the _____ County area), and shall be a member of the American Institute of Real Estate Appraisers or a successor or similar organization of recognized national standing. The two appraisers appointed shall meet promptly and attempt to agree on a determination of the Market Rate for the Renewal Term in question. The determination of Market Rate by the two appraisers, if they agree, shall be binding on Landlord and Tenant. If the Market Rate determinations of the two appraisers differ by an amount equal to or less than five percent (5%) of the higher of the two determinations of Market Rate, then the Market Rate shall be equal to the arithmetic mean of the two determinations.

(ii) If the two appraisers cannot agree upon the Market Rate for the Renewal Term in question within ten (10) days following their appointment, or if their determinations of Market Rate differ by more than five percent (5%) of the higher of the two determinations of Market Rate, then the two appointees shall select a third appraiser, but if they are unable to agree on a third appraiser within five (5) days, then each appraiser shall select the names of two willing persons qualified to be appraisers hereunder and from the four persons so named, one name shall be drawn by lot by a representative of Tenant in the presence of a representative of Landlord, and the person whose name is so drawn shall be the third appraiser. If either of the first two appraisers fails to select the names of two willing, qualified appraisers and to cooperate with the other appraiser so that a third appraiser can be selected by lot, as aforesaid, the third appraiser shall be selected by lot from the two appraisers which were selected by the other appraiser for the drawing. The three appraisers so selected shall confer and immediately proceed to determine the Market Rate for the Renewal Term in question. If the three appraisers fail to agree on such Market Rate within ten (10) days after the appointment of the third appraiser, the average of the two determinations of Market Rate which are closer to each other than the third determination of Market Rate shall be the Market Rate for the Renewal Term in question.

(iii) The appraisers selected hereunder shall deliver a signed written report of their appraisal, or the average of the two closer appraisals, as the case may be, to Tenant and Landlord. The fee of the appraiser initially selected by Tenant shall be paid by Tenant, the fee of the appraiser initially selected by Landlord shall be paid by Landlord, and the fee of any third appraiser and any expenses reasonably incident to the appraisal (except attorneys' fees, which shall be borne by the party incurring the same) shall be shared equally by Tenant and Landlord. Any vacancy in the office of the appraiser appointed by Tenant shall be filled by Tenant,

any vacancy in the office of the appraiser appointed by Landlord shall be filled by Landlord, and any vacancy in the office of the third appraiser shall be filled by the first two appraisers in the manner specified above for the selection of a third appraiser.

(iv) If appraisal proceedings are initiated as provided above in order to determine the Market Rate which is applicable to the Renewal Term in question, the decision and award of the appraisers as to such Market Rate shall be final, conclusive, and binding on the parties, absent settlement by agreement of the parties prior to the rendering by the appraisers of any such decision and award. If the Market Rate is not finally determined prior to the commencement of the Renewal Term in question, Tenant shall pay monthly base rent based upon monthly base rent theretofore in effect under this Lease until the final determination of the Market Rate for the Renewal Term in question occurs as provided above. If the final determination of such Market Rate is different from the amount paid by Tenant, Tenant shall promptly pay to Landlord any deficiency in base rent or Landlord shall promptly pay to Tenant any overpayment of base rent from the commencement of the Renewal Term in question until such final determination.]

The above rent schedule is inclusive of all charges other than taxes, insurance and Common Area Operating Costs (as hereinafter defined) and Tenant shall not be obligated to pay any other charges to Landlord except those described in this Lease. Tenant's charges for taxes, insurance and Common Area Operating Costs shall not exceed ___ (\$___) per square foot for the first calendar year.

Notwithstanding anything contained in this Lease to the contrary, the Rent Commencement Date shall not be deemed to have occurred if (i) Tenant's customers, contractors, guests, employees or invitees do not have access to the Premises via completed city, state, county, parish or United States government roads available for public use and traffic; or (ii) Tenant cannot obtain a governmental certificate of occupancy or open for business due to improper or unavailable ingress or egress; or (iii) Tenant cannot obtain a governmental certificate of occupancy or open for business due to Landlord's or another party's non-completion of the common area surrounding the Premises; or (iv) Tenant cannot obtain a governmental certificate of occupancy or open for business due to Landlord having not received a certificate of occupancy for the work to be performed by or on behalf of Landlord in the Premises or Shopping Center; or (v) Tenant cannot open for business in the Premises due to any act of Landlord or failure to act by Landlord.

4. **Use of Premises.** Tenant shall have the right to use and occupy the Premises for sales, service and installation of _____ or any other lawful retail, restaurant or office use and other uses incidental thereto. Tenant shall have the exclusive right within the Shopping Center to sell, service and install _____ products which include, without limitation, products and services for _____. The trade name known to the general public will be _____.

5. **Quiet Enjoyment.** Landlord warrants to Tenant that Landlord has good title to the Premises free and clear of all liens and encumbrances, except as set forth in Section 22 of this Lease, and that Landlord may rightfully enter into this Lease. Landlord shall protect, defend and indemnify Tenant against any interference with Tenant's use and quiet enjoyment of the Premises.

6. **Finish-out Allowance.** Landlord agrees to pay to Tenant an allowance of _____ (\$_____) per square foot for finish-out of the Premises or a total finish-out allowance of _____ (\$_____) ("Finish-Out Allowance"). Landlord shall pay the Finish-Out Allowance to Tenant upon Tenant opening for business in the Premises. Should Landlord fail to promptly pay the allowance, Tenant may offset the amount due from future installments of rent until the balance has been paid by Landlord or is applied in full.

7. **Taxes.** Beginning on the Rent Commencement Date, Tenant shall be responsible for the payment of all taxes assessed on the Premises during the Initial Term and any Renewal Term and shall be responsible for the payment of taxes assessed upon any of Tenant's personal property located on the Premises. Each month during the Term of this Lease, Tenant shall pay Landlord one-twelfth (1/12) of Tenant's Pro-Rata Share of the estimated real estate taxes for the calendar year based on the previous year, which for the first calendar year of this Lease shall be _____ Dollars (\$_____) per month or \$_____ per square foot annually. Each such payment shall be due and payable at the same time in the same manner as the payment of the base rent paid hereunder.

8. **Insurance.** Beginning on the Rent Commencement Date, Tenant shall pay its Pro-Rata Share of Landlord's actual, reasonable and out-of-pocket costs of premiums for fire insurance, extended coverage insurance, liability insurance, "other perils" insurance, and other insurance carried by Landlord on or with respect to the Premises. Tenant's Pro-Rata Share of said annual insurance premiums is estimated to be _____ (\$_____) during the first calendar year. Each such payment shall be due and payable at the same time in the same manner as the payment of base rent paid hereunder. If the premiums should increase or decrease at any time, Tenant's Pro-Rata Share and Tenant's payments shall be appropriately adjusted.

(a) **Tenant Insurance.** Tenant shall maintain at all times during the Initial Term and any Renewal Term, commercial general liability insurance against claims for personal injury, death or property damage occurring in, on or about the Premises or sidewalks or areas adjacent to the Premises to afford protection to the limit of not less than \$2,000,000 combined single limit. Such insurance may be covered under a blanket policy covering the Premises and other locations of Tenant or its general partner or the general partner's parent or an affiliate corporation. Tenant shall deliver a certificate of insurance to Landlord upon written request.

(b) **Landlord Insurance.** Landlord shall maintain at all times during the Initial Term and any Renewal Term commercial general liability insurance of at least \$2,000,000; employer liability insurance of at least \$2,000,000; and statutory workers compensation insurance. Landlord shall also maintain, throughout the Initial Term and any Renewal Term of this Lease, at its sole cost and expense, a "special form" property coverage insurance policy insuring the improvements upon the Premises under standard fire and

extended coverage insurance in an amount not less than the full replacement value of the improvements to the Premises. Landlord shall deliver certificates of all policies of insurance to Tenant upon written request.

(c) **Waiver of Subrogation.** Any policy or policies of insurance procured by Landlord or Tenant, covering direct or indirect property loss, shall include a waiver of subrogation clause from their respective insurers which establishes a waiver of the insurer's subrogation against Landlord or Tenant, as the case may be, for any property loss (real/personal property or improvements/betterments) caused by the other.

9. **Utilities.** Landlord shall provide (furnish and install) to the Premises connections for all utilities necessary for Tenant's conducting of its business therein at Landlord's sole cost and expense. Tenant shall pay for all sewer, water, gas, electric current, telephone and other utilities used or consumed in or on the Premises. Should Landlord separately provide any of the utilities to the Premises, a separate meter shall be installed at Landlord's expense to measure Tenant's use of such utilities. Landlord's charge for any utilities furnished directly by Landlord shall be no more than the rates charged by the local public utility company for such services. Upon Tenant's request, Landlord shall furnish sufficient documentation to substantiate such local public utility rates and shall immediately refund any overpayments made by Tenant. In the event utility service is interrupted to the Premises due to the need for maintenance and repair to the utility lines, Landlord shall immediately commence restoration and repairs of the lines and conduits in order that said utility service shall be resumed at the earliest possible time. If Landlord shall fail to make such repairs, Tenant may do so at Landlord's expense. Additionally, should there be an interruption in the utilities for more than twenty-four (24) hours due to the Landlord's negligence or failure to act, rent shall be abated until the utilities are restored.

10. **Maintenance and Repairs.**

A. **Maintenance and Repairs by Landlord.** Landlord shall maintain only the foundation, the exterior walls (except store front, windows and exterior doors), structural portions of the Premises (including load-bearing interior walls and columns), roof of the Premises, and the common areas (including parking areas, sidewalks, landscaping and snow removal), in good repair; provided, however, that Landlord shall not be required to make any repairs occasioned by the act, omission or negligence of Tenant, or Tenant's customers, invitees, agents, contractors, employees, servants, subtenants, assignees, licensees or concessionaires. Also, it is agreed that roof repairs required or necessitated by any damage or injury arising out of or as a result of maintenance work performed by or on behalf of Tenant on Tenant's heating, ventilating and air conditioning equipment shall be the sole obligation of Tenant. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give prompt written notice thereof to Landlord.

B. **Maintenance and Repairs by Tenant.** Tenant shall maintain and repair at Tenant's own cost and expense the interior of the Premises (excluding the fire/sprinkler/water line). For purposes hereof, the interior of the Leased Premises

includes standard store front and entrance (including, without limitation, all plate glass and exterior doors), all of the interior wall framing, floor covering, ceiling and interior doors and hardware, sprinkler systems (if required by Tenant), water and sewer systems (including plumbing lines from the plumbing stubs in the Building to the Premises), gas systems (including gas lines from the main gas line at the rear of the Building to the Premises), all interior electrical, plumbing and mechanical machinery, equipment and fixtures, all air conditioning and heating equipment (whether situated on the interior or exterior of the Premises), and other equipment and furnishings as shown on the final detailed plans and specifications of the Premises. The maintenance and repairs to the interior of the Leased Premises shall include all necessary repairs and replacements of those items listed above. All maintenance and repair shall be done with materials and equipment of a quality equal to that called for in the final detailed plans and specifications and shall be in accordance with the then existing federal, state and local regulations regarding health and safety. All such repairs and replacements of the interior of the Leased Premises made by Tenant in and to the Leased Premises pursuant to this Section, exclusive of Tenant's furniture, fixtures and equipment, shall constitute a part of the fee estate remainder subject to this Lease, and Tenant's rights, title and interest therein shall be limited to Tenant's right of possession and use pursuant to the provisions of this Lease and subject to all of the terms and provisions hereof.

11. **Common Area Maintenance.** (a) Landlord shall repair and maintain the Shopping Center. Beginning on the Rent Commencement Date, Tenant agrees to reimburse Landlord for Tenant's Pro-Rata Share of the actual administrative and operating expenses incurred by Landlord in maintaining the common area. "Common Area Operating Costs" shall mean all actual, reasonable and out-of-pocket costs incurred by Landlord in connection with the operation, maintenance and repair of the common area, including those costs incurred for lighting, painting, water, sewage and other utilities, landscaping, resurfacing, striping, bumpers, exterminating, cleaning and policing of the common area. In addition, although the roof of the building in the Shopping Center is not literally part of the common area, Landlord and Tenant agree the roof maintenance and repair shall be included as a Common Area Operating Cost to the extent not specifically allocated to Tenant under this Lease, nor to another tenant pursuant to its lease. Each month during the Term of this Lease, Tenant shall pay the Landlord one-twelfth (1/12) of the estimated Common Area Operating Costs for the current year which for the first calendar year shall be _____ Dollars (\$_____) per month or \$_____ per square foot annually. Each such payment shall be due and payable at the same time in the same manner as the payment of the base rent paid hereunder. Within sixty (60) days after the end of each calendar year, Landlord shall notify Tenant in writing of the exact amount of the Common Area Operating Costs for the Shopping Center for the prior calendar year and confirm Tenant's Pro-Rata Share thereof. If the Tenant's total Common Area Operating Cost payments are less than Tenant's actual Pro-Rata Share of the Common Area Operating Costs relating to the Shopping Center, Tenant shall pay to Landlord within thirty (30) days after demand, the difference; if the total Common Area Operating Cost payments of Tenant are more than Tenant's actual Pro-Rata Share of such costs, Landlord shall refund to Tenant such overpayments. At the request of Tenant, Landlord shall provide Tenant with a written, verified and detailed statement of all Common Area Operating Costs due from Tenant. If Tenant shall

reasonably object to the inclusion of any charge or the amount of any charge as a Common Area Operating Cost, Tenant may withhold these sums from the amounts tendered to Landlord.

(b) Notwithstanding the foregoing, it is agreed that with regard to Controllable Expenses (hereinafter defined), Tenant's obligation to pay any increases in Controllable Expenses for any year of the Term of this Lease, shall be limited to an increase of ___% (the "Cap") from the amount paid with respect to Controllable Expenses for the immediately preceding year; provided, however, that if any such increase in Controllable Expenses is less than the maximum amount that Controllable Expenses could have increased pursuant to the foregoing applicable Cap (the difference between the maximum amount that such Controllable Expenses could have increased and the amount that they did in fact increase is referred to herein as the "Unused Cap"), then the Unused Cap shall be applied to increase the Cap that is applicable to the year in question and for all subsequent years until all Unused Cap amounts are exhausted. Furthermore, the Unused Cap for all years shall be cumulated and be applied to increase the Caps applicable to all subsequent years in the Term of the Lease. It is the intention of this provision that the Cap provided with respect to Controllable Expenses be a "cumulative cap". The term "Controllable Expenses" shall mean _____ [all Common Area Operating Costs, except for costs described in the immediately preceding subsection (a)] [all Landscape Maintenance Costs, tax consultant costs and all costs described in the immediately preceding subsection (a)] [all Reimbursable Expenses, except (1) Taxes, (2) premiums for insurance required to be maintained by Landlord under the Lease, (3) the cost of jointly metered utilities provided to the Shopping Center, and (4) expenses incurred in order to comply with the requirements of a governmental authority or applicable law or regulation].

(c) The following costs and expenses shall not be included as Common Area Operating Costs:

- (i) Executives' salaries above the grade of building manager;
- (ii) Cost of repairs or replacements incurred by reason of fire or other casualty or condemnation to the extent Landlord is compensated therefor by insurance;
- (iii) Advertising and promotional expenditures;
- (iv) Depreciation costs;
- (v) Brokerage commissions;
- (vi) Landlord's income taxes or any franchise taxes or estate taxes;
- (vii) Refinancing costs, mortgage interest and amortization (except as otherwise provided herein);
- (viii) Legal or consulting fees of any kind, other than those expenses incurred for the general benefit of the Shopping Center's tenants;

(ix) Costs incurred in selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interests in the Shopping Center;

(x) Costs incurred in removing toxic or hazardous materials (as defined below) from the building or land which occur or exist through no fault of Tenant;

(xi) Debt service payments;

(xii) Costs associated with remedying any latent defects in the original construction of the Building's roof, foundation, or walls;

(xiii) Costs, fines or penalties imposed upon Landlord for violating any law, rule or regulation, or for breaching its obligations under any lease; and

(xiv) Costs, fines or penalties imposed upon Landlord as a result of late or delinquent payments (unless such costs, fines or penalties are imposed as a result of Tenant's failure to perform its obligations hereunder).

12. **Improvements, Fixtures and Signage.** [Tenant may install such tenant improvements, fixtures and finishes in the Premises, as Tenant may deem necessary or desirable.] [Tenant shall not have the right to make any improvements, alterations, additions or modifications to the Premises without Landlord's prior written consent; provided, however, Tenant may, without Landlord's consent, make alterations which are non-structural in character, do not affect the Building systems, and the cost of which does not exceed \$ _____ during the Term of this Lease.] Tenant, at its own cost and expense, may erect such shelves, bins, machinery and trade fixtures as it desires. Tenant may bolt Tenant's safe to the concrete floor slab of the Premises. Tenant may remove its improvements and fixtures when it vacates the Premises. However, Tenant shall not be required to remove any such improvements or fixtures and Tenant's failure to do so within thirty (30) days after the expiration of the Term of this Lease shall be deemed to be an abandonment thereof whereby the same shall become part of the real estate with title thereto vesting in Landlord. Landlord also grants Tenant the right to install a Muzak® receiver on the roof of the Premises with the understanding that the installation will not involve any roof penetration whatsoever. Tenant may install signs in, on and about the Premises to the maximum extent permitted by local law.

13. **Fire or Casualty.** In the event the Premises, or the Shopping Center in which it is located, are taken or destroyed in whole or in part by fire or other casualty, Tenant may in its sole discretion terminate this Lease, declare a partial abatement of the monthly rental due Landlord under this Lease based upon the pro rata portion of Premises which have been subjected to fire or other casualty, or declare a total abatement of the monthly rental due Landlord until the damage caused by the fire or other casualty has been fully repaired by Landlord. Within thirty (30) days after the date of a fire or other casualty, Landlord must inform Tenant if the Premises and the Shopping Center will be rebuilt. If the Premises and Shopping Center are to be rebuilt and Tenant elects not to terminate the Lease, the Premises and Shopping Center must be rebuilt and ready for occupancy within ninety (90) days of the date of fire or other casualty.

14. **Eminent Domain.** If any portion of the Premises, or the Shopping Center in which it is located, shall be taken by right of eminent domain, Tenant shall have the right, at its discretion, to terminate this Lease and be relieved from further liability hereunder. Should Tenant elect not to terminate this Lease, the rent due during the remainder of the Term shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such taking, Landlord shall, with all due diligence and at its own cost and expense, make all necessary repairs and alterations required to make the remaining portion of the Premises an architectural whole. All compensation awarded for such taking shall be allocated in accordance with the Landlord's and Tenant's respective interest therein.

15. **Tenant's Default.** Each of the following events shall be deemed to be an event of default of Tenant hereunder (each of which is sometimes referred to herein as an "Event of Default"):

- (1) Failure of Tenant to pay any installment of rent hereunder when due when such failure shall continue for ten (10) days after written notice to Tenant;
- (2) Failure of Tenant to observe or perform any other covenant, term or condition set forth in this Lease when such failure continues for a period of thirty (30) days from the date of written notice thereof from Landlord to Tenant; provided, however, if such failure cannot through the exercise of reasonable diligence be cured within such thirty (30) days, an Event of Default shall not be deemed to have occurred under this Section so long as Tenant commences its curative efforts within such thirty (30)-day period and diligently prosecutes same to completion;
- (3) Tenant shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or Tenant shall commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or Tenant shall take any corporate action to authorize, or in contemplation of, any of the actions set forth above;
- (4) Any case, proceeding or other action against the Tenant shall be commenced seeking to have an order for relief entered against it as debtor or to have it adjudicated a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and

such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof, or (ii) shall remain undismissed for a period of thirty (30) days; or

- (5) Any other failure or default of Tenant which pursuant to any other provision of this Lease is an Event of Default.

In no event shall Landlord be entitled to accelerate rent due from Tenant or to take possession of the Premises or personal property owned by Tenant on the Premises. It shall be the duty of the Landlord in any event of default to use its best efforts to mitigate Tenant's damages.

16. **Landlord's Default.** If Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying in detail such failure (or if the failure cannot be corrected, through the exercise of reasonable diligence, within such thirty (30)-day period, if Landlord does not commence to correct same within such thirty (30)-day period and thereafter diligently prosecute same to completion), Tenant's sole and exclusive remedy shall be (i) an action for damages, or (ii) if such failure can be cured by the payment of money, Tenant shall have the right to cure such failure on behalf of Landlord and, in connection therewith, expend such reasonable sums as are reasonably necessary to cure such failure. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. In the event Tenant exercises its rights under clause (ii) of this Section, then Landlord agrees to reimburse Tenant for all reasonable sums so expended by Tenant in curing any such failure of Landlord; provided, however, if Landlord fails to so reimburse Tenant within thirty (30) days after such request for payment, Tenant may deduct such amounts from base rent until the full amount has been satisfied (provided that in no event shall the amount so deducted from any individual monthly installment of base rent exceed ____ percent (___%) of such monthly amount of base rent). Notwithstanding anything to the contrary contained herein, in no event shall Tenant have the right to deduct any amounts, as provided above, from any base rent that becomes due at any time after the earlier of (a) any person or entity succeeding to the interest of Landlord in the Premises as the result of or following a foreclosure of any lien encumbering Landlord's interest in the Premises, a deed in lieu of such foreclosure or any other similar event, or (b) Tenant's receipt of written notice from the holder of any indebtedness secured by a lien encumbering Landlord's interest in the Premises sent pursuant to the applicable loan documents directing Tenant to deliver payments of base rent directly to such holder or its designee. In no event shall Tenant have the right to offset or deduct any sums or damages which are owed by Landlord to Tenant against amounts that are owed by Tenant to Landlord hereunder except as provided in the preceding provisions of this Section.

Notwithstanding anything to the contrary contained herein, if Landlord shall be in default or shall fail or refuse to perform or comply with its obligation under the Lease and shall continue in default for a period of thirty (30) days after Tenant has given Landlord

written notice of such default and demand of performance in regard to Tenant's exclusive right within the Shopping Center to sell, service and install _____ products, Tenant may terminate this Lease or Tenant may reduce all rental payments due under this Lease by fifty percent (50%) during the Initial Term and any Renewal Term(s) beginning on the date of the default.

17. **Assignment and Sub-letting.** Tenant shall not sublease the Premises or any portion thereof or assign the Lease without Landlord's consent; provided, however, Tenant may assign this Lease or sublet the Premises to any entity that controls, is controlled by, or is under common control with Tenant. The merger or consolidation of Tenant with another entity shall not be deemed to be an assignment of this Lease by operation of law, so long as the surviving entity in any such merger or consolidation has a net worth (determined in accordance with generally accepted accounting principles consistently applied) immediately following such merger or consolidation that is equal to or greater than the net worth of Tenant immediately prior to such merger or consolidation. For purposes of the Lease, any sale or transfer of capital stock including redemption or issuance of additional stock of any class will not be deemed an assignment, subletting or any other transfer of the Lease or the Premises. If Tenant assigns this Lease, Tenant shall be relieved of future obligations under the Lease. Landlord will not be entitled to receive any consideration with respect to any assignment or subletting.

18. **Holding Over.** If Tenant remains in possession of the Premises after the expiration of the Initial Term (or any Renewal Term hereof) without the execution of a new lease and in the absence of good faith negotiations for a renewal of the Lease, such holding over will be deemed to have created and be construed as a tenancy from month-to-month terminable on thirty (30) days written notice by either party to the other, subject to all the other conditions, provisions, and obligations of the Lease insofar as the same are applicable to a month-to-month tenancy.

19. **Hazardous Materials.** Landlord warrants and represents that the Premises and the Shopping Center (collectively referred to as the Property) are in compliance with environmental laws and regulations.

Prior to delivering possession of the Premises to Tenant, Landlord shall remove any hazardous materials from the Property including, without limitation, asbestos or asbestos containing materials and mold or materials where mold is present. Landlord will indemnify and hold Tenant harmless from loss relating to any hazardous materials. Tenant will hold Landlord harmless from loss for any hazardous materials present on the Property as a result of Tenant's negligence or willful misconduct.

As used herein, "hazardous material" means any substance that is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the state in which the Property is located, or the United States government or poses a threat to human health or the environment. "Hazardous material" includes any and all material and substances which are defined as "hazardous waste", "toxic substances" or a "hazardous substance" pursuant to state, federal or local

governmental law. "Hazardous material" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCBs") and petroleum.

20. **Condition of Premises and Shopping Center.** Landlord warrants and represents that upon delivery and throughout the Term of this Lease, the Premises and Shopping Center will be and Landlord will maintain the same in sound condition, with all of Landlord's Work complete and in compliance with all applicable federal, state and local codes and that the structural elements, roof and building systems of the Shopping Center along with the Premises will be seismically and otherwise sound and will meet all applicable federal, state and local codes, including but not limited to the Americans with Disabilities Act.

21. **Attorney's Fees.** In connection with any litigation arising out of this Lease, the prevailing party, Tenant or Landlord, shall be entitled to recover all costs incurred, including reasonable attorney's fees.

22. **Liens.** Each party represents to the other that it has complete authority to enter into this transaction. Landlord further warrants to Tenant that Landlord owns the land and Shopping Center in fee simple, free and clear of all liens and encumbrances of every kind and nature, except for those listed below.

Name of Lienholder	Type of Lien
_____	_____

Landlord shall use reasonable efforts to obtain from the holder of any lien which is not discharged within ten (10) business days of the date of execution of this Lease, a Subordination, Attornment and Nondisturbance Agreement in form acceptable to Tenant.

23. **Anchor Tenant.** Landlord acknowledges that _____ is an existing tenant and that the continued presence and ongoing business of _____ ("Anchor Tenant"), as a tenant in the Shopping Center in the ordinary course of its business provide a significant inducement for Tenant to enter into this Lease and to remain a tenant in the Shopping Center. In the event that Anchor Tenant ceases operation of business in the Shopping Center, Landlord shall tender written notice thereof to Tenant. If Anchor Tenant ceases operation of business in the Shopping Center and a tenant reasonably acceptable to Tenant does not open for business within six (6) months from the date Anchor Tenant ceases operation of business in the Shopping Center, Tenant may at any time thereafter terminate this Lease by written notice to Landlord and Tenant shall have no further obligations hereunder.

24. **Mutual Indemnity.** LANDLORD SHALL INDEMNIFY, PROTECT, HOLD HARMLESS AND DEFEND TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, PARTNERS, DIRECTORS, OFFICERS AND ANY AFFILIATES OF THE ABOVE-MENTIONED PARTIES (COLLECTIVELY, THE "TENANT AFFILIATES") AGAINST ANY AND ALL CLAIMS OR LIABILITY (I) FOR ANY INJURY OR DAMAGE TO ANY PERSON IN, ON OR ABOUT THE PREMISES OR ANY PART THEREOF AND/OR THE

BUILDING AND SHOPPING CENTER OF WHICH THE PREMISES ARE A PART, WHEN SUCH INJURY OR DAMAGE SHALL BE CAUSED BY THE ACT, NEGLIGENCE, FAULT, OR OMISSION OF ANY DUTY WITH RESPECT TO THE SAME BY LANDLORD, ITS AGENTS, SERVANTS AND EMPLOYEES OR (II) ARISING FROM A BREACH, VIOLATION OR NONPERFORMANCE OF ANY TERM, PROVISION, COVENANT OR AGREEMENT OF LANDLORD HEREUNDER, OR A BREACH OR VIOLATION BY LANDLORD OF ANY COURT ORDER OR ANY LAW, REGULATION OR ORDINANCE OF ANY FEDERAL, STATE, OR LOCAL AUTHORITY (UNLESS THE INDEMNIFIED LOSS IS CAUSED WHOLLY OR IN PART BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF TENANT AND/OR ANY TENANT AFFILIATES, IN WHICH EVENT THIS INDEMNITY SHALL NOT APPLY TO THE ALLOCABLE SHARE OF SUCH LOSS RESULTING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF TENANT AND/OR ANY TENANT AFFILIATES). EXCEPT FOR ANY CLAIMS, RIGHTS OF RECOVERY AND CAUSES OF ACTION THAT LANDLORD HAS RELEASED, TENANT SHALL INDEMNIFY, PROTECT, HOLD HARMLESS AND DEFEND LANDLORD, ITS AGENTS, EMPLOYEES, CONTRACTORS, PARTNERS, DIRECTORS, OFFICERS AND ANY AFFILIATES OF THE ABOVE-MENTIONED PARTIES (COLLECTIVELY THE "LANDLORD AFFILIATES") FROM AND AGAINST ANY AND ALL OBLIGATIONS, SUITS, LOSSES, JUDGMENTS, ACTIONS, DAMAGES, CLAIMS OR LIABILITY (INCLUDING, WITHOUT LIMITATION, ALL COSTS, ATTORNEYS' FEES, AND EXPENSES INCURRED IN CONNECTION THEREWITH) IN CONNECTION WITH ANY LOSS, INJURY OR DAMAGE (I) TO ANY PERSON OR PROPERTY WHATSOEVER OCCURRING IN, ON OR ABOUT THE PREMISES OR ANY PART THEREOF AND/OR OF THE BUILDING AND SHOPPING CENTER OF WHICH THE PREMISES ARE A PART, WHEN SUCH INJURY OR DAMAGE SHALL BE CAUSED BY THE ACT, NEGLIGENCE, FAULT OF, OR OMISSION OF ANY DUTY WITH RESPECT TO THE SAME BY TENANT, OR ANY TENANT AFFILIATES, OR INVITEES, OR (II) ARISING FROM A BREACH, VIOLATION OR NONPERFORMANCE OF ANY TERM, PROVISION, COVENANT OR AGREEMENT OF TENANT HEREUNDER, OR A BREACH OR VIOLATION BY TENANT OF ANY COURT ORDER OR ANY LAW, REGULATION, OR ORDINANCE OF ANY FEDERAL, STATE OR LOCAL AUTHORITY (COLLECTIVELY, THE "LOSSES"), EXCEPT TO THE EXTENT THE LOSSES ARE CAUSED WHOLLY OR IN PART BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LANDLORD AND/OR LANDLORD AFFILIATES IN WHICH EVENT THIS INDEMNITY SHALL NOT APPLY TO THE ALLOCABLE SHARE OF SUCH LOSSES RESULTING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LANDLORD AND/OR LANDLORD AFFILIATES. IF ANY CLAIM IS MADE AGAINST LANDLORD OR LANDLORD AFFILIATES, OR AGAINST TENANT OR TENANT AFFILIATES (AS APPLICABLE), THE INDEMNIFYING PARTY, AT ITS SOLE COST AND EXPENSE, SHALL DEFEND ANY SUCH CLAIM, SUIT OR PROCEEDING BY OR THROUGH ATTORNEYS SATISFACTORY TO THE INDEMNIFYING PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR

TERMINATION OF THIS LEASE WITH RESPECT TO ANY CLAIMS OR LIABILITY OCCURRING PRIOR TO SUCH EXPIRATION OR TERMINATION.

25. **Permit Contingency.** Tenant may terminate this Lease if it is unable to obtain all permits, variances and governmental approvals needed for the lawful construction and operation of its store.

26. **New Construction Contingency.** Notwithstanding anything in this Lease to the contrary, Tenant shall not be obligated to pay rent, Common Area Operating Costs or any other charges or open for business in the Premises until at least 95% of the gross leasable area of the Shopping Center is occupied and open for business and construction of all common areas and parking areas is substantially complete and construction equipment and debris have been removed, provided, however, that Tenant may elect to open before such conditions are satisfied, in which event rent shall be reduced by thirty percent (30%) until the conditions are satisfied.

27. **Memorandum of Lease.** Tenant may, at its option, record this Lease or a Memorandum of Lease executed by all parties and the cost of any recording fees shall be paid equally by the parties hereto. Should Landlord fail or refuse to execute and deliver the Memorandum of Lease in the manner and time required, Tenant may, at its option, terminate this Lease and all obligations hereunder.

28. **Notices.** Any notice, report, statement, approval, consent, designation, demand or request to be given under this Lease shall be effective when made in writing, deposited for mailing with the United States Postal Service or with a recognized overnight delivery service and addressed to Landlord or Tenant at the following addresses:

LANDLORD: _____
 Address _____

 Phone _____
 Fax _____

TENANT: _____
 Address _____

 Phone _____
 Fax _____

29. **Equipment.** To facilitate Tenant's business in the Premises, Landlord hereby grants Tenant a non-exclusive license to install, maintain, operate, replace and remove communications equipment consisting of an in-building amplifier system and/or a satellite dish (the "Equipment") which shall be placed on the roof without penetrating the roof or mounted on an outside wall of the Premises. Unless Tenant receives Landlord's prior written permission to the contrary, Tenant shall use existing roof or wall penetrations when installing the coaxial cable which may be connected to the Equipment. Tenant shall ensure that the strength of the signal propagated and/or distributed from the in-building amplifier system is only strong enough to provide signal to handheld

communications equipment in the Premises. The Equipment shall be installed and operated in compliance with laws and governmental regulations and shall not interfere with the ability of Landlord or the ability of Landlord's tenants that occupy space adjacent to the Premises to receive radio, television, telephone, microwave or other signals or frequencies of any sort that are transmitted through the air or atmosphere. The Equipment shall at all times remain the property of the Tenant notwithstanding the fact that it may be affixed or attached to the Premises.

30. **Early Termination.** Upon giving Landlord at least one hundred-twenty (120) days prior written notice, Tenant may terminate this Lease on or after the last day of the third (3rd) Lease Year. The first "Lease Year" shall commence on the later of (a) the date that Tenant accepts possession of the Premises or (b) the date that Tenant receives all permits, variances, and governmental approvals necessary to construct and operate Tenant's store in the Premises, and shall terminate twelve (12) full calendar months thereafter. Each succeeding Lease Year shall contain twelve (12) full calendar months.

31. **Continuous Operation.** Tenant shall have no obligation to operate continuously in the Premises during the Initial Term or any Renewal Term.

32. **Miscellaneous.**

(a) **Successors and Assigns.** This Lease shall be binding upon and shall inure to the benefit of Landlord, Tenant and their respective successors and assigns.

(b) **Governing Law.** This Lease shall be construed under the laws of the State of _____.

(c) **Merger Clause.** This Lease contains the entire agreement between Landlord and Tenant regarding the Premises which are the subject of this Lease and may only be altered by a written agreement executed by both Landlord and Tenant.

(d) **Severability.** If any term or provision of this Lease or the application hereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby.

(e) **Force Majeure.** In the event the performance by either party of any of its obligations hereunder, except with respect to the payment of money, is delayed by reason of the act or neglect of the other party, act of God, strike, governmental restrictions, war, or any other cause, similar or dissimilar, beyond the reasonable control of the party from whom such performance is due, the period for the commencement of completion thereof shall be extended for a period equal to the period during which performance is so delayed.

(f) **Counterparts.** This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

(g) **No Partnership Created.** Landlord and Tenant are not and shall not be considered joint venturers, not partners, and neither shall have power to bind or obligate the other except as set forth herein.

(h) **Headings.** The titles to the sections of this Lease are inserted only as a matter of convenience and for reference and in no way confine, limit or describe the scope or intent of any section of this Lease, nor in any way affect this Lease.

(i) **Modification.** No modifications, alterations, or amendments of this Lease or any agreements in connection therewith shall be binding or valid unless in writing and duly executed by both Landlord and Tenant.

(j) **Landlord's Work.** Prior to delivering the Premises to Tenant, Landlord shall construct the Premises, at Landlord's sole cost and expense, per Tenant's Retail Store Building Requirements, attached hereto as Exhibit "B" ("Landlord's Work").

(k) **Leasing Commissions and Agency Disclosure.** Landlord acknowledges that _____ ("Tenant's Broker") represents the Tenant in this Lease. Landlord agrees to pay a brokerage commission to Tenant's Broker for services provided in connection with this Lease in accordance with the terms of a separate commission agreement. Landlord agrees that Tenant will not be responsible for paying any commissions related to this Lease. Landlord and Tenant (with the exception of Landlord's obligation to pay _____) shall each indemnify, defend and hold the other harmless from and against, all damages (including reasonable attorneys' fees and costs) resulting from any claims that may be asserted against Landlord or Tenant by any broker, finder, or other person with whom the indemnifying party has or purportedly has dealt. This provision documents the agreement between Landlord and Tenant and is not intended to create any third-party beneficiary rights for any broker or real estate agent.

(l) **Penalty for Late Delivery.** Landlord will deliver possession of the Premises to Tenant with Landlord's Work completed on or before _____ ("Delivery Date"). For each and every day after the Delivery Date that the Landlord does not tender possession of the Premises to Tenant with Landlord's Work completed, Tenant shall receive a credit for one (1) day of free rent, taxes, insurance and Common Area Operating Costs. If Landlord does not tender possession of the Premises to Tenant with Landlord's Work completed on or before thirty (30) days after the Delivery Date, Tenant shall have the right, but not the obligation, to terminate this Lease by providing written notice to Landlord at any time after the thirty (30) day period.

(m) **Compliance.** Landlord and Tenant agree to comply with any and all Federal, State and Local ordinances or regulations regarding the Shopping Center.

(n) **Authority.** Each party hereby represents to the other that the person(s) who have executed this Lease are duly authorized to do so.

(o) **Effective Date.** The "Effective Date" of this Lease shall be the date upon which the latter of Tenant or Landlord shall so execute this Lease as evidenced by the date inserted below the signature of each party at the time of execution.

(p) **Parking.** Landlord shall provide all necessary parking for Tenant's employees and customers and Landlord shall apply for and obtain all variances needed to meet all codes and permitting requirements for Tenant's anticipated use throughout the Term of this Lease. The current parking ratio of the Shopping Center is _____ per 1,000 square feet. Tenant shall have the exclusive right to ___ parking spaces.

(q) **Banners.** Tenant shall have the right to place a "Coming Soon" banner on or near the Premises once Tenant begins its build out of the Premises. Tenant shall also have the right to place a "Grand Opening" banner on or near the Premises four (4) weeks prior to Tenant's opening at the Premises and shall have the right to leave said banner up four (4) weeks after Tenant opens for business in the Premises.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year above first written.

LANDLORD:

By: _____

Title: _____

Date: _____

TENANT:

By: _____

Title: _____

Date: _____

EXHIBIT "A"

PREMISES

EXHIBIT "A-1"

SHOPPING CENTER

EXHIBIT "B"

LANDLORD'S WORK

_____ RETAIL STORE
BUILDING REQUIREMENTS

**Lease Term Sheet
(Tenant)**

1. Landlord: _____
2. Landlord's Notice Address: _____

3. Tenant: _____
4. Location (street address, suite number): _____

5. Premises: _____ sq. ft.
6. Parking: _____

7. Broker: _____
8. Term: _____ months
9. Renewal Term: _____
10. Commencement Date: _____
11. Rent Commencement Date: _____
12. Base Rent: _____ (\$ _____ psf per annum)
13. CAM Charges: _____
14. Taxes, Insurance, Other Recurring Charges or Fees: _____

15. Renewal Rent Rate: _____
16. Permitted Use: _____
17. Exclusive Use Rights: _____
18. Finish-Out Requirements: _____

19. Finish-Out Allowance: _____

- 20. Landlord Services Provided: _____

- 21. Landlord Repair and Maintenance Obligations: _____

- 22. Tenant Repair and Maintenance Obligations: _____

- 23. Right of First Refusal: _____

- 24. Expansion Option: _____

- 25. Roof Mounted Satellite, Tower or Other Equipment: _____

- 26. Other: _____

SAMPLE SUBLEASE

SUBLEASE

THIS SUBLEASE (the "Sublease") is made and entered into as of the ____day of _____, ____ ("Effective Date") between _____, a _____ ("Sublessor"), with its principal place of business at _____, and _____, a _____ ("Subtenant"), with its principal place of business at _____.

1. PREMISES: In accordance with that certain Lease Agreement dated _____, as amended by _____ (as amended, collectively, the "Prime Lease"), Sublessor leases from _____ ("Landlord") certain premises containing approximately _____ square feet in the aggregate ("Leased Premises") in the _____ office building located at _____. The Leased Premises are further described in the Prime Lease, a copy of which is attached hereto as Exhibit A and is incorporated by reference herein.

2. DEMISE: In accordance with this Sublease, Sublessor hereby subleases to Subtenant, and Subtenant hereby subleases from Sublessor, _____ square feet of the Leased Premises ("Subleased Premises"). The actual Subleased Premises is located within that portion of the Leased Premises identified by hatching on Exhibit B attached hereto. Subject to the terms of the Prime Lease, at no additional charge to Subtenant (except such charges as may be included in Operating Costs in accordance with the terms of the Prime Lease), Subtenant shall have the right to use all associated common areas and shall have such other use and access rights as may be necessary for the exercise of its rights and the performance of its obligations hereunder, including, but not limited to, access to electrical, phone and data rooms, existing phone and data wiring infrastructure, and restrooms.

3. SUBLEASE: This Sublease is subject and subordinate to the Prime Lease and to the matters to which the Prime Lease is or shall be subject and subordinate.

4. TERM: The term of this Sublease shall commence _____, and shall expire on _____ (the "Term"), unless sooner terminated in accordance with this Sublease.

5. PRIME LEASE: The Prime Lease is incorporated herein by reference so that, except to the extent that certain provisions of the Prime Lease are inapplicable or modified by this Sublease, or excluded below, each and every term, covenant and condition of the Prime Lease binding or inuring to the benefit of Landlord shall, in respect of the Sublease, bind or inure to the benefit of Sublessor, and each and every term, covenant and condition of the Prime Lease binding or inuring to the benefit of lessee thereunder shall, in respect of the Sublease, bind or inure to the benefit of Subtenant, with the same force and effect as if such terms, covenants and conditions were completely set forth in the Sublease, and as if the words "Lessor(s)" and "Lessee(s)", or words of similar import, wherever the same appear in the Prime Lease, were construed to mean, respectively, "Sublessor" and "Subtenant" in the Sublease, and as if the words "Leased Premises", "Premises", "Leased Property", or words of similar import, wherever the same appear in the Prime Lease, were construed to mean "Subleased Premises" in the Sublease, and as if the word "Lease", or words of similar import, wherever the same appear in the Prime Lease, were construed to mean the "Sublease."

If any of the express provisions of the Sublease shall conflict with any of the provisions of the Prime Lease incorporated by reference herein, such conflict shall be resolved in every instance in favor of the express provisions of the Sublease. Notwithstanding the foregoing or anything to the contrary contained herein, Subtenant shall not have the right to exercise any renewal options, expansion options, rights of first offer or similar rights set forth in the Prime Lease.

6. RENT: Subtenant shall pay a portion of the total rent paid by Sublessor, including base rent, additional costs and other charges (collectively referred to herein as "Rent") as set forth on Exhibit C. Subtenant shall make all payments to Sublessor at the address set forth herein or to such other place as Sublessor may designate in writing. If

the Effective Date is other than the first day of a calendar month, the Rent for the first month shall be prorated and shall be tendered to Sublessor on the first day of the following calendar month.

7. **PERFORMANCE BY SUBLESSOR:** Any obligations of Sublessor which are contained in the Sublease by the incorporation by reference of the provisions of the Prime Lease shall be observed or performed by Sublessor using reasonable efforts to cause the Landlord to observe and/or perform the same (which obligations include, without limitation, services to be provided by Landlord and restoration of damaged property), and Sublessor shall diligently enforce its rights to cause such observance or performance. Subtenant shall not in any event have any rights in respect of the Subleased Premises greater than Sublessor's right with respect thereto under the Prime Lease.

8. **NO BREACH OF PRIME LEASE:** Subtenant shall not do any act which may constitute a breach or violation of any term, covenant or condition of the Prime Lease by the lessee thereunder, whether or not such act or thing is permitted under the provisions of the Sublease. Sublessor shall not do or permit to be done any act which may constitute a breach or violation of any term, covenant or condition of the Prime Lease.

9. **NO PRIVITY OF ESTATE:** Nothing contained in the Sublease shall be construed to create privity of estate or of contract between Subtenant and the Landlord.

10. **RELEASES:** Subtenant hereby releases the Landlord or anyone claiming through or under the Landlord by way of subrogation or otherwise to the extent that Sublessor, as tenant, released the Landlord pursuant to the terms of the Prime Lease, and/or the Landlord was relieved of liability or responsibility pursuant to the provisions of the Prime Lease, and Subtenant will cause its insurance carriers to include any clauses or endorsements in favor of the Landlord which Sublessor is required to provide pursuant to the provisions of the Prime Lease with respect to the Subleased Premises.

11. **USE:** Subtenant shall use and occupy the Subleased Premises solely for general office purposes and lawful uses incidental thereto. Any other activities not specifically mentioned above regarding the use and occupancy of the Subleased Premises are subject to the prior written approval of Sublessor and Landlord.

12. **CONDITION OF SUBLEASED PREMISES:** Subtenant is leasing the Subleased Premises in its "as is," "where is" condition on the date hereof.

13. **CONSENT AND APPROVALS:** Sublessor shall reasonably cooperate to seek Landlord's consent to any matter under the Prime Lease as may be reasonably requested by Subtenant.

14. **NOTICES:** Any notice, report, statement, approval, consent, designation, demand or request to be given under this Sublease shall be effective when made in writing, deposited for mailing with the United States Postal Service or with a recognized overnight delivery service and addressed to Sublessor or Subtenant at the following addresses:

SUBTENANT: _____
Phone () _____
Fax () _____

SUBLESSOR: _____

With a copy to:

Phone () _____
Fax () _____

Sublessor shall promptly give written notice to Subtenant of (i) all claims, demands or controversies by or with the Landlord under the Prime Lease, and (ii) any events which require that Sublessor give notice to Landlord under the Prime Lease, which would materially affect Subtenant's rights or obligations hereunder.

15. **TERMINATION:** If for any reason the Prime Lease shall terminate prior to the expiration of the Sublease Term, this Sublease shall thereupon be terminated and Sublessor shall have no liability whatsoever to Subtenant by reason thereof (unless the termination occurred as a result of Sublessor's default or breach under the Prime Lease).

16. **ASSIGNMENT AND SUBLETTING:** Subtenant shall not sublet the Subleased Premises or any part thereof or assign the Sublease or otherwise encumber or dispose of its interest therein without Sublessor's and Landlord's prior written consent in each instance, which consent may be withheld in Sublessor's and/or Landlord's sole discretion, except that Subtenant shall have the right, without Sublessor's or Landlord's consent, to assign this Sublease to any entity that controls, is controlled by, or under common control with Subtenant.

17. **INSURANCE:** Subtenant shall, throughout the Term of this Sublease, maintain for the Subleased Premises comparable insurance coverage as required of Sublessor under the Prime Lease. Such insurance shall, in addition to complying with the requirements of the Prime Lease, name Sublessor as an additional insured.

18. **DEFAULT:** The default provisions set forth in the Prime Lease are incorporated herein by reference, provided that Subtenant shall have a ten (10) day notice and cure period for monetary default and a thirty (30) day notice and cure period for non-monetary default (unless such non-monetary default is not capable of cure within thirty (30) days, in which case Subtenant shall have a reasonable period of time in which to effect a cure, so long as Subtenant diligently prosecutes the cure to completion).

19. **BROKERAGE:** Each party represents and warrants to the other that no broker or other person had any part, or was instrumental in any way, in bringing about the Sublease, other than _____ (collectively, "Broker"). Each party agrees to indemnify, defend and hold harmless the other from and against any claims made by any broker or other person (other than Broker) for a brokerage commission, finder's fee, or similar compensation, by reason of or in connection with the Sublease, and any loss, liability, damage, cost and expense (including, without limitation, reasonable attorney's fees) which may be incurred in connection with such claims if such other broker or other person (other than Broker) claims to have had dealings with such party. Sublessor shall be responsible for all payments due to Broker in connection with this Sublease pursuant to separate written agreements.

20. **WAIVER OF JURY TRIAL AND RIGHT TO COUNTERCLAIM:** Each party hereby waives all right to trial by jury in any action, proceeding or counterclaim arising out of or in any way connected with the Sublease, the relationship of Sublessor and Subtenant, the Subleased Premises and the use and occupancy thereof, and any claim of injury or damages.

21. **MODIFICATIONS:** The Sublease cannot be changed orally or in any manner other than by a written agreement executed by both parties. Sublessor shall not amend the Prime Lease with respect to any material provision that would materially affect Subtenant's rights or obligations hereunder without Subtenant's prior written consent.

22. **SUCCESSORS AND ASSIGNS:** The provisions of the Sublease, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

23. **INTERPRETATION:** This Sublease shall be governed by and construed in accordance with the laws of the state in which the Subleased Premises are located. If any provision of the Sublease or application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of the Sublease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The captions and headings are solely for convenience of reference and shall be construed without regard to any presumption or other rule requiring construction against the party causing the Sublease to be drafted.

24. **AUTHORITY:** Each party represents and warrants that the undersigned has the full right, power and authority to execute this Sublease on behalf of the party indicated.

25. **QUIET ENJOYMENT:** Sublessor warrants that, upon payment of the Rent, as defined herein, and performance of all obligations, covenants and agreements of Subtenant hereunder, Subtenant shall peaceably and quietly have, hold and enjoy the Subleased Premises during the Sublease Term, subject however to the provisions of this Sublease.

26. **FURNITURE:** Sublessor agrees to allow Subtenant to use the office furniture located within the Subleased Premises as of the date hereof, which includes the following: _____ (collectively, the "Furniture"). Provided Subtenant has not defaulted under the Sublease, the Furniture shall become the property of Subtenant upon expiration of the Sublease Term.

27. **PARKING:** Subject to the terms and conditions of the Prime Lease, Sublessor shall, at no cost to Subtenant, allow Subtenant the use of such parking as is made available to Sublessor under the Prime Lease with respect to the Subleased Premises, but no less than 117 parking spaces.

28. **CONTINGENCY:** Sublessor and Subtenant acknowledge and agree that this Sublease is expressly contingent upon Subtenant entering in to a Termination of Sublease Agreement ("Termination") with the sublessor of its existing sublease dated _____, for _____ sq ft at _____. If the Termination is not effected by _____, with written notice thereof delivered to Sublessor, then this Sublease shall automatically be deemed null and void and of no further force and effect.

29. **LANDLORD'S CONSENT:** This Sublease is expressly contingent upon receipt of Landlord's approval and execution of the Landlord's Consent attached hereto as Exhibit D and incorporated herein by this reference.

30. **COUNTERPARTS:** This Sublease may be executed in multiple counterparts. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, Sublessor and Subtenant have hereunto executed the Sublease as of the day and year first above written.

SUBLESSOR:

By: _____
[Signature]

Name: _____

Date: _____

SUBTENANT:

By: _____
[Signature]

Name: _____

Title: _____

Date: _____

_____, as guarantor of the Sublessor's obligations under the Prime Lease, hereby consents to the execution of this Sublease and further confirms its continuing liability for all obligations and liabilities of Sublessor arising under or in connection with the Prime Lease.

By: _____

Name: _____

Its: _____

- Exhibit A – Prime Lease
- Exhibit B – Subleased Premises
- Exhibit C – Rent Schedule
- Exhibit D – Landlord Consent

**EXHIBIT A
PRIME LEASE**

[see attached]

**EXHIBIT B
SUBLEASED PREMISES**

[see attached]

**EXHIBIT C
RENT SCHEDULE**

Minimum Rent

1. \$0.00 for months _____.
2. \$_____ (\$_____ psf per annum) for months _____ (commencing _____).

Additional Costs

1. Subtenant's Proportionate Share is ____% for the Subleased Premises.
2. Subtenant's "Base Year" for Operating Costs, Building Specific Operating Costs and Real Estate Taxes shall be calendar year _____. Amounts due shall be paid monthly based on estimates and reconciled annually in accordance with the terms of the Prime Lease.
3. Utility costs, if any, for the Subleased Premises shall be paid by Subtenant during the Term and the free rent period (commencing on the Effective Date).
4. Subtenant shall not be required to make a security deposit.

**EXHIBIT D
LANDLORD'S CONSENT**

Landlord acknowledges, agrees and accepts the terms and conditions of the foregoing Sublease. Landlord further acknowledges that Sublessor is not in default under the Prime Lease, and no event or condition exists which, with the giving of notice or the passage of time, or both, would constitute a default or event of default by Sublessor under the Prime Lease.

By: _____

Name: _____

Its: _____

Date: _____

SAMPLE ESTOPPEL CERTIFICATE

TENANT'S ESTOPPEL CERTIFICATE

Date: _____

PREMISES (include street address, suite number, and square footage): _____
 _____ ("Premises")

BUILDING: The Premises are located in the building known as "_____" located in the City of _____, _____ County, _____ ("Building")

LANDLORD: _____ ("Landlord")

LEASE DATED: _____ ("Lease")

TENANT (include actual name and any assumed name): _____ ("Tenant")
 NOTICE ADDRESS: _____

PURCHASER: _____ or its assigns ("Purchaser")

Tenant has executed and entered into the Lease, which Lease is attached hereto as Exhibit "A" and made a part hereof for all purposes. Tenant understands that _____, the owner of the Building and of the Landlord's interest in the Lease, intends to sell, transfer, assign, and convey the Landlord's interest in all tenant leases with respect to such property to Purchaser. With respect to the Lease and the above-referenced sale transaction, Tenant represents and warrants to Purchaser as follows: (a) A true and correct copy of the Lease is attached hereto as Exhibit "A"; (b) The Lease represents the entire agreement between Landlord and Tenant, is in full force and effect, and has not changed except as indicated on Exhibit "A"; (c) The commencement date of the term of the Lease is _____, _____, and the Lease will expire on _____, _____, unless it is sooner terminated as provided for in the Lease; (d) Landlord has complied with all of its construction and other obligations under the Lease to this date, and Tenant is fully obligated to pay, and is paying, the rent and other charges due thereunder, and is fully obligated to perform, and is performing, all of the other obligations of Tenant under the Lease without right of credit, counterclaim, offset, or defense; (e) Tenant's current annual base rent is \$_____ per year, payable in equal monthly installments of \$_____; (f) Tenant has made all rent payments due under the Lease through _____; (g) To Tenant's knowledge (i) neither Landlord nor Tenant is in default in any respect under the Lease, and (ii) no condition exists, which with the passage of time or the giving of notice, or both, would constitute a default under the Lease; and (h) No security or other deposit has been paid by Tenant with respect to the Lease except: _____.

Following Purchaser's acquisition of Landlord's interest in the Lease, Tenant agrees to attorn to Purchaser, and to perform all of the Tenant's obligations as lessee under the Lease, including, without limitation, the payment of rent, directly to Purchaser or to any other individual or entity appointed by Purchaser, as the lessor under the Lease from and after the date of such assignment. Tenant acknowledges and agrees that Purchaser may rely and is relying on this letter for all purposes.

TENANT:

By: _____
 Its: _____

EXHIBIT:
 A - Lease

SAMPLE GUARANTY

LEASE GUARANTY

THIS LEASE GUARANTY (“Guaranty”) is made this ___ day of _____, 200__, by the undersigned (hereinafter referred to as “Guarantor”, whether one or more) in favor of _____, a (“Landlord”).

FOR VALUE RECEIVED, Guarantor hereby unconditionally, irrevocably and absolutely guarantees to Landlord the prompt and full payment and performance, when due, of all obligations and covenants of (“Tenant”), fixed or contingent, arising out of the Lease Agreement dated _____, 200__, executed by and between Tenant and Landlord and any and all renewals, extensions, amendments, and modifications thereof (collectively, the “Lease”), or which Tenant, or its successors or assigns, may in any other manner now or at any time hereafter owe Landlord in connection with the Lease, including, but not limited to, rent, taxes, insurance, operating expenses, maintenance costs, damages and expenses resulting from Tenant’s default under the Lease, interest and collection costs (collectively, the “Obligations”).

1. **CONTINUING GUARANTY.** This is a continuing Guaranty and shall apply to the Obligations and any renewals, extensions, amendments, modifications, waivers and transfers thereof.

2. **OTHER REMEDIES.** Landlord shall not be required to pursue any other remedies before invoking the benefits of this Guaranty; specifically, Landlord shall not be required to take any action against Tenant or any other person, to exhaust its remedies against any other guarantor of the Obligations, any collateral or other security, or to resort to any balance of any deposit account or credit on the books of Landlord in favor of Tenant or any other person.

3. **OBLIGATIONS NOT IMPAIRED.** Prior to performance and satisfaction in full of the Obligations, the liability of Guarantor under this Guaranty shall not be released or impaired without the prior written consent of Landlord, except as provided in Section 18 hereof. Without limiting the generality of the foregoing, the liability of Guarantor shall not be released or impaired on account of any of the following events:

- (a) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of Tenant, or any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting Tenant or any of its assets;
- (b) the addition of a new guarantor or guarantors;
- (c) any bankruptcy or insolvency proceedings against or by Tenant, its property, or its estate or any modification, discharge or extension of the Obligations resulting from the operation of any present or future provision of the United States Bankruptcy Code or any other similar federal or state statute, or from the decision of any court, it being the intention hereof that Guarantor shall remain liable on the Obligations notwithstanding any act, omission, order, judgment or event which might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor;
- (d) Landlord’s failure to use diligence in preserving the liability of any person on the Obligations, or in bringing suit to enforce collection of the Obligations;
- (e) the substitution or withdrawal of collateral, or release of collateral, or the exercise or failure to exercise by Landlord of any right conferred upon it herein or in any collateral agreement;

(f) if Tenant is not liable for any of the Obligations because the act of creating the Obligations is ultra vires, or the officers or persons creating the Obligations acted in excess of their authority, or for any reason the Obligations cannot be enforced against Tenant;

(g) any payment by Tenant to Landlord if such payment is held to constitute a preference under the bankruptcy laws, or if for any other reason Landlord is required to refund such payment to Tenant or pay the amount thereof to any other party;

(h) if this Guaranty is ever deemed invalid or unenforceable as to the Guarantor;

(i) any extension, renewal, amendment, or modification of the Lease; or

(j) any assignment of the Lease or subletting of all or any portion of the premises leased pursuant to the Lease.

4. **BENEFIT TO GUARANTOR.** Guarantor acknowledges and warrants that it derives or expects to derive financial and other advantage and benefit, directly or indirectly, from the Lease, the Obligations and the release of collateral or other relinquishment of legal rights made or granted or to be made or granted by Landlord to Tenant. Guarantor acknowledges that, in entering into the Lease, Landlord is relying on Guarantor’s agreements contained in this Guaranty and on Guarantor’s creditworthiness. Guarantor acknowledges that Landlord would not have entered into the Lease without Guarantor’s guarantee of the Obligations pursuant to the terms hereof.

5. **JOINT AND SEVERAL LIABILITY.** Unless the context clearly indicates otherwise, “Guarantor” shall mean the guarantor hereunder, or any of them, if more than one. The obligations of said guarantors hereunder if more than one, shall be joint and several. Suit may be brought against said guarantors jointly and severally, and against any one or more of them, or less than all, without impairing the rights of Landlord against the others of said guarantors; and Landlord may compromise with any one of said guarantors for such sums or sum as it may see fit and release such of said guarantors from all further liability to Landlord for such indebtedness without impairing the right of Landlord to demand and collect the balance of such indebtedness from others of said guarantors not so released; but it is agreed among said guarantors themselves, however, that such compromising and release shall not impair the rights and obligations of said guarantors as among themselves.

6. **CHANGE IN COMPOSITION.** Should the status, composition, structure or name of Tenant change, including, but not limited to, by reason of a merger, dissolution, consolidation or reorganization, this Guaranty shall continue and also cover the indebtedness and Obligations of Tenant under the new status, composition structure or name according to the terms hereof. If Tenant is a general or limited partnership, no termination of said partnership, nor withdrawal therefrom by, or termination of any ownership interest therein owned by, any general or limited partner of such partnership shall alter, limit or modify Guarantor’s obligations set forth in this Guaranty or otherwise affect this Guaranty in any manner whatsoever, all of which obligations of Guarantor shall remain in effect as herein written.

7. **WAIVER AND SUBROGATION OF GUARANTOR’S RIGHTS AGAINST TENANT.** Until all of Tenant’s obligations under the Lease are fully performed, Guarantor

- a. waives any rights that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligations of Guarantor under this Guaranty; and
- b. subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under the Lease.

8. **DEATH OR DISSOLUTION OF GUARANTOR.** Upon the death, dissolution or bankruptcy of Guarantor, the liability of Guarantor shall continue against its assets as to all Obligations which shall have been incurred by Tenant.

9. **FINANCIAL STATEMENTS.** The Guarantor warrants and represents to Landlord that all financial statements heretofore delivered by Guarantor to Landlord are true and correct in all material respects and there are no material adverse changes with respect thereto as of the date hereof. Guarantor further agrees to deliver true, correct and complete current, audited financial statements (which shall include, at a minimum, a balance sheet, profit and loss statement), bank references and Dun & Bradstreet reports on Guarantor, if available, at the following times: **[alternative provision:** within ____ days after the end of each fiscal year of Guarantor] **[alternative provision:** within ____ days after Landlord's written request therefor] **[list other times].**

10. **WAIVER OF NOTICE.** Guarantor waives diligence on the part of Landlord in the collection and enforcement of the Obligations, protest, and all extensions that may be granted to Tenant with respect thereto. Guarantor waives notice of acceptance of this Guaranty. Guarantor additionally waives grace, demand, presentment, notice of demand and all other notices (to the extent allowed by law). **[insert if applicable:** Notwithstanding anything to the contrary contained herein, Guarantor shall be entitled to the benefits of any and all grace periods and notices and opportunities to cure to which Tenant is entitled under the Lease before Guarantor shall have any liability hereunder. So long as Guarantor has liability under this Guaranty, Landlord shall provide Guarantor with written notice of any breach or failure to perform on the part of the Tenant under the Lease concurrently with delivery of notice of such breach or failure to Tenant under the Lease. Notices to Guarantor shall be served at the address stated below in accordance with the notice provisions of the Lease.]

11. **LIMITATION ON INTEREST.** To the extent that any law limiting the amount of interest that may be contracted for, charged or received is applicable to the indebtedness of Guarantor under this Guaranty, no provision of this Guaranty shall require the payment or permit the collection of any sum in excess of the maximum lawful amount of interest applicable to Guarantor's indebtedness under this Guaranty. If any sum in excess of the maximum lawful amount applicable to Guarantor's indebtedness under this Guaranty is provided for herein, the provision of this paragraph shall govern, and Guarantor shall not be obligated to pay any sum in excess of the maximum lawful amount applicable to Guarantor's indebtedness under this Guaranty. The intention of Guarantor and Landlord hereunder is to comply with all laws applicable to this Guaranty and Guarantor's liability hereunder.

12. **MODIFICATION OR CONSENT.** No modification, consent or waiver of any provision of this Guaranty, nor consent to any departure by Guarantor therefrom, shall be effective unless the same shall be in writing and signed by Landlord, and then shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Guarantor **[insert if applicable:** , except as provided in Section 10 hereof], in any case shall, of itself, entitle Guarantor to any other or further notice or demand in similar or other circumstances. No delay or omission by Landlord in exercising any power or right hereunder shall impair any such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such power preclude other or further exercise thereof or the exercise of any other right or power hereunder. All rights and remedies of Landlord hereunder are cumulative of each other and of every other right or remedy which Landlord may otherwise have at law or in equity or under any other contract or document, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

13. **INDUCEMENT TO LANDLORD.** Guarantor acknowledges that this Guaranty is given to induce Landlord to enter into the Lease and to extend credit to Tenant which would not be extended except in reliance upon this Guaranty.

14. **ATTORNEYS' FEES.** If a lawsuit is instituted in connection with this Guaranty, then Guarantor agrees to pay to Landlord all expenses incurred in connection with such lawsuit (including, but not limited to, reasonable attorneys' fees and costs of court).

15. **SUCCESSORS AND ASSIGNS.** This Guaranty is for the benefit of Landlord, and its successors or assigns. Landlord may assign its rights hereunder in whole or in part; and, upon any such assignment, all the terms and provisions of this Guaranty shall inure to the benefit of such assignee, to the extent so assigned. The liability of Guarantor hereunder shall be binding upon all heirs, estates, executors, administrators, legal representatives, successors and assigns of Guarantor.

16. **HEADINGS.** The section headings hereof are inserted for convenience of reference only and shall not alter, define or be used in construing the text of this instrument.

17. **PLACE OF PERFORMANCE.** Guarantor agrees that this agreement is performable in County, _____. Suit on this Guaranty may be brought in any state or federal court in _____ County, _____ and Guarantor waives the right to be sued elsewhere. This Guaranty shall be deemed to have been made under and shall be governed by the laws of the State of _____ in all respects.

18. **TERM.**

(a) **[insert if applicable:** Subject to the provisions of Section 18(b) below], this Guaranty shall terminate only when all of the Obligations have been fully performed and satisfied.]

[Insert if applicable: (b) Notwithstanding anything to the contrary contained herein, Guarantor's liability under this Guaranty shall terminate upon an assignment or other transfer of the Lease, or a sublease of the Leased Premises (as defined in the Lease and herein so called), in accordance with the terms of the Lease, to a party ("Transferee") if any such Transferee, or any person or entity who shall provide an absolute and unconditional guaranty of such Transferee's Obligations, is creditworthy. For purposes of determining whether a person or entity is "creditworthy," the Landlord in its sole discretion shall have the right to determine whether a person or entity is creditworthy by taking into account the following factors, as applicable, and such other factors as Landlord deems appropriate:

(1) The Transferee has a net worth (on a consolidated basis) equal to or greater than Guarantor's net worth as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(2) The Transferee has a credit rating, under Dun & Bradstreet's credit rating system, equal to or better than Guarantor's credit rating as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(3) The Transferee has a credit rating, under Standard & Poor's credit rating system, equal to or better than Guarantor's credit rating as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(4) The Transferee has a credit rating, under Moody's credit rating system, equal to or better than Guarantor's credit rating as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(5) The Transferee has a debt-to-equity ratio equal to or less than Guarantor's debt-to-equity ratio as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(6) The Transferee has total assets equal to or greater than Guarantor's total assets as of either the date hereof or the date of the assignment or sublease, whichever is greater; and

(7) The Transferee has total revenues equal to or greater than Guarantor's total revenues as of either the date hereof or the date of the assignment or sublease, whichever is greater; and

(8) The Transferee has total operating revenues equal to or greater than Guarantor's total operating revenues as of either the date hereof or the date of the assignment or sublease, whichever is greater; and

(9) The Transferee has earnings, expressed as a percentage of required annual debt service (paid or accrued), equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(10) The Transferee has a current or working capital ratio (i.e., current assets divided by current liabilities) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(11) The Transferee has an acid-test or quick ratio (i.e., current assets divided by current liabilities) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(12) The Transferee has a working capital to total asset ratio (i.e., working capital divided by total assets) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(13) The Transferee has a receivable turnover ratio (i.e., net credit sales divided by average receivables [net]) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(14) The Transferee has an owner's equity to total asset ratio (i.e., shareholder's equity divided by total assets) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(15) The Transferee has a creditors' equity ratio (i.e., total liabilities divided by total assets) equal to or less than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(16) The Transferee has a profit margin (i.e., net income divided by net sales) equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater; and

(17) The Transferee has net earnings equal to or greater than Guarantor's as of the date hereof or the date of the assignment or sublease, whichever is greater.

If Landlord determines in its sole discretion that the Transferee, or the person or entity who shall provide an absolute and unconditional guaranty of Transferee's obligations, is creditworthy as herein provided, Landlord agrees to execute at Guarantor's expense such instruments as Guarantor may reasonably request for the purpose of documenting Guarantor's release from its liability hereunder.]

19. **GUARANTY OF PAYMENT AND PERFORMANCE.** This is a guaranty of payment and performance and not a guaranty of collection.

20. **PAST DUE AMOUNTS.** All past due payments of the Obligations shall bear interest at the maximum lawful rate, or if no maximum lawful rate is established by applicable law, then at the rate per annum which shall from day to day be equal to _____ percent (___%).

21. **REPRESENTATIONS.** Guarantor represents and warrants to Landlord that (i) Guarantor has executed this Guaranty of its free will and accord; (ii) Guarantor has read and understands the terms of this Guaranty and the Lease; (iii) Guarantor has had the opportunity to have this Guaranty and the Lease reviewed by an attorney of Guarantor's choice; and (iv) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor.

22. **ENTIRE AGREEMENT.** Guarantor acknowledges and agrees that this Guaranty accurately represents and contains the entire agreement between Guarantor and Landlord with respect to the subject matter hereof, that Guarantor is not relying, in the execution of this Guaranty, on any representations (whether written or oral) made by or on behalf of Landlord except as expressly set forth in this Guaranty, and that any and all prior statements and/or representations made by or on behalf of Landlord to Guarantor (whether written or oral) in connection with the subject matter hereof are merged herein. This Guaranty shall not be waived, altered, modified or amended as to any of its terms or provisions except in writing duly signed by Landlord and Guarantor.

23. **SEVERABILITY.** A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

24. **WAIVER OF RIGHT TO JURY TRIAL.** GUARANTOR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR THE LEASE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY LANDLORD OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LANDLORD OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTY OR THE LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. Neither this provision nor any provision in the Lease regarding waiver of jury trial or submission to jurisdiction or venue in any court is intended or shall be construed to be in derogation of any provision herein or in the Lease for arbitration of any controversy or claim.

25. **STATE SPECIFIC PROVISIONS.** To the extent allowed by law, this Guaranty shall be effective as a waiver of, and Guarantor waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws or similar laws in effect from time to time including, but not limited to [Chapter 34 of the *Texas Business and Commerce Code*, Rule 31 of the *Texas Rules of Civil Procedure*, and Section 17.001 of the *Texas Civil Practice & Remedies Code*.] To the extent allowed by law, Grantor additionally waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first written above.

GUARANTOR:

ADDRESS OF GUARANTOR:

By: _____

Its: _____

THE STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 200__, by _____ of _____, a _____, on behalf of said _____.

Notary Public, State of _____

My Commission Expires: _____

Notary's Printed/Typed Name

SAMPLE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(Fee Transaction Form)

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made by and between _____, a _____ corporation with offices at _____ ("Lender") and _____, a [an] [individual] name of state [corporation] [limited liability company] [general partnership] [limited partnership] [d/b/a _____] with its principal place of business at _____ ("Tenant").

RECITALS:

A. Lender has made or is about to make a loan (together with all advances and increases, the "Loan") to _____, a [an] [individual] [corporation] [limited liability company] [general partnership] [limited partnership] _____ ("Borrower").

B. Borrower, as landlord, and Tenant have entered into a lease dated _____ as amended by amendments dated _____ (the "Lease") which leased to Tenant [Suite No. _____] [Floor _____] [Store No. _____] (the "Leased Space") located in the Property (defined below).

C. The Loan is or will be secured by the [Open-End] Mortgage, Assignment of Leases and Rents, Fixture Filing Statement and Security Agreement recorded or to be recorded in the official records of the County of _____, State or Commonwealth of _____ (together with all advances, increases, amendments or consolidations, the "Mortgage") and the Assignment of Leases and Rents recorded or to be recorded in such official records (together with all amendments or consolidations, the "Assignment"), assigning to Lender the Lease and all rent, additional rent and other sums payable by Tenant under the Lease (the "Rent").

D. The Mortgage encumbers the real property, improvements and fixtures located at _____ in the City of _____, County of _____, State of Commonwealth of _____, commonly known as _____, and described on Exhibit "A" (the "Property").

IN CONSIDERATION of the mutual agreements contained in this Agreement, Lender and Tenant agree as follows:

1. The Lease and all of Tenant's rights under the Lease are and will remain subject and subordinate to the lien of the Mortgage and all of Lender's rights under the Mortgage and Tenant will not subordinate the Lease to any other lien against the Property without Lender's prior consent.
2. This Agreement constitutes notice to Tenant of the Mortgage and the Assignment and, upon receipt of notice from Lender, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease.
3. Tenant does not have and will not acquire any right or option to purchase any portion of or interest in the Property.
4. Tenant and Lender agree that if Lender exercises its remedies under the Mortgage or the Assignment and if Tenant is not then in default under this Agreement and if Tenant is not then in default beyond any applicable grace and cure periods under the Lease:

(a) Lender will not name Tenant as a party to any judicial or non-judicial foreclosure or other proceeding to enforce the Mortgage unless joinder is required under applicable law but in such case Lender will not seek affirmative relief against Tenant, the Lease will not be terminated and Tenant's possession of the Leased Space will not be disturbed.

(b) If Lender or any other entity (a "Successor Landlord") acquires the Property through foreclosure, by other proceeding to enforce the Mortgage or deed-in-lieu of foreclosure (a "Foreclosure"), Tenant's possession of the Leased Space will not be disturbed and the Lease will continue in full force and effect between Successor Landlord and Tenant; and

(c) If, notwithstanding the foregoing, the Lease is terminated as a result of a Foreclosure, a lease between Successor Landlord and Tenant will be deemed created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease. Successor Landlord and Tenant will execute a replacement lease at the request of either.

5. Upon Foreclosure, Tenant will recognize and attorn to Successor Landlord as the landlord under the Lease for the balance of the term. Tenant's attornment will be self-operative with no further instrument required to effectuate the attornment except that at Successor Landlord's request, Tenant will execute instruments reasonably satisfactory to Successor Landlord confirming the attornment.

6. Successor Landlord will not be:

(a) liable for any act or omission of any prior landlord under the Lease occurring before the date of the Foreclosure except for repair and maintenance obligations of a continuing nature imposed on the landlord under the Lease;

(b) required to credit Tenant with any Rent paid more than one month in advance or for any security deposit unless such Rent or security deposit has been received by Successor Landlord;

(c) bound by any amendment, renewal or extension of the Lease that is inconsistent with the terms of this Agreement or is not in writing and signed both by Tenant and landlord;

(d) bound by any reduction of the Rent unless the reduction is in connection with an extension or renewal of the Lease at prevailing market terms or was made with Lender's prior consent;

(e) bound by any reduction of the term¹ of the Lease or any termination, cancellation or surrender of the Lease unless the reduction, termination, cancellation or surrender occurred during the last 6 months of the term or was made with Lender's prior consent;

(f) bound by any amendment, renewal or extension of the Lease entered into without Lender's prior consent if the Leased Space represents 50% or more of the net rentable area of the building in which the Leased Space is located;

(g) **[INCLUDE ONLY FOR SHOPPING CENTER LEASES]** bound by any amendment, renewal or extension of the Lease entered into without Lender's prior consent, if Tenant is a major department store or anchor tenant;

(h) subject to any credits, offsets, claims, counterclaims or defenses that Tenant may have that arose prior to the date of the Foreclosure or liable for any damages Tenant may suffer as a result of any misrepresentation, breach of warranty or any act of or failure to act by any party other than Successor Landlord;

¹ For purposes of this subparagraph "the term of the Lease" includes any renewal term after the right to renew has been exercised.

(i) bound by any obligation to make improvements to the Property, including the Leased Space, to make any payment or give any credit or allowance to Tenant provided for in the Lease or to pay any leasing commissions arising out of the Lease, except that Successor Landlord will be:

(i) bound by any such obligations provided for in the Lender-approved form lease;

(ii) bound by any such obligations if the overall economic terms of the Lease (including the economic terms of any renewal options) represented market terms for similar space in properties comparable to the Property when the Lease was executed; and

(iii) bound to comply with the casualty and condemnation restoration provisions included in the Lease provided that Successor Landlord receives the insurance or condemnation proceeds; or

(j) liable for obligations under the Lease with respect to any off-site property or facilities for the use of Tenant (such as off-site leased space or parking) unless Successor Landlord acquires in the Foreclosure the right, title or interest to the off-site property.

7. Lender will have the right, but not the obligation, to cure any default by Borrower, as landlord, under the Lease. Tenant will notify Lender of any default that would entitle Tenant to terminate the Lease or abate the Rent and any notice of termination or abatement will not be effective unless Tenant has so notified Lender of the default and Lender has had a 30-day cure period (or such longer period as may be necessary if the default is not susceptible to cure within 30 days) commencing on the latest to occur of the date on which (i) the cure period under the Lease expires; (ii) Lender receives the notice required by this paragraph; and (iii) Successor Landlord obtains possession of the Property if the default is not susceptible to cure without possession.

8. All notices, requests or consents required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested or by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to the appropriate party at the address set forth above.

9. Any claim by Tenant against Successor Landlord under the Lease or this Agreement will be satisfied solely out of Successor Landlord's interest in the Property and Tenant will not seek recovery against or out of any other assets of Successor Landlord. Successor Landlord will have no liability or responsibility for any obligations under the Lease that arise subsequent to any transfer of the Property by Successor Landlord.

10. This Agreement is governed by and will be construed in accordance with the laws of the state or commonwealth in which the Property is located.

11. Lender and Tenant waive trial by jury in any proceeding brought by, or counterclaim asserted by, Lender or Tenant relating to this Agreement.

12. If there is a conflict between the terms of the Lease and this Agreement, the terms of this Agreement will prevail as between Successor Landlord and Tenant.

13. This Agreement binds and inures to the benefit of Lender and Tenant and their respective successors, assigns, heirs, administrators, executors, agents and representatives.

14. This Agreement contains the entire agreement between Lender and Tenant with respect to the subject matter of this Agreement, may be executed in counterparts that together constitute a single document and may be amended only by a writing signed by Lender and Tenant.

15. **[INCLUDE ONLY IN SNDA'S SIGNED POST-CLOSING]** Tenant certifies that: the Lease represents the entire agreement between the landlord under the Lease and Tenant regarding the Leased Space; the Lease is in full force and effect; neither party is in default under the Lease beyond any applicable grace and cure

periods and no event has occurred which with the giving of notice or passage of time would constitute a default under the Lease; Tenant has entered into occupancy and is open and conducting business in the Leased Space; and all conditions to be performed to date by the landlord under the Lease have been satisfied.

IN WITNESS WHEREOF, Lender and Tenant have executed and delivered this Agreement as of _____, _____.

By: _____
 Name: _____
 Title: _____

Insert Name of Tenant
 a[n] [individual] _____ [corporation]
 [limited liability company] [general partnership] [limited
 partnership] [d/b/a _____]

By: _____
 Name: _____
 Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Before me, a Notary Public, in and for said County, personally appeared _____, to me known and known to me to be the persons who, as _____, the Corporation which executed the foregoing instrument, signed the same, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said corporation as such officers respectively; that the same is their free act and deed as such officers, respectively, and the free act and deed of said corporation; that they were duly authorized thereunto by its board of trustees; and that the seal affixed to said instrument is the corporate seal of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____, _____ this ____ day of _____, ____.

 Notary Public

ACKNOWLEDGMENTS

INDIVIDUAL

STATE OF _____)
) SS:
 COUNTY OF _____)

On this ____ day of _____, _____, before me personally appeared _____ to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as their free act and deed.

 Notary Public

My commission expires:

CORPORATE

STATE OF)
) SS:
COUNTY OF)

On this ____ day of _____, _____, before me, personally appeared _____ to me personally known, who, being by me duly sworn, did say he is the _____ of _____ and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My commission expires:

PARTNERSHIP

STATE OF)
) SS:
COUNTY OF)

In _____ County in said station on the ____ day of _____, _____, before me personally appeared _____ as general partner of _____ PARTNERSHIP, to me known and known by me to be the party executing the foregoing and the acknowledged said instrument by him executed to be his free act and deed, and his free act and deed in his capacities as aforesaid, and the free act and deed of _____ PARTNERSHIP.

Notary Public
My commission expires:

EXHIBIT A

Property Description

LEASES

I. TYPES OF LEASES – SPECIAL CONSIDERATIONS

- Office
- Retail
- Industrial / Warehouse

II. FREQUENTLY NEGOTIATED PROVISIONS

- Issues List
- Top 10 Leasing Issues – Sample Provisions
 1. Renewal Rights / Renewal Rent –
Avoid Agreeing to Agree
 2. Insurance – Are You Covered?
 3. Repair & Maintenance –
Who Does What?
 4. Operating Expenses –
Caps & Exclusions

II. FREQUENTLY NEGOTIATED PROVISIONS

- Top 10 Leasing Issues – Sample Provisions
(Continued)
 5. Alterations – Permitted Non-
Structural Improvements
 6. Default – Notice & Cure
 7. Remedies – Right to Self Help
 8. Assignment & Subleasing –
Affiliate & Other Transfers
 9. Indemnities – Mutuality
 10. Business-Specific Concerns –
What Does Rick Want?

II. FREQUENTLY NEGOTIATED PROVISIONS

- Issues List
- Top 10 Leasing Issues – Sample Provisions
- Lease Term Sheet

III. SUBLEASES

IV. ESTOPPEL CERTIFICATES

V. GUARANTIES OR GUARANTEES

VI. SUBORDINATION, NON-
DISTURBANCE &
ATTORNNMENT AGREEMENTS

A Brief Walk Through a
Purchase and Sale
Agreement

Earnest Money Deposit

- Due Diligence Period-”Soft” v. “Hard” Immediately (With Certain Exceptions)
- Is Written Notice Needed to Make Deposit Hard? Time Frame for Diligence?
- Deposit Held by Escrow Agent, not Seller
- Retention of Deposit is usually Seller’s Sole Remedy for Buyer Breach.

Title and Survey Provisions

- Time Period Needed for Title Objections
- Seller Should Cure All Monetary Defaults Without Need of Objection
- Specific List of Objections vs. “all matters of Record”

Prorations

- Timing for True-up?
- Prorating rents – collected vs. uncollected? Survivability Period for Past Rents?

Reps. and Warranties

- Often Limited in Today's Market-Buyer Forced to Rely on Tenant Estoppels
- ERISA and OFAC Reps. Often Missing
- Environmental is Very Limited or Non-Existent (Client needs to Rely on Own Diligence-Phase I before Closing-Innocent Purchaser Defense)
- Survival Period of 6-12 months.
- “Knowledge”-Prop. Manager and Engineer

Scope of Release

Buyer seeks carry-outs for:

- 3rd Party Claims
- Rights of Subrogation (Especially regarding Environmental)

Casualty/Condemnation Provisions

- Big Issue is When Can the Buyer Walk Away. What Threshold of Damage?
- How are Insurance Proceeds Handled? Underinsured Casualties?

Indemnification and Caps on Liability

- Cap-Usually 1-5% of Purchase Price. Usually a basket as well.
- Who stands by the indemnity (Guaranty)? SPE only?
- Buyer Seeks a Holdback/Escrow Equal to Cap if Seller is SPE.

Remedies for Breach by Seller

- Buyer wants Right of Specific Performance as well as Termination
- Buyer usually wants Diligence Costs for Willful Seller Breaches.

Covenants b/t Signing and Closing

- Buyer must be allowed to approve new leases, amendments, TIs, LCs.

Conditions to Closing

- Seller wants fast Closing (with right to extend to meet conditions).
- Buyer wants time for diligence and organizing financing.
- Estoppels (for tenants properties) and Required Consents. Identify Major Tenants. Seller Estoppel Allowed (limit to 10%)? Note-Make sure estoppels are also addressed to Lender to Avoid Duplication.
- Loan Assumption?
- Delivery of Title Policy.
- Closing-Delivery by Seller of 1) Deed, 2) Assumption of Leases and Contracts, 3) Bill of Sale (agreed forms in PSA) and 4) FIRPTA Certificate.

Several Smaller Practical Tips

- Assignment-Make Sure Property can be Assigned to an SPE
- Time of the Essence-Watch Date and Time of closing
- Transfer Taxes-Local Custom
- Mortgage Tax-Better to Assume Loans in Some States (i.e.,NY)

Take Away Point From Presentation

- As Buyer's Counsel for a tenanted building acquisition, your key task is to obtain full disclosure of the all tenants' rights and obligations, and to prevent Seller from negatively altering those rights and obligations prior to Closing. Make sure that your client obtains a correct rent roll, and is able to confirm lease terms via estoppels or otherwise.

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "Agreement") is entered into and effective for all purposes as of _____, 200__ (the "Effective Date"), by and between _____, a _____ ("Seller"), and _____, a _____ ("Purchaser").

In consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

AGREEMENT OF SALE AND PURCHASE

BETWEEN

as Seller

AND

as Purchaser
pertaining to

EXECUTED EFFECTIVE AS OF

_____, 200__

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement, the following capitalized terms have the meanings set forth in this Section 1.1:

"Affiliate" means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Purchaser or Seller, as the case may be. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agreement" has the meaning ascribed to such term in the opening paragraph.

["Anti-Terrorism Law" as used in this Agreement means any law of the United States that prohibits financing of terrorists (as defined in Executive Order No. 13224) or prohibiting money laundering, including Executive Order No. 13224 and Title III of the USA PATRIOT Act.]

"Authorities" means the various governmental and quasi-governmental bodies or agencies having jurisdiction over Seller, the Real Property, the Improvements, or any portion thereof.

"Broker" has the meaning ascribed to such term in Section 11.1.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), as the same may be amended.

"Certificate as to Foreign Status" has the meaning ascribed to such term in Section 10.3(e).

"Certifying Party" has the meaning ascribed to such term in Section 4.5.

“**Closing**” means the consummation of the purchase and sale of the Property contemplated by this Agreement, as provided for in Article X.

“**Closing Date**” means the date on which the Closing occurs, which date will be _____, 200____, or such earlier or later date to which Purchaser and Seller may hereafter agree in writing.

“**Closing Statement**” has the meaning ascribed to such term in Section 10.4(a).

“**Closing Surviving Obligations**” means the covenants, rights, liabilities and obligations set forth in Sections 3.2, 4.9, 5.2(a), 5.2(d), 5.3, 5.5, 5.6, 8.1 (subject to Section 16.1), 8.2, 10.4 (subject to the limitations therein), 10.7, 11.1, 13.3, 16.1, 17.2 and 17.15.

“**Closing Time**” has the meaning ascribed to such term in Section 10.4(a).

“**Code**” has the meaning ascribed to such term in Section 4.9.

“**Commitment**” has the meaning ascribed to such term in Section 6.2(a).

“**Confidentiality Agreement**” means that certain Confidentiality Agreement dated _____, 200__ executed by Purchaser.

“**Deed**” has the meaning ascribed to such term in Section 10.3(a).

“**Deposit**” has the meaning ascribed to such term in Section 4.1.

“**Deposit Time**” means ____:00 p.m. _____ Time on the Business Day that is immediately preceding the Closing Date.

“**Documents**” has the meaning ascribed to such term in Section 5.2(a).

“**Earnest Money Deposit**” has the meaning ascribed to such term in Section 4.1.

“**Effective Date**” has the meaning ascribed to such term in the opening paragraph of this Agreement.

“**Environmental Laws**” means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any Authorities and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Purchaser, and as same have been amended, modified or supplemented from time to time prior to and are in effect as of the date of this Agreement, including but not limited to CERCLA, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), RCRA, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air

Quality Research Act (42 U.S.C. § 7401 note, et seq.), comparable state and local laws, and any and all rules and regulations which are in effect as of the date of this Agreement under any and all of the aforementioned laws.

“**Escrow Instructions**” has the meaning ascribed to such term in Section 4.2.

“**Existing Survey**” has the meaning ascribed to such term in Section 6.1.

“**General Conveyance**” has the meaning ascribed to such term in Section 10.2(b).

“**Governmental Regulations**” means all laws, ordinances, rules and regulations of the Authorities applicable to Seller or Seller’s use and operation of the Real Property or the Improvements or any portion thereof.

“**Hazardous Substances**” means all (a) asbestos, radon gas, electromagnetic waves, urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls of 50 ppm or greater, (b) any solid, liquid, gaseous or thermal contaminant, including smoke vapor, soot, fumes, acids, alkalis, chemicals, waste, petroleum products or byproducts, asbestos, PCBs, phosphates, lead or other heavy metals, chlorine, or radon gas, (c) any solid or liquid wastes (including hazardous wastes), hazardous air pollutants, hazardous substances, hazardous chemical substances and mixtures, toxic substances, pollutants and contaminants, as such terms are defined in any Environmental Law, including, without limitation CERCLA, RCRA, the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Hazardous Substances Transportation Act, the Toxic Substances Control Act, the Clean Water Act (33 U.S.C. § 1321 et seq.), the Clean Air Act, the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such Laws have been amended and/or supplemented from time to time prior to the date of this Agreement, and any and all rules and regulations promulgated under any of the above, and (d) any other chemical, material or substance, the use or presence of which, or exposure to the use or presence of which, is prohibited, limited or regulated by any Environmental Laws, in effect as of or prior to the date of this Agreement or as the same may be amended or supplemented after the date of this Agreement.

“**Improvements**” means all buildings, structures, fixtures, parking areas and improvements owned by Seller and located on the Real Property.

“**Independent Consideration**” has the meaning ascribed to such term in Section 3.4.

“**Inspection Agreement**” means that certain Inspection Agreement dated _____, 200__ between Seller and Purchaser.

“**Leasing Costs**” has the meaning ascribed to such term in Section 10.4(e).

“**Licensee Parties**” has the meaning ascribed to such term in Section 5.1(a).

“Licenses and Permits” means, collectively, all of Seller's right, title and interest, to the extent assignable without the necessity of consent or assignable only with consent and such consent has been obtained, in and to licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by the Authorities prior to Closing in connection with the Real Property and the Improvements, together with all renewals and modifications thereof.

“Major Tenants” has the meaning ascribed to such term in Section 7.2(a).

“New Tenant Costs” has the meaning ascribed to such term in Section 10.4(e).

“Official Records” means the Official Records of Real Property in the Office of the Clerk and Recorder of the City of _____ and County of _____, _____.

“Operating Expense Recoveries” has the meaning ascribed to such term in Section 10.4(c).

“Other Party” has the meaning ascribed to such term in Section 4.5.

“Permitted Exceptions” has the meaning ascribed to such term in Section 6.2(a).

“Permitted Outside Parties” has the meaning ascribed to such term in Section 5.2(b).

“Personal Property” means all of Seller's right, title and interest in and to the equipment, appliances, tools, supplies, machinery, artwork, furnishings and other tangible personal property attached to, appurtenant to, located in and used exclusively in connection with the ownership or operation of the Improvements and described on Exhibit A attached hereto.

“Prohibited Person” as used in this Agreement means: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Section 1 of Executive Order No. 13224; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Section 1 of Executive Order No. 13224; (iii) a person or entity with whom Buyer/Seller is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (iv) a person or entity who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224.]

“Property” has the meaning ascribed to such term in Section 2.1.

“Proration Items” has the meaning ascribed to such term in Section 10.4(a).

“Purchase Price” has the meaning ascribed to such term in Section 3.1.

“Purchaser” has the meaning ascribed to such term in the opening paragraph of this Agreement.

“Purchaser's Information” has the meaning ascribed to such term in Section 5.2(e).

“RCRA” means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, and as further amended.

“Real Property” means those certain parcels of or interests in real property located at _____, as more particularly described on Exhibit B attached hereto and made a part hereof, together with all of Seller's right, title and interest, if any, in and to the appurtenances pertaining thereto, including but not limited to Seller's right, title and interest in and to the streets, alleys and right-of-ways which abut such real property, and any easement rights, air rights, subsurface rights, development rights and water rights appurtenant to such real property.

“Records and Plans” means, collectively: (i) all books and records, including but not limited to property operating statements, specifically relating to the Improvements; (ii) all structural reviews, architectural drawings and engineering, soils, seismic, geologic and architectural reports, studies and certificates pertaining to the Real Property or the Improvements; and (iii) all final plans, specifications and drawings of the Improvements or any portion thereof. The terms “Records and Plans” shall not include (1) any document or correspondence which would be subject to the attorney-client privilege; (2) any document or item which Seller is contractually or otherwise bound to keep confidential; (3) any documents pertaining to the marketing of the Property for sale to prospective purchasers; (4) any internal memoranda, reports or assessments of Seller or Seller's Affiliates relating to Seller's valuation of the Property; (5) appraisals of the Property whether prepared internally by Seller or Seller's Affiliates or externally; (6) any documents or items which Seller considers confidential or proprietary; (7) any documents or items which are not in Seller's possession and control, and (8) any materials projecting or relating to the future performance of the Property.

“Rentals” has the meaning ascribed to such term in Section 10.4(b), and some may be **“Delinquent”** in accordance with the meaning ascribed to such term in Section 10.4(b).

“Rent Roll” has the meaning ascribed to such term in Section 5.2(a).

“Reporting Person” has the meaning ascribed to such term in Section 4.9(a).

“Seller” has the meaning ascribed to such term in the opening paragraph of this Agreement.

“Seller Certificate” has the meaning ascribed to such term in Section 7.2(b).

“Service Contracts” means all of Seller's right, title and interest in all service agreements, maintenance contracts, equipment leasing agreements, warranties, guarantees, bonds and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property, Improvements or Personal Property and under which Seller is currently paying for services rendered in connection with the Property, as listed and described on Exhibit C attached hereto, together with all renewals, supplements, amendments and modifications thereof, and any

new such agreements entered into after the Effective Date, to the extent permitted by Section 7.1(f), except that any management agreements will be terminated at Closing and are excluded from such term.

“**Significant Portion**” means damage by fire or other casualty to the Real Property and the Improvements or a portion thereof requiring repair costs in excess of \$ _____ *****[[10% of the Purchase Price]]** as such repair costs are reasonably estimated by Seller.

“**Tenant Deposits**” means all security deposits, paid or deposited by the Tenants to Seller, as landlord, or any other person on Seller's behalf pursuant to the Tenant Leases, which have not been applied to obligations under Tenant Leases (together with any interest which has accrued thereon, but only to the extent such interest has accrued for the account of the respective Tenants).

“**Tenant Leases**” means the following pertaining to the Improvements: (i) any and all written leases, rental agreements, occupancy agreements and license agreements (and any and all written renewals, amendments, modifications and supplements thereto) entered into on or prior to the Effective Date, (ii) any and all new written leases, rental agreements, occupancy agreements and license agreements entered into after the Effective Date and prior to the Closing Date and (iii) any and all new written renewals, amendments, modifications and supplements to any of the foregoing entered into after the Effective Date and prior to the Closing Date, and, as to (ii) and (iii) only, to the extent approved by Purchaser pursuant to Section 7.1(e) to the extent such approval is required under Section 7.1(e). Tenant Leases will not include subleases, franchise agreements or similar occupancy agreements entered into by Tenants which, by their nature, are subject to Tenant Leases.

“**Tenant Notice Letters**” has the meaning ascribed to such term in Section 10.7.

“**Tenants**” means all persons or entities leasing, renting or occupying space within the Improvements pursuant to the Tenant Leases, but expressly excludes any subtenants, licensees, concessionaires, franchisees or other persons or entities whose occupancy is derived through Tenants.

“**Termination Surviving Obligations**” means the rights, liabilities and obligations set forth in Sections 3.4, 5.2, 5.3, 5.6, 11.1, 12.1, 13.3, 17.2, 17.15 and Article XIII.

“**Title Company**” means _____, _____, Attn: _____, Phone: (____) _____.

“**Title Policy**” has the meaning ascribed to such term in Section 6.2(a).

“**To Seller's Knowledge**” means the present actual (as opposed to constructive or imputed) knowledge solely of _____ and _____, without any independent investigation or inquiry whatsoever. Such individuals are named in this Agreement solely for the purpose of establishing the scope of Seller's knowledge. Such individuals shall not be deemed to be parties to this Agreement nor to have made any representations or warranties hereunder, and no recourse shall be had to such individuals for any of Seller's representations

and warranties hereunder (and Purchaser hereby waives any liability of or recourse against such individuals).

[“**USA PATRIOT Act**” as used in this Agreement means Title III of the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Public Law 107-56), as amended and modified from time to time.]

Section 1.2 References; Exhibits and Schedules. Except as otherwise specifically indicated, all references in this Agreement to Articles or Sections refer to Articles or Sections of this Agreement, and all references to Exhibits or Schedules refer to Exhibits or Schedules attached hereto, all of which Exhibits and Schedules are incorporated into, and made a part of, this Agreement by reference. The words “herein,” “hereof,” “hereinafter” and words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or Article.

**ARTICLE II
AGREEMENT OF PURCHASE AND SALE**

Section 2.1 Agreement. Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, on the Closing Date and subject to the terms and conditions of this Agreement, all of the following (collectively, the “**Property**”):

- (a) the Real Property;
- (b) the Improvements;
- (c) the Personal Property;
- (d) all of Seller's right, title and interest as lessor in and to the Tenant Leases and, subject to the terms of the respective applicable Tenant Leases, the Tenant Deposits;
- (e) all of Seller's right, title and interest, if any, in, to and under the Service Contracts and the Licenses and Permits, in each case to the extent assignable without the necessity of consent or approval and, if consent or approval is required, to the extent any necessary consent or approval has been obtained;

(f) all of Seller's right, title and interest, to the extent assignable or transferable without the necessity of consent or approval (and if consent or approval is required, to the extent such consent or approval has been obtained), in and to all trade names, trademarks, logos and service marks (in each case, if any) utilized solely by Seller in connection with the operation of the Real Property and Improvements (other than the names or variations thereof of Seller, its Affiliates, the property manager and Tenants);

Section 2.2 Indivisible Economic Package. Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of the Property, it being the express agreement and understanding of Purchaser and Seller that, as a material inducement to Seller and Purchaser to enter into this Agreement, Purchaser has agreed to purchase, and Seller has agreed to sell, all of the Property, subject to and in accordance with the terms and conditions hereof.

**ARTICLE III
CONSIDERATION**

Section 3.1 Purchase Price. The purchase price for the Property (the "Purchase Price") will be _____ and No/100 Dollars (\$ _____) in lawful currency of the United States of America, payable as provided in Section 3.3.

Section 3.2 Assumption of Obligations. As additional consideration for the purchase and sale of the Property, effective as of Closing, Purchaser will be deemed to have, and by virtue of closing the purchase of the Property Purchaser shall have: (1) assumed and agreed to perform or pay, as applicable, (i) all of the covenants and obligations of Seller, Seller's predecessor in title (if any) and Seller's Affiliates pursuant to the Tenant Leases and Service Contracts assigned to Purchaser and which are to be performed on or subsequent to the Closing Date, (ii) all of the covenants and obligations of Seller under the Tenant Leases and the Service Contracts and the Licenses and Permits assigned to Purchaser and relating to the physical or environmental condition of the Property, regardless of whether such obligations arise before or after the Closing Date and (iii) the Leasing Costs for which Purchaser is responsible under Section 10.4(e) below; and (2) assumed and agreed to discharge, perform and comply with each and every liability, duty, covenant, debt or obligation of Seller or any of its Affiliates resulting from, arising out of or in any way related to the Licenses and Permits and arising or accruing on or after the Closing Date. Purchaser hereby indemnifies, defends, and holds Seller and its Affiliates harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) asserted against or incurred by Seller or its Affiliates and arising out of the failure of Purchaser to perform its obligations pursuant to this Section 3.2. The provisions of this Section 3.2 shall fully survive the Closing without limitation.

Section 3.3 Method of Payment of Purchase Price. No later than the Deposit Time, Purchaser will deposit in escrow with the Title Company the Purchase Price (subject to adjustments described in Section 10.4), together with all other costs and amounts to be paid by Purchaser at Closing pursuant to the terms of this Agreement, by Federal Reserve wire transfer of immediately available funds to an account to be designated by the Title Company. No later than 10:00 a.m. _____ Time on the Closing Date: (a) Purchaser will cause the Title Company to (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account to be designated by Seller, the Purchase Price (subject to adjustments described in Section 10.4), less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, and (ii) pay to all appropriate payees the other costs and amounts to be paid by Purchaser at Closing pursuant to the terms of this Agreement; and (b) Seller will direct the Title Company to pay to the appropriate payees out of the proceeds of Closing payable to Seller, all costs and amounts to be paid by Seller at Closing pursuant to the terms of this Agreement.

Section 3.4 Independent Consideration. The sum of One Hundred Dollars (\$100.00) (the "Independent Consideration") out of the Earnest Money Deposit is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Effective Date hereof, and is not refundable to Purchaser under any circumstances. Accordingly, if this

Agreement is terminated for any reason by either party, the Independent Consideration shall be paid by the Title Company to Seller.

**ARTICLE IV
EARNEST MONEY DEPOSIT AND ESCROW INSTRUCTIONS**

Section 4.1 The Deposit. Simultaneously with the execution and delivery of this Agreement, Purchaser has deposited with the Title Company, in good funds immediately collectible by the Title Company, the sum of _____ and No/100 Dollars (\$ _____) (the "Deposit"), which will be held in escrow by the Title Company pursuant to the terms of this Agreement. The Deposit (plus all interest earned thereon), less the Independent Consideration, shall be the "Earnest Money Deposit" for purposes of this Agreement.

Section 4.2 Escrow Instructions. Article IV of this Agreement constitutes the escrow instructions of Seller and Purchaser to the Title Company with regard to the Earnest Money Deposit and the Closing (the "Escrow Instructions"). By its execution of the joinder attached hereto, the Title Company agrees to be bound by the provisions of this Article IV. If any requirements relating to the duties or obligations of the Title Company hereunder are not acceptable to the Title Company, or if the Title Company requires additional instructions, the parties agree to make such deletions, substitutions and additions to the Escrow Instructions as Purchaser and Seller hereafter mutually approve in writing and which do not substantially alter this Agreement or its intent. In the event of any conflict between this Agreement and such additional escrow instructions, this Agreement will control.

Section 4.3 Documents Deposited into Escrow. On or before the Deposit Time, (a) Purchaser will cause the difference between the Purchase Price and the Deposit and interest thereon (subject to the prorations provided for in Section 10.4 and with the addition of all Closing costs to be paid by Purchaser) to be transferred to the Title Company's escrow account, in accordance with the timing and other requirements of Section 3.3, (b) Purchaser will deliver in escrow to the Title Company the documents described and provided for in Section 10.2(b), (c), (d) and (e) below, and (c) Seller will deliver in escrow to the Title Company the documents described and provided for in Section 10.3(a), (b), (c), (d), (e), (f), (h) and (k) below.

Section 4.4 Close of Escrow. Provided that the Title Company has not received from Seller or Purchaser any written termination notice as described and provided for in Section 4.5 (or if such a notice has been previously received, provided that the Title Company has received from such party a withdrawal of such notice), when Purchaser and Seller have delivered the documents required by Section 4.3, the Title Company will:

(a) If applicable and when required, file with the Internal Revenue Service (with copies to Purchaser and Seller) the reporting statement required under Section 6045(e) of the Internal Revenue Code and Section 4.9;

(b) Insert the applicable Closing Date as the date of any document delivered to the Title Company undated, and assemble counterparts into single instruments;

(c) Disburse to Seller, by wire transfer to Seller of immediately available federal funds, in accordance with wiring instructions to be obtained by the Title Company from Seller, all sums to be received by Seller from Purchaser at the Closing, comprised of the Purchase Price as adjusted in accordance with the provisions of this Agreement;

(d) Deliver the Deed to Purchaser by agreeing to cause the same to be recorded in the Official Records and agreeing to obtain conformed copies of the recorded Deed for delivery to Purchaser and to Seller following recording;

(e) Issue to Purchaser the Title Policy required by Section 6.2(a) of this Agreement;

(f) Deliver to Seller, in addition to Seller's Closing proceeds, all documents deposited with the Title Company for delivery to Seller at the Closing; and

(g) Deliver to Purchaser (i) all documents deposited with the Title Company for delivery to Purchaser at the Closing and (ii) any funds deposited by Purchaser in excess of the amount required to be paid by Purchaser pursuant to this Agreement.

Section 4.5 Termination Notices. If at any time the Title Company receives a certificate of either Seller or Purchaser (for purposes of this Section 4.5, the “**Certifying Party**”) stating that: (a) the Certifying Party is entitled to receive the Earnest Money Deposit pursuant to the terms of this Agreement, and (b) a copy of the certificate was delivered as provided herein to the other party (for purposes of this Section 4.5, the “**Other Party**”) prior to or contemporaneously with the giving of such certificate to the Title Company, then, unless the Title Company has then previously received, or receives within three (3) Business Days after receipt of the Certifying Party's certificate, contrary instructions from the Other Party, the Title Company, within one (1) Business Day after the expiration of the foregoing three (3) Business Day period, will deliver the Independent Consideration to Seller and the Earnest Money Deposit to the Certifying Party, and thereupon the Title Company will be discharged and released from any and all liability hereunder. If the Title Company receives contrary instructions from the Other Party within three (3) Business Days following the Title Company's receipt of said certificate, the Title Company will not so deliver the Earnest Money Deposit, but will continue to hold the same pursuant hereto, subject to Section 4.6.

Section 4.6 Indemnification of Title Company. If this Agreement or any matter relating hereto becomes the subject of any litigation or controversy, Purchaser and Seller jointly and severally, will hold Title Company free and harmless from any loss or expense, including reasonable attorneys' fees, that may be suffered by it by reason thereof other than as a result of Title Company's gross negligence or willful misconduct. In the event conflicting demands are made or notices served upon Title Company with respect to this Agreement, or if there is uncertainty as to the meaning or applicability of the terms of this Agreement or the Escrow Instructions, Purchaser and Seller expressly agree that the Title Company will be entitled to file a suit in interpleader and to obtain an order from the court requiring Purchaser and Seller to interplead and litigate their several claims and rights among themselves. Upon delivery of the Independent Consideration to Seller and the filing of the action in interpleader and the deposit of the Earnest Money Deposit into the registry of the court, the Title Company will be fully

released and discharged from any further obligations imposed upon it by this Agreement after such deposit.

Section 4.7 Maintenance of Confidentiality by Title Company. Except as may otherwise be required by law or by this Agreement, Title Company will maintain in strict confidence and not disclose to anyone the existence of this Agreement, the identity of the parties hereto, the amount of the Purchase Price, the provisions of this Agreement or any other information concerning the transactions contemplated hereby, without the prior written consent of Purchaser and Seller in each instance.

Section 4.8 Investment of Earnest Money Deposit. Title Company will invest and reinvest the Deposit, at the instruction and sole election of Purchaser, only in (a) bonds, notes, Treasury bills or other securities constituting direct obligations of, or guaranteed by the full faith and credit of, the United States of America, and in no event maturing beyond the Closing Date, or (b) an interest-bearing account at _____ or some other commercial bank mutually acceptable to Seller, Purchaser and Title Company. The investment of the Deposit will be at the sole risk of Purchaser and no loss on any investment will relieve Purchaser of its obligations to pay to Seller as liquidated damages the original amount of the Deposit as provided in Article XIII, or of its obligation to pay the Purchase Price. All interest earned on the Deposit will be the property of Purchaser and will be reported to the Internal Revenue Service as income until such time as Seller is entitled to the Deposit pursuant to this Agreement. Purchaser will provide the Title Company with a taxpayer identification number and will pay all income taxes due by reason of interest accrued on the Deposit.

Section 4.9 Designation of Reporting Person. In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (for purposes of this Section 4.9, the “**Code**”), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) The Title Company (for purposes of this Section 4.9, the “**Reporting Person**”), by its execution hereof, hereby assumes all responsibilities for information reporting required under Section 6045(e) of the Code.

(b) Seller and Purchaser each hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such party, as reasonably requested by the Reporting Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Reporting Person is correct.

(c) Each party hereto agrees to retain this Agreement for not less than four years from the end of the calendar year in which Closing occurred, and to produce it to the Internal Revenue Service upon a valid request therefor.

(d) The addresses for Seller and Purchaser are as set forth in Section 14.1 hereof, and the real estate subject to the transfer provided for in this Agreement is described in Exhibit B.

ARTICLE V INSPECTION OF PROPERTY

Section 5.1 Entry and Inspection

(a) Purchaser expressly acknowledges and confirms that, prior to the execution and delivery of this Agreement, Purchaser and Seller executed and delivered the Inspection Agreement pursuant to which Purchaser and its agents, representatives, contractors and consultants have inspected and investigated the Property and conducted such tests, evaluations and assessments of the Property as Purchaser deemed necessary, appropriate or prudent in any respect and for all purposes in connection with Purchaser's acquisition of the Property and the consummation of the transaction contemplated by this Agreement. From and after the Effective Date, but subject to the provisions of this Section 5.1 and subject to the obligations set forth in Section 5.3 below, Seller will permit Purchaser and its authorized agents and representatives (collectively, the "**Licensee Parties**") the right to enter upon the Real Property at all reasonable times during normal business hours to perform additional inspections of the Property and communicate with Tenants and service providers; provided, however, Purchaser shall not have the right to communicate with Tenants or service providers unless interviews and communications are coordinated through Seller and Seller shall have the right to participate in any such communications. Purchaser will provide to Seller written notice of the intention of Purchaser or the other Licensee Parties to enter the Real Property at least 48 hours prior to such intended entry and specify the intended purpose therefor and the inspections and examinations contemplated to be made and/or the Tenants and service providers with whom any Licensee Party will communicate. At Seller's option, Seller may be present for any such entry, inspection and communication with any Tenants or service providers. Notwithstanding anything to the contrary contained herein, no physical testing or sampling shall be conducted during any such entry by Purchaser or any Licensee Party upon the Real Property without Seller's specific prior written consent, which consent may be withheld, delayed or conditioned in Seller's sole and absolute discretion; provided, however, that prior to giving any such approval, Seller shall be provided with a written sampling plan in reasonable detail in order to allow Seller a reasonable opportunity to evaluate such proposal. If Purchaser or the other Licensee Parties undertake any borings or other disturbances of the soil, the soil shall be recompacted to its condition as existed immediately before any such borings or other disturbances were undertaken. If Purchaser or any Licensee Party takes any sample from the Real Property in connection with any testing, Purchaser shall, upon the request of Seller, provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing.

(b) Subject to the obligations set forth in Section 5.3 below, the Licensee Parties shall have the right to communicate directly with the Authorities for any good faith

reasonable purpose in connection with this transaction contemplated by this Agreement (so long such communications can be conducted without disclosing that a sale of the Property is contemplated); provided, however, Purchaser shall provide Seller at least 48 hours prior written notice of Purchaser's intention to communicate with any Authorities and Seller shall have the right to participate in any such communications.

Section 5.2 Document Review

(a) Purchaser expressly acknowledges and confirms that, prior to the execution and delivery of this Agreement, Purchaser and its authorized agents or representatives have reviewed, inspected, examined, analyzed, verified and photocopied, or had the opportunity to review, inspect, examine, analyze, verify and photocopy, at either the office of Seller, Seller's property manager or at the Real Property, the following relative to the Property to the extent in Seller's possession or control (collectively, the "**Documents**"): (i) all existing environmental reports and studies of the Property; (ii) assessments (special or otherwise), ad valorem and personal property tax bills, covering the year preceding the Effective Date; (iii) Seller's most current rent roll (the "**Rent Roll**"); (iv) operating statements for the previous time period covering the period of Seller's ownership of the Property; (v) copies of the Tenant Leases, the Service Contracts, the Licenses and Permits and the Records and Plans; and (vi) a current inventory of the Personal Property.

(b) Purchaser acknowledges that any and all of the Documents may be proprietary and confidential in nature and have been provided to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. Subject only to the provisions of Article XII, Purchaser agrees not to disclose the contents of the Documents, or any of the provisions, terms or conditions contained therein, to any party outside of Purchaser's organization other than its attorneys, partners, accountants, lenders or investors (collectively, for purposes of this Section 5.2(b), the "**Permitted Outside Parties**"). Purchaser further agrees that within its organization, or as to the Permitted Outside Parties, the Documents will be disclosed and exhibited only to those persons within Purchaser's organization or to those Permitted Outside Parties who are responsible for determining the feasibility of Purchaser's acquisition of the Property. Purchaser further acknowledges that the Documents and other information relating to the leasing arrangements between Seller and the Tenants or prospective tenants are proprietary and confidential in nature. Purchaser agrees not to divulge the contents of such Documents and other information except in strict accordance with the confidentiality standards set forth in this Section 5.2 and Article XII. In permitting Purchaser and the Permitted Outside Parties to review the Documents or information to assist Purchaser, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller and any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent with regard to such waiver.

(c) Purchaser will return to Seller all copies Purchaser has made of the Documents and all copies of any studies, reports or test results regarding any part of the Property obtained by Purchaser, before or after the execution of this Agreement, in connection with

Purchaser's inspection of the Property (collectively, "**Purchaser's Information**") not later than ten (10) Business Days following the time this Agreement is terminated for any reason.

(d) Purchaser acknowledges that some of the Documents may have been prepared by third parties and may have been prepared prior to Seller's ownership of the Property. Purchaser hereby acknowledges that, except as expressly provided in Section 8.1 below, Seller has not made and does not make any representation or warranty regarding the truth, accuracy or completeness of the Documents or the sources thereof (whether prepared by Seller, Seller's Affiliates or any other person or entity). Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Documents and is providing the Documents solely as an accommodation to Purchaser.

(e) Notwithstanding any provision of this Agreement to the contrary, no termination of this Agreement will terminate Purchaser's obligations pursuant to this Section 5.2.

Section 5.3 Entry and Inspection Obligations.

(a) Purchaser agrees that in entering upon and inspecting or examining the Property and communicating with any Tenants, Purchaser and the other Licensee Parties will not: disturb the Tenants or interfere with their use of the Property pursuant to their respective Tenant Leases; interfere with the operation and maintenance of the Property; damage any part of the Property or any personal property owned or held by any Tenant or any other person or entity; injure or otherwise cause bodily harm to Seller or any Tenant, or to any of their respective agents, guests, invitees, contractors and employees, or to any other person or entity; permit any liens to attach to the Property by reason of the exercise of Purchaser's rights under this Article V; communicate with the Tenants or service providers without Seller's prior written consent as provided in this Article V; or reveal or disclose any information obtained concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) and Article XII. Purchaser will: (i) maintain and cause those entering the Property to maintain comprehensive general liability (occurrence) insurance in terms (including contractual indemnity coverage with respect to the indemnity in Section 5.3(b)) and amounts satisfactory to Seller covering any accident arising in connection with the presence or activities of Purchaser or the other Licensee Parties on the Property, and deliver to Seller a certificate of insurance verifying such coverage and Seller being named as an additional insured on such coverage prior to entry upon the Property; (ii) promptly pay when due the costs of all inspections, entries, samplings and tests and examinations done with regard to the Property; and (iii) promptly restore the Property to its condition as existed immediately prior to any such inspection, investigations, examinations, entries, samplings and tests, but in no event later than ten (10) days after the damage occurs. Nothing contained in this Section 5.3 shall be deemed or construed as Seller's consent to any further physical testing or sampling with respect to the Property after the date hereof.

(b) Purchaser hereby indemnifies, defends and holds Seller and its members, partners, agents, officers, directors, employees, successors, assigns and Affiliates harmless from and against any and all liens, claims, causes of action, damages, liabilities, demands, suits, and obligations, together with all losses, penalties, costs and expenses relating to any of the foregoing (including but not limited to court costs and reasonable attorneys' fees) arising out of any

inspections, investigations, examinations, entries, samplings or tests conducted by Purchaser or any Licensee Party, whether prior to or after the date hereof, with respect to the Property or any violation of the provisions of this Section 5.3.

(c) Notwithstanding any provision of this Agreement to the contrary, neither the Closing nor a termination of this Agreement will terminate Purchaser's obligations pursuant to this Section 5.3.

Section 5.4 No Right of Termination. Purchaser acknowledges and agrees that the right to enter and inspect and examine the Property and communicate with Tenants pursuant to Article V has been given to Purchaser solely as an accommodation to Purchaser in connection with Purchaser's contemplated ownership and operation of the Property following the Closing. Prior to the execution and delivery of this Agreement, Purchaser has already conducted such inspections, examinations, tests, evaluations and assessments of the Property as Purchaser deemed necessary, appropriate and prudent and Purchaser shall have no right to terminate this Agreement based upon the results of any inspections, examinations, tests, evaluations or assessments conducted after the date hereof.

Section 5.5 Sale "As Is". THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND PURCHASER, THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND PURCHASER, AND PURCHASER HAS CONDUCTED ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE SPECIFIC MATTERS REPRESENTED IN SECTION 8.1 HEREOF (AS LIMITED BY SECTION 16.1 OF THIS AGREEMENT), BY WHICH ALL OF THE FOLLOWING PROVISIONS OF THIS SECTION 5.5 ARE LIMITED, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AFFILIATES, AGENTS OR REPRESENTATIVES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE. SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OF ITS AFFILIATES NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO PURCHASER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (e) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN, OR UNKNOWN, OR LATENT, WITH RESPECT TO THE REAL PROPERTY, IMPROVEMENTS OR THE PERSONAL PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY OR THE TENANTS AND (g) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL

REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY IN SECTION 8.1 OF THIS AGREEMENT (AS LIMITED BY SECTION 16.1 OF THIS AGREEMENT), THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate, and that it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Property. Prior to the date hereof, Purchaser has conducted such inspections, investigations and other independent examinations of the Property and related matters as Purchaser deemed necessary, including but not limited to the physical and environmental conditions thereof, and will rely upon same and not upon any statements of Seller (excluding the limited specific matters represented by Seller in Section 8.1 hereof as limited by Section 16.1 of this Agreement) or of any Affiliate, officer, director, employee, agent or attorney of Seller. Purchaser acknowledges that all information obtained by Purchaser was obtained from a variety of sources and Seller will not be deemed to have represented or warranted the completeness, truth or accuracy of any of the Documents or other such information heretofore or hereafter furnished to Purchaser. Upon Closing, Purchaser will assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Purchaser's inspections and investigations. Purchaser further hereby assumes the risk of changes in applicable Environmental Laws relating to past, present and future environmental health conditions on, or resulting from the ownership or operation of, the Property. Purchaser acknowledges and agrees that upon Closing, Seller will sell and convey to Purchaser, and Purchaser will accept the Property, "AS IS, WHERE IS," with all faults. Purchaser further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Seller, an Affiliate of Seller, any agent of Seller or any third party. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein. Purchaser acknowledges that the Purchase Price reflects the "AS IS, WHERE IS" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Purchaser, with Purchaser's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement, and that Seller would not have agreed to sell the Property to Purchaser for the Purchase Price without the disclaimer and other agreements set forth in this Agreement. The terms and conditions of this Section 5.5 will expressly survive the Closing and will not merge with the provisions of any closing documents.

Purchaser Initials

Section 5.6 Purchaser's Release of Seller.

(a) Seller Released From Liability. Purchaser, on behalf of itself and its partners, officers, directors, agents, controlling persons and Affiliates, hereby releases Seller and Seller's Affiliates from any and all liability, responsibility and claims arising out of or related to the condition (including the presence in the soil, air, structures and surface and subsurface

waters, of Hazardous Substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever except to the extent that such responsibility or liability is the result of the material inaccuracy (if any) of Seller's representation under Section 8.1(j) hereof (as limited by Section 16.1 of this Agreement). Without limiting the foregoing, Purchaser specifically releases Seller and Seller's Affiliates from any claims Purchaser may have against Seller and/or Seller's Affiliates now or in the future arising from the environmental condition of the Property or the presence of Hazardous Substances or contamination on or emanating from the Property. The foregoing waivers and releases by Purchaser shall survive either (i) the Closing and shall not be deemed merged into the provisions of any closing documents, or (ii) any termination of this Agreement.

Purchaser Initials

(b) Purchaser's Waiver of Objections. Purchaser acknowledges that it has inspected the Property, observed its physical characteristics and existing conditions and had the opportunity to conduct such investigations and studies on and of said Property and adjacent areas as it deems necessary, and subject only to Seller's responsibility for any breach of the warranty and representation contained in Section 8.1(j) of this Agreement (as limited by Section 16.1 of this Agreement), Purchaser hereby waives any and all objections to or complaints (including but not limited to actions based on federal, state or common law and any private right of action under CERCLA, RCRA or any other state and federal law to which the Property is or may be subject) against Seller, its Affiliates, or their respective officers, directors, partners, members, owners, employees or agents regarding physical characteristics and existing conditions, including without limitation structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Substances on, under, adjacent to or otherwise affecting the Property or related to prior uses of the Property.

(c) Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental, safety or health conditions on, or resulting from the ownership or operation of, the Property, and the risk that adverse physical characteristics and conditions, including without limitation the presence of Hazardous Substances or other substances, may not be revealed by its investigation.

Purchaser Initials

(d) Survival. The provisions of this Section 5.6 shall survive either (i) the Closing and shall not be deemed merged into the provisions of any closing documents, or (ii) any termination of this Agreement.

**ARTICLE VI
TITLE AND SURVEY MATTERS**

Section 6.1 Survey. Prior to the execution and delivery of this Agreement, Seller has delivered to Purchaser a copy of that certain survey of the Real Property, dated _____, prepared by _____ (the "Existing Survey"). Seller shall have no obligation to obtain any modification, update, or recertification of the Existing Survey.

Section 6.2 Title Commitment.

(a) Prior to the execution and delivery hereof, Purchaser has caused the Title Company to furnish to Purchaser a preliminary title report or title commitment dated _____ (the "Commitment"), by the terms of which the Title Company agrees to issue to Purchaser at Closing an owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price on the ALTA Owner Policy of Title Insurance with extended coverage, Standard Form Rev. 10/17/92 (as amended to date) insuring Purchaser's fee simple title to the Real Property to be good and indefeasible, subject to the terms of such policy and the exceptions described therein. Subject to Section 6.2(b), all matters shown on the Existing Survey and exceptions listed in the Commitment are conclusively deemed to be acceptable to Purchaser. The term "Permitted Exceptions" means taxes and assessments for the year of Closing and for any other year if not yet due and payable as of Closing and all matters either shown on the Existing Survey or listed in the Commitment. The Title Policy may be delivered after Closing if at the Closing the Title Company issues a currently effective, duly executed "marked up" Commitment and irrevocably commits in writing to issue the Title Policy in the form of the "marked up" Commitment promptly after the Closing Date.

(b) Notwithstanding any provision of this Section 6.2 to the contrary, Seller will be obligated to cure exceptions to title to the Real Property and Improvements relating to (or, as to (ii) below, cure or cause deletion from the Title Policy or affirmative title insurance over) (i) liens and security interests securing any loan to Seller, and (ii) any other liens or security interests created by documents executed by Seller to secure monetary obligations, other than liens for ad valorem taxes and assessments for the current calendar year.

**ARTICLE VII
INTERIM OPERATING COVENANTS AND ESTOPPELS**

Section 7.1 Interim Operating Covenants. Seller covenants to Purchaser that Seller will:

(a) **Operations.** From the Effective Date until Closing, continue to operate, manage and maintain the Improvements in the ordinary course of Seller's business and substantially in accordance with Seller's present practice, subject to ordinary wear and tear and further subject to Article IX of this Agreement.

(b) **Maintain Insurance.** From the Effective Date until Closing, maintain fire and extended coverage insurance on the Improvements which is at least equivalent in all material respects to Seller's insurance policies covering the Improvements as of the Effective Date.

(c) **Personal Property.** From the Effective Date until Closing, not transfer or remove any Personal Property from the Improvements except for the purpose of repair or replacement thereof. Any items of Personal Property replaced after the Effective Date will be installed prior to Closing and will be of substantially similar quality of the item of Personal Property being replaced.

(d) **Comply with Governmental Regulations.** From the Effective Date until Closing, not knowingly take any action that Seller knows would result in a failure to comply in all material respects with all Governmental Regulations applicable to the Property, it being understood and agreed that prior to Closing, Seller will have the right to contest any such Governmental Regulations.

(e) **Leases.** From the Effective Date until Closing, not enter into any new lease of more than 5,000 square feet or any amendments, expansions or renewals of Tenant Leases of more than 5,000 square feet without the prior written consent of Purchaser, which consent will not be unreasonably withheld, delayed or conditioned, and will be deemed given unless written objection thereto is given within two (2) Business Days after receipt of the relevant information. Furthermore, nothing herein shall be deemed to require Purchaser's consent to any expansion or renewal which Seller, as landlord, is required to honor pursuant to any Tenant Lease.

(f) **Service Contracts.** From the Effective Date until Closing, not enter into any service contract other than in the ordinary course of business, unless such service contract is terminable on thirty (30) days notice without penalty or unless Purchaser consents thereto in writing, which approval will not be unreasonably withheld, delayed or conditioned.

(g) **Notices.** To the extent received by Seller, from the Effective Date until Closing, promptly deliver to Purchaser copies of written default notices, notices of lawsuits and notices of violations affecting the Property.

Section 7.2 Estoppels.

(a) It will be a condition to Closing that Seller obtain and deliver to Purchaser, from the major tenants listed on **Exhibit D-1 ("Major Tenants")** and other Tenants leasing space which when added to the Major Tenants aggregates at least 75% of the leased space at the Improvements, executed estoppel certificates, with no material modifications from the estoppel certificate form attached hereto as **Exhibit D-2**; provided, however, (i) to the extent that the form as so completed requires information not required of a Tenant under the provisions of its Tenant Lease, Seller will exercise good faith efforts to obtain an estoppel certificate for such Tenant in the form completed as provided below, or in a form as close thereto as reasonably possible, but in any event an estoppel certificate executed by a Tenant in the form prescribed by its Tenant Lease shall satisfy the requirement of this Section 7.2(a), and (ii) Purchaser will not unreasonably withhold approval of any estoppel certificate as modified by a Tenant and delivered by Seller to Purchaser, provided that the information included in such estoppel is not inconsistent with the information included in the estoppel form completed for such Tenant pursuant to the below provisions of this Section 7.2(a). Within five (5) Business Days after the Effective Date, Seller will deliver to Purchaser completed forms of estoppel certificates, in the

form attached hereto as **Exhibit D-2** and containing the information contemplated thereby, for all Tenants. Within two (2) Business Days following Purchaser's receipt thereof, Purchaser will send to Seller notice either (i) approving such forms as completed by Seller or (ii) setting forth in detail all changes to such forms which Purchaser believes to be appropriate to make the completed forms of estoppel certificates accurate and complete. Seller will make such changes to the extent Seller agrees such changes are appropriate, except that Seller will not be obligated to make any changes which request more expansive information than is contemplated by **Exhibit D-2**. Notwithstanding anything contained herein to the contrary, in no event shall Seller's failure to obtain the required number of acceptable estoppel certificates in accordance with the provisions of this Section 7.2(a) constitute a default by Seller under this Agreement.

(b) Seller, at its sole option, may elect to satisfy part of the requirements under Section 7.2(a) by delivering a representation certificate of Seller in the form attached hereto as **Exhibit E** (a "**Seller Certificate**") for up to 10% of the space leased by non-Major Tenants. If Seller subsequently obtains an estoppel certificate meeting the requirements of Section 7.2(a) hereof, from a Tenant for which Seller has delivered a Seller Certificate, the delivered Seller Certificate will be null and void, and Purchaser will accept such estoppel certificate in its place.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES

Section 8.1 Seller's Representations and Warranties. The following constitute the sole representations and warranties of Seller. Subject to the limitations set forth in Article XVI of this Agreement, Seller represents and warrants to Purchaser the following as of the Effective Date:

(a) **Status.** Seller is a _____ duly organized and validly existing under the laws of the State of _____.

(b) **Authority.** The execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been or will be duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller, subject to equitable principles and principles governing creditors' rights generally.

(c) **Non-Contravention.** The execution and delivery of this Agreement by Seller and the performance by Seller of Seller's obligations under this Agreement will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller is a party or by which it is bound.

(d) **Suits and Proceedings.** To Seller's Knowledge as of the Effective Date, except as listed in **Exhibit F**, there are no legal actions, suits or similar proceedings pending and served, or threatened against Seller relating to the Property or Seller's ownership or operation of the Property, which are not adequately covered by existing insurance or, if adversely determined,

would materially adversely affect the value of the Property, the continued operations thereof or Seller's ability to perform Seller's obligations under this Agreement.

(e) **Non-Foreign Entity.** Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(f) **Tenants.** To Seller's Knowledge as of the Effective Date, the list of Tenants, as set forth on **Exhibit G** attached hereto, constitutes all of the Tenants from whom Seller is currently accepting rental payments. To Seller's Knowledge, there are no written leases or occupancy agreements affecting the Real Property or Improvements to which Seller is a party and bound with any parties other than the Tenants listed on **Exhibit G**. Attached as **Exhibit H** hereto is a list of tenant leases executed by Seller on or after _____, 20____.

(g) **Service Contracts.** To Seller's Knowledge as of the Effective Date, none of the service providers listed on **Exhibit C** is in default under any Service Contract. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2(a) hereof include copies of all Service Contracts listed on **Exhibit C** under which Seller is currently paying for services rendered in connection with the Property.

(h) **No Violations.** To Seller's Knowledge, Seller has not received prior to the Effective Date any written notification from an Authority (i) that the Real Property and Improvements is in violation of any applicable fire, health, building, use, occupancy or zoning laws or (ii) that any work is required to be done to the Real Property and Improvements where such work remains outstanding and, if unaddressed would have a material adverse affect on the Property or use of the Property as currently operated.

(i) **Insurance.** To Seller's Knowledge, Seller has not received any written notice from any insurance company or board of fire underwriters of any defects or inadequacies in or on the Improvements or any part or component thereof that would adversely affect the insurability of the Improvements or cause any increase in the premiums for insurance for the Improvements.

(j) **[Environmental.** *Except as shown in any environmental reports covering the Real Property and Improvements which have been made available to Purchaser pursuant to Section 5.2(a), to Seller's Knowledge, Seller has not received written notice from any Authorities of the Real Property or Improvements being in violation of any Environmental Law.*]

(k) **[OFAC Compliance.** *Neither Seller/Buyer nor any person owning more than [20%] of the outstanding equity interests of Seller/Buyer, nor any person controlling Seller/Buyer, nor any person at least [20%] owned or controlled by Seller/Buyer (all such persons for purpose of this section 3.10 being the "ATL Affiliates"), is or at any time until the Closing Date will be in violation in any material respect of any applicable provision of any Anti-Terrorism Law. Neither Seller/Buyer nor any of the ATL Affiliates nor, to Seller's/Buyer's knowledge as of the date hereof, any agent for it in connection with the sale/purchase of the Property is or, as of the Closing Date, will be a Prohibited Person.*]

Section 8.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

(a) **Status.** Purchaser is a _____ duly organized and validly existing under the laws of the State of _____.

(b) **Authority.** The execution and delivery of this Agreement and the performance of Purchaser's obligations hereunder have been or will be duly authorized by all necessary action on the part of Purchaser and its constituent owners and/or beneficiaries and this Agreement constitutes the legal, valid and binding obligation of Purchaser, subject to equitable principles and principles governing creditors' rights generally.

(c) **Non-Contravention.** The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of, or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchaser is a party or by which it is bound.

(d) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby.

**ARTICLE IX
CONDEMNATION AND CASUALTY**

Section 9.1 Significant Casualty. If, prior to the Closing Date, all or a Significant Portion of the Real Property and Improvements is destroyed or damaged by fire or other casualty, Seller will notify Purchaser of such casualty. Purchaser will have the option to terminate this Agreement upon notice to Seller given not later than ten (10) days after receipt of Seller's notice. If this Agreement is terminated, the Earnest Money Deposit will be returned to Purchaser upon Purchaser's compliance with Section 4.5 and thereafter neither Seller nor Purchaser will have any further rights or obligations to the other hereunder except with respect to the Termination Surviving Obligations. If Purchaser does not elect to terminate this Agreement, Seller will not be obligated to repair such damage or destruction but (a) Seller will assign and turn over to Purchaser all of the insurance proceeds net of reasonable collection costs (or, if such have not been awarded, all of its right, title and interest therein) payable with respect to such fire or other casualty, and (b) the parties will proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price, except that Purchaser will receive a credit for the lesser of (i) any insurance deductible amount, or (ii) the cost of such repairs (other than repairs which are the responsibility of Tenants under Tenant Leases) as reasonably estimated by Seller.

Section 9.2 Casualty of Less Than a Significant Portion. If less than a Significant Portion of the Real Property and Improvements is damaged as aforesaid, Purchaser shall not have the right to terminate this Agreement and Seller will not be obligated to repair such damage

or destruction but (a) Seller will assign and turn over to Purchaser all of the insurance proceeds net of reasonable collection costs (or, if such have not been awarded, all of its right, title and interest therein) payable with respect to such fire or other casualty, and (b) the parties will proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price, except that Purchaser will receive a credit for the lesser of (i) any insurance deductible amount, or (ii) the cost of such repairs (other than repairs which are the responsibility of Tenants under Tenant Leases) as reasonably estimated by Seller.

Section 9.3 Condemnation of Property. In the event of condemnation or sale in lieu of condemnation of all or any portion of the Real Property and Improvements prior to the Closing, Purchaser will have the option, by providing Seller written notice within ten (10) days after receipt of Seller's notice of such condemnation or sale, of terminating Purchaser's obligations under this Agreement or electing to have this Agreement remain in full force and effect. In the event Purchaser does not terminate this Agreement pursuant to the preceding sentence, Seller will assign to Purchaser any and all claims for the proceeds of such condemnation or sale to the extent the same are applicable to the Real Property and Improvements, and Purchaser will take title to the Property with the assignment of such proceeds and subject to such condemnation and without reduction of the Purchase Price. Should Purchaser elect to terminate Purchaser's obligations under this Agreement under the provisions of this Section 9.3, the Earnest Money Deposit will be returned to Purchaser upon Purchaser's compliance with Section 4.5 and neither Seller nor Purchaser will have any further obligation under this Agreement except for the Termination Surviving Obligations. Notwithstanding anything to the contrary herein, if any eminent domain or condemnation proceeding is instituted (or notice of same is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be used in substantially the same manner as though such rights have not been taken, Purchaser will not be entitled to terminate this Agreement as to any part of the Property, but any award resulting therefrom will be assigned to Purchaser at Closing and will be the exclusive property of Purchaser upon Closing.

**ARTICLE X
CLOSING**

Section 10.1 Closing. The Closing of the sale of the Property by Seller to Purchaser will occur on the Closing Date through the escrow established with the Title Company. At Closing, the events set forth in this Article X will occur, it being understood that the performance or tender of performance of all matters set forth in this Article X are mutually concurrent conditions which may be waived by the party for whose benefit they are intended.

Section 10.2 Purchaser's Closing Obligations. At least one (1) Business Day prior to the Closing Date, Purchaser, at its sole cost and expense, will deliver the following items in escrow with the Title Company pursuant to Section 4.3, for delivery to Seller at Closing as provided herein:

(a) The Purchase Price, after all adjustments are made at the Closing as herein provided, by Federal Reserve wire transfer of immediately available funds, in accordance with the timing and other requirements of Section 3.3;

(b) A counterpart of the General Conveyance, Bill of Sale, and Assignment and Assumption substantially in the form attached hereto as **Exhibit I** (the "**General Conveyance**") duly executed by Purchaser;

(c) Evidence reasonably satisfactory to Seller that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so;

(d) The Tenant Notice Letters, duly executed by Purchaser;

(e) A counterpart of any required State, County or Municipal transfer declaration forms; and

(f) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

Section 10.3 Seller's Closing Obligations. Seller, at its sole cost and expense, will deliver (y) the following items (a), (b), (c), (d), (e), (f), (h), (k) and (l) in escrow with the Title Company pursuant to Section 4.3, and (z) upon receipt of the Purchase Price, Seller shall deliver the following items (g), (i) and (j) to Purchaser at the Property:

(a) A special warranty deed substantially in the form attached hereto as **Exhibit J** (the "**Deed**"), duly executed and acknowledged by Seller conveying to Purchaser the Real Property and the Improvements subject only to the Permitted Exceptions, which Deed shall be delivered to Purchaser by the Title Company agreeing to cause same to be recorded in the Official Records;

(b) The General Conveyance duly executed by Seller;

(c) The Tenant Notice Letters, duly executed by Seller;

(d) Evidence reasonably satisfactory to Title Company and Purchaser that the person executing the Closing documents on behalf of Seller has full right, power and authority to do so;

(e) A certificate in the form attached hereto as **Exhibit K** ("**Certificate as to Foreign Status**") certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;

(f) The Tenant Deposits, at Seller's option, either (i) in the form of a cashier's check issued by a bank reasonably acceptable to Purchaser, or (ii) as part of an adjustment to the Purchase Price. In the event the Tenant Deposits are in the form of a letter of credit, then Seller shall deliver at Closing the original letter(s) of credit, together with documentation sufficient to cause the letter(s) of credit to be assigned to Purchaser upon approval thereof by the issuer of the letter(s) of credit;

(g) The Personal Property;

(h) The Rent Roll, updated to show any changes, to Seller's Knowledge, as of one (1) Business Day prior to the Closing Date (which shall be deemed a part of the Documents for purposes of this Agreement);

(i) All original Licenses and Permits, Tenant Leases, and Service Contracts in Seller's possession and control;

(j) All keys to the Improvements which are in Seller's possession;

(k) A counterpart of any required State, County or Municipal transfer declaration forms; and

(l) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

Section 10.4 Prorations.

(a) Seller and Purchaser agree to adjust, as of 11:59 p.m. on the day immediately preceding the Closing Date (the "**Closing Time**"), the following (collectively, the "**Proration Items**"): real estate and personal property taxes and assessments which are required to be paid for the calendar year in which the Closing occurs, utility bills (except as hereinafter provided), collected Rentals (subject to the terms of (c) below) and operating expenses payable by the owner of the Property. Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Closing Time, and Purchaser will be charged and credited for all of the Proration Items relating to the period after the Closing Time. Such preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser for Purchaser's approval (which approval shall not be unreasonably withheld, delayed or conditioned) five (5) days prior to the Closing Date (the "**Closing Statement**"). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller and delivered to the Title Company for purposes of making the preliminary proration adjustment at Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at Closing by Purchaser to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Purchaser (if the preliminary prorations result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Time, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received, prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Purchaser. No prorations will be made in relation to insurance premiums (except to the extent covered by the proration of Operating Expense Recoveries), and Seller's insurance policies will not be assigned to Purchaser. Final readings and final billings for utilities will be made if possible as of the Closing Time, in which event no proration will be made at the Closing with respect to utility bills (except to the extent covered by the proration of Operating Expense Recoveries). Seller will be entitled to all deposits presently in effect with the utility providers, and Purchaser will be obligated to make its own arrangements for deposits with the utility providers. A final reconciliation of Proration Items shall be made by Purchaser and Seller within _____. The provisions of this Section 10.4 (excluding

subsection (e) which is governed by Section 3.2 above) will survive the Closing for twelve (12) months.

(b) Purchaser will receive a credit on the Closing Statement for the prorated amount (as of the Closing Time) of all Rentals previously paid to and collected by Seller and attributable to any period following the Closing Time. After the Closing, Seller will cause to be paid or turned over to Purchaser all Rentals, if any, received by Seller after Closing and properly attributable to any period following the Closing Time. "Rentals" as used herein includes fixed monthly rentals, additional rentals, percentage rentals, escalation rentals (which include each Tenant's proportionate share of building operation and maintenance costs and expenses as provided for under the applicable Tenant Lease, to the extent the same exceeds any expense stop specified in such Tenant Lease), retroactive rentals, all administrative charges, utility charges, tenant or real property association dues, storage rentals, special event proceeds, temporary rents, telephone receipts, locker rentals, vending machine receipts and other sums and charges payable to Seller or its successor by tenants under the Tenant Leases or from other occupants or users of the Property, excluding specific tenant billings which are governed by Section 10.4(d) below. Rentals are "Delinquent" if they were due prior to the Closing Time and payment thereof has not been made on or before the Closing Time. Delinquent Rentals will not be prorated. Purchaser agrees to use good faith collection procedures with respect to the collection of any Delinquent Rentals, but Purchaser will have no liability for the failure to collect any such amounts and will not be required to conduct lock-outs or take any other legal action to enforce collection of any such amounts owed to Seller by Tenants of the Property. All sums collected by Purchaser from and after Closing from each Tenant (excluding Tenant payments for Operating Expense Recoveries attributable to the period prior to the Closing Time governed by Section 10.4(c) below and tenant specific billings for tenant work orders and other specific services as described in and governed by Section 10.4(d) below) will be applied first to current amounts owed by such Tenant to Purchaser and then to prior delinquencies owed by such Tenant to Seller. Any sums collected by Purchaser and due Seller will be promptly remitted to Seller. Notwithstanding the foregoing, however, after the Closing Date Seller may collect Delinquent Rentals, amounts owed for Operating Expense Recoveries and billings for tenant work orders directly from Tenants, provided, however, in no event will Seller have the right to threaten termination of any Tenant Lease.

(c) Seller will prepare a reconciliation as of the Closing Time of the amounts of all billings and charges for operating expenses and taxes in excess of the applicable expense stop, if any, specified in each Tenant Lease (collectively, "Operating Expense Recoveries") for calendar year _____. If less amounts have been collected from Tenants for Operating Expense Recoveries for calendar year _____ than would have been owed by Tenants under the Tenant Leases if the reconciliations under such Tenant Leases were completed as of the Closing Time based on the operating expenses and taxes incurred by Seller for calendar year _____ up to the Closing Time (as prorated pursuant to Section 10.4(a) above), Purchaser will pay such difference to Seller at Closing as an addition to the Purchase Price. If more amounts have been collected from Tenants for Operating Expense Recoveries for calendar year _____ than would have been owed by Tenants under the Tenant Leases if the reconciliations under such Tenant Leases were completed as of the Closing Time based on the operating expenses and taxes incurred by Seller for calendar year _____ up to the Closing Time (as prorated pursuant to Section 10.4(a) above), Seller will pay to Purchaser at Closing as a credit against the Purchase Price such excess

collected amount. Purchaser and Seller agree that such proration of Operating Expense Recoveries at Closing for calendar year _____ will fully relieve Seller from any responsibility to Tenants or Purchaser for such matters subject to Seller's and Purchaser's right and obligation to finalize prorations within _____ () days after Closing solely to make adjustments necessary to the extent estimates used in the calculation of such reconciliation at Closing differ from actual bills received after Closing for those items covered by such reconciliation at Closing or to correct any errors. In this regard, Purchaser will be solely responsible, from and after Closing, for (i) collecting from Tenants the amount of any outstanding Operating Expense Recoveries for calendar year _____ for periods before and after Closing, and (ii) where appropriate, reimbursing Tenants for amounts attributable to Operating Expense Recoveries for calendar year _____, as may be necessary based on annual reconciliations for Operating Expense Recoveries for such calendar year.

(d) With respect to specific tenant billings for work orders, special items performed or provided at the request of a given Tenant or other specific services, which are collected by Purchaser or Seller after the Closing Time but relate to any such specific services rendered by Seller or its property manager prior to the Closing Time and which are identified on the Tenant's payment as relating to such specific services or which are clearly identifiable as being payment for any such specific services, Purchaser shall cause such collected amounts to be paid to Seller, or Seller may retain such payment if such payment is received by Seller after the Closing Time.

(e) Notwithstanding any provision of this Section 10.4 to the contrary, Purchaser will be solely responsible for all leasing commissions, brokerage commissions, tenant improvement allowances, legal fees and other expenditures incurred in connection with the lease of space in the Property ("Leasing Costs") to the extent unpaid as of the Closing Date and payable after Closing under or with respect to Tenant Leases entered into prior to _____, 200__. Subject to any approval rights which Purchaser may have pursuant to Section 7.1(e) of this Agreement, Purchaser further agrees to be solely responsible for all Leasing Costs (for purposes of this Section 10.4(e), "New Tenant Costs") incurred or to be incurred in connection with any new Tenant Lease executed on or after _____, 200__, and Purchaser will pay to Seller at Closing as an addition to the Purchase Price an amount equal to any New Tenant Costs paid by Seller prior to Closing.

Section 10.5 Delivery of Real Property. Upon completion of the Closing, Seller will deliver to Purchaser possession of the Real Property and Improvements, subject to the Tenant Leases and the Permitted Exceptions.

Section 10.6 Costs of Title Company and Closing Costs. Costs of the Title Company and other Closing costs incurred in connection with the Closing will be allocated as follows:

(a) Purchaser will pay (i) all premium and other costs for the Title Policy and any endorsements, except the portion thereof payable by Seller pursuant to Section 10.6(b) below, (ii) all premiums and other costs for any mortgagee policy of title insurance, including but not limited to any endorsements or deletions, (iii) the costs associated with any modifications, updates, or recertifications of the Existing Survey, (iv) Purchaser's attorney's fees;

(v) 1/2 of all of the Title Company's escrow and closing fees, if any, (vi) all recording fees, and (vii) the documentary fee payable at the time of recording the Deed;

(b) Seller will pay (i) the premium for the basic Title Policy with extended coverage and the cost for any endorsement with respect to liens described in Section 6.2(b), (ii) 1/2 of all of the Title Company's escrow and closing fees, and (iii) Seller's attorneys' fees;

(c) Any other costs and expenses of Closing not provided for in this Section 10.6 shall be allocated between Purchaser and Seller in accordance with the custom in the county in which the Real Property is located; and

(d) If the Closing does not occur on or before the Closing Date for any reason whatsoever, the costs incurred through the date of termination will be borne by the party incurring same.

Section 10.7 Post-Closing Delivery of Tenant Notice Letters. Immediately following Closing, Purchaser will deliver to each Tenant (via messenger or certified mail, return receipt requested) a written notice executed by Purchaser and Seller (i) acknowledging the sale of the Property to Purchaser, (ii) acknowledging that Purchaser has received and is responsible for the Tenant Deposits (specifying the exact amount of the Tenant Deposits) and (iii) indicating that rent should thereafter be paid to Purchaser and giving instructions therefor (the "**Tenant Notice Letters**"). Purchaser shall provide to Seller a copy of each Tenant Notice Letter promptly after delivery of same, and proof of delivery of same promptly after such proof is available. This Section 10.7 shall survive Closing.

**ARTICLE XI
BROKERAGE**

Section 11.1 Brokers. Seller agrees to pay to _____ ("**Broker**") a real estate commission at Closing (but only in the event of Closing in strict compliance with this Agreement) pursuant to a separate agreement. The payment of the commission by Seller to Broker will fully satisfy the obligations of the Seller for the payment of a real estate commission hereunder. Other than as stated in the first sentence of this Section 11.1, Purchaser and Seller represent to the other that no real estate brokers, agents or finders' fees or commissions are due or will be due or arise in conjunction with the execution of this Agreement or consummation of this transaction by reason of the acts of such party, and Purchaser and Seller will indemnify, defend and hold the other party harmless from any brokerage or finder's fee or commission claimed by any person asserting his entitlement thereto at the alleged instigation of the indemnifying party for or on account of this Agreement or the transactions contemplated hereby. The provisions of this Article XI will survive any Closing or termination of this Agreement.

**ARTICLE XII
CONFIDENTIALITY**

Section 12.1 Confidentiality. Seller and Purchaser each expressly acknowledges and agrees that, unless and until the Closing occurs, the transactions contemplated by this Agreement and the terms, conditions, and negotiations concerning the same will be held in the strictest confidence by each of them and will not be disclosed by either of them except to their respective

legal counsel, accountants, consultants, officers, investors, clients, partners, directors, and shareholders, and except and only to the extent that such disclosure may be necessary for their respective performances hereunder or as otherwise required by applicable law. Purchaser further acknowledges and agrees that, until the Closing occurs, all information obtained by Purchaser in connection with the Property will not be disclosed by Purchaser to any third persons without the prior written consent of Seller. Nothing contained in this Article XII will preclude or limit either party to this Agreement from disclosing or accessing any information otherwise deemed confidential under this Article XII in connection with that party's enforcement of its rights following a disagreement hereunder, or in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with governmental authorities required by reason of the transactions provided for herein pursuant to an opinion of counsel. Nothing in this Article XII will negate, supersede or otherwise affect the obligations of either party under the Confidentiality Agreement. The provisions of this Article XII will survive any termination of this Agreement.

**ARTICLE XIII
REMEDIES**

Section 13.1 Default by Seller. In the event the Closing of the purchase and sale transaction provided for herein does not occur as herein provided by reason of any default of Seller, Purchaser may, as Purchaser's sole and exclusive remedy, elect by notice to Seller within ten (10) Business Days following the scheduled Closing Date, either of the following: (a) terminate this Agreement, in which event Purchaser will receive from the Title Company the Earnest Money Deposit (and the Independent Consideration shall be paid to Seller) whereupon Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations; or (b) seek to enforce specific performance of the Agreement, and in either event, Purchaser hereby waives all other remedies, including without limitation, any claim against Seller for damages of any type or kind including, without limitation, consequential or punitive damages. Failure of Purchaser to make the foregoing election within the foregoing ten (10) Business Day period shall be deemed an election by Purchaser to terminate this Agreement and receive from the Title Company the Earnest Money Deposit, whereupon Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations. Notwithstanding the foregoing, nothing contained in this Section 13.1 will limit Purchaser's remedies at law, in equity or as herein provided in the event of a breach by Seller of any of the Closing Surviving Obligations after Closing or the Termination Surviving Obligations after termination.

Section 13.2 DEFAULT BY PURCHASER. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREIN DO NOT OCCUR AS PROVIDED HEREIN BY REASON OF ANY DEFAULT OF PURCHASER, PURCHASER AND SELLER AGREE IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE DAMAGES WHICH SELLER MAY SUFFER. PURCHASER AND SELLER HEREBY AGREE THAT (i) AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT, TOGETHER WITH ALL INTEREST ACCRUED THEREON, IS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT SELLER WOULD SUFFER IN THE EVENT PURCHASER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY, AND (ii) SUCH AMOUNT WILL BE THE FULL,

AGREED AND LIQUIDATED DAMAGES FOR PURCHASER'S DEFAULT AND FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY, AND WILL BE SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY) FOR ANY DEFAULT OF PURCHASER RESULTING IN THE FAILURE OF CONSUMMATION OF THE CLOSING, WHEREUPON THIS AGREEMENT WILL TERMINATE AND SELLER AND PURCHASER WILL HAVE NO FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EXCEPT WITH RESPECT TO THE TERMINATION SURVIVING OBLIGATIONS. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS SECTION 13.2 HEREIN WILL LIMIT SELLER'S REMEDIES AT LAW, IN EQUITY OR AS HEREIN PROVIDED IN THE EVENT OF A BREACH BY PURCHASER OF ANY OF THE CLOSING SURVIVING OBLIGATIONS OR THE TERMINATION SURVIVING OBLIGATIONS.

Purchaser Initials

Seller Initials

Section 13.3 Consequential and Punitive Damages. Each of Seller and Purchaser waive any right to sue the other for any consequential or punitive damages for matters arising under this Agreement. This Section 13.3 shall survive Closing or termination of this Agreement.

**ARTICLE XIV
NOTICES**

Notices. All notices or other communications required or permitted hereunder will be in writing, and will be given by (a) personal delivery, or (b) professional expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (d) facsimile (providing that such facsimile is confirmed by the sender by expedited delivery service in the manner previously described), sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith and will be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery on a Business Day at the address or in the manner provided herein, or, in the case of facsimile transmission, upon receipt if on a Business Day and, if not on a Business Day, on the next Business Day. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

To Purchaser:

Attn: _____
Fax: () _____

with copy to:

Attn: _____
Fax: () _____

To Seller:

c/o _____

Attn: _____
Fax: _____

with copy to:

Attn: _____
Fax: () _____

**ARTICLE XV
ASSIGNMENT AND BINDING EFFECT**

Section 15.1 Assignment; Binding Effect. Purchaser will not have the right to assign this Agreement without Seller's prior written consent. Notwithstanding the foregoing, Purchaser and Seller may each assign its rights under this Agreement to an Affiliate of such assigning party without the consent of the non-assigning party, provided that any such assignment does not relieve the assigning party of its obligations hereunder. This Agreement will be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Purchaser, such reference will include the successors and permitted assigns of such party under this Agreement.

**ARTICLE XVI
PROCEDURE FOR INDEMNIFICATION AND LIMITED SURVIVAL OF
REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 16.1 Survival of Representations, Warranties and Covenants.

(a) Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties of Seller set forth in Section 8.1 and Seller's liability under Section 8.1 will survive the Closing for a period of six (6) months. Purchaser will not have any right to bring any action against Seller as a result of any untruth, inaccuracy or breach of such representations and warranties under Section 8.1 unless and until the aggregate amount of all

liability and losses arising out of all such untruths, inaccuracies, breaches and failures exceeds \$500,000, and then only to the extent of such excess. In addition, in no event will Seller's liability for all such untruths, inaccuracies, breaches, and/or failures under Section 8.1 (including Seller's liability for attorneys' fees and costs in connection with such untruths, inaccuracies, breaches and/or failures) exceed, in the aggregate, **[\$1,000,000]**.

(b) Seller shall have no liability with respect to any of Seller's representations, warranties and covenants herein if, prior to the Closing, Purchaser has actual knowledge of any breach of a representation, warranty or covenant of Seller herein, or Purchaser obtains actual knowledge (from whatever source, including, without limitation, any tenant estoppel certificates, as a result of Purchaser's due diligence tests, investigations and inspections of the Property, or written disclosure by Seller or Seller's agents and employees) that contradicts any of Seller's representations, warranties or covenants herein, and Purchaser nevertheless consummates the transaction contemplated by this Agreement.

(c) The Closing Surviving Obligations will survive Closing without limitation unless a specified period is otherwise provided in this Agreement. All other representations, warranties, covenants and agreements made or undertaken by Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing Date but will be merged into the Closing documents delivered at the Closing. The Termination Surviving Obligations shall survive termination of this Agreement without limitation unless a specified period is otherwise provided in this Agreement.

ARTICLE XVII MISCELLANEOUS

Section 17.1 Waivers. No waiver of any breach of any covenant or provisions contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

Section 17.2 Recovery of Certain Fees. In the event a party hereto files any action or suit against another party hereto by reason of any breach of any of the covenants, agreements or provisions contained in this Agreement, then in that event the prevailing party will be entitled to have and recover of and from the other party all attorneys' fees and costs resulting therefrom, subject, however, in the case of Seller, to the limitations set forth in Section 16.1 above. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean all court costs and the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 17.2 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

Section 17.3 Time of Essence. Seller and Purchaser hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

Section 17.4 Construction. Headings at the beginning of each article and section are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular will include the plural and the masculine will include the feminine and vice versa. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. All exhibits and schedules referred to in this Agreement are attached and incorporated by this reference, and any capitalized term used in any exhibit or schedule which is not defined in such exhibit or schedule will have the meaning attributable to such term in the body of this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action will be taken on the next succeeding Business Day.

Section 17.5 Counterparts. To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original or faxed signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed original or faxed counterparts will collectively constitute a single agreement.

Section 17.6 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.7 Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof, and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument, signed by the party to be charged or by its agent duly authorized in writing, or as otherwise expressly permitted herein.

Section 17.8 Governing Law. THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____. *[State where Property is located].*

Section 17.9 No Recording. The parties hereto agree that neither this Agreement nor any affidavit concerning it will be recorded.

Section 17.10 Further Actions. The parties agree to execute such instructions to the Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

Section 17.11 No Other Inducements. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

Section 17.12 Exhibits. Exhibits A through K, inclusive, are incorporated herein by reference.

Section 17.13 No Partnership. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

Section 17.14 Limitations on Benefits. It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser and Seller and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser and Seller or their respective successors and assigns as permitted hereunder. Nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party (including, without limitation, Broker or any Tenant) a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

Section 17.15 Exculpation. In no event whatsoever shall recourse be had or liability asserted against any of Seller's partners, members, shareholders, employees, agents, directors, officers or other owners of Seller or their respective constituent partners. Seller's direct and indirect shareholders, partners, members, beneficiaries and owners and their respective trustees, officers, directors, employees, agents and security holders, assume no personal liability for any obligations entered into on behalf of Seller under this Agreement and the Closing documents.

[SIGNATURES FOLLOW ON NEXT SUCCEEDING PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have respectively executed this Agreement to be effective as of the date first above written.

PURCHASER:

a _____

By: _____
Name: _____
Title: _____

SELLER:

a _____

By: _____
Name: _____
Title: _____

Agreement of
Purchase and Sale

JOINDER BY TITLE COMPANY

_____, referred to in this Agreement as the "Title Company," hereby acknowledges that it received this Agreement executed by Seller and Purchaser on the _____ day of _____, 200____, and accepts the obligations of the Title Company as set forth herein. It further acknowledges that it received the Deposit on the _____ day of _____, 200____. The Title Company hereby agrees to hold and distribute the Independent Consideration and Earnest Money Deposit and interest thereon, and Closing proceeds in accordance with the terms and provisions of this Agreement. It further acknowledges that it hereby assumes all responsibilities for information reporting required under Section 6045(e) of the Internal Revenue Code.

By: _____
Printed Name: _____
Title: _____

Agreement of
Purchase and Sale

JOINDER BY BROKER

The undersigned Broker joins herein to evidence such Broker's agreement to the provisions of Section 11.1 and to represent to Seller and Purchaser that such Broker (i) knows of no other brokers, salespersons or other parties entitled to any compensation for brokerage services arising out of this transaction other than those whose names appear in this Agreement, (ii) has not made any of the representations or warranties specifically disclaimed by Seller in Section 16.1 and (iii) is duly licensed and authorized to do business in the State of _____.

Date: _____, 200__ By: _____
Printed Name: _____
Title: _____
Address: _____

License No.: _____
Tax I.D. No.: _____

Agreement of
Purchase and Sale

EXHIBIT A

PERSONAL PROPERTY

A-1

EXHIBIT B

LEGAL DESCRIPTION

B-1

EXHIBIT C

SERVICE CONTRACTS

EXHIBIT D-1

MAJOR TENANTS

C-1

D-1-1

EXHIBIT D-2

FORM OF TENANT ESTOPPEL CERTIFICATE

[All blanks will be completed by Seller prior to delivery of Estoppel Certificate to the Tenant.]

From: _____ ("Tenant")

To: _____ ("Purchaser")

and _____ ("Landlord")

Lease: Lease dated _____, _____ between Landlord and Tenant, covering the Premises (as defined below), as modified, altered or amended (as further described in Paragraph 1 below) (the "Lease"). All capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Lease.

Premises: Suite _____, consisting of a total of _____ rentable square feet (as set forth in the Lease) (the "Premises"), located in the building known as _____ having an address of _____.

Tenant hereby certifies to Landlord and Purchaser as follows:

1. Tenant is the current Tenant under the Lease. The Lease is in full force and effect and is the only lease, agreement or understanding between Landlord and Tenant affecting the Premises and any rights to parking. The Lease has not been modified, altered or amended, except by the documents listed on Annex I attached hereto.

2. The Commencement Date of the Lease occurred on _____, and the Expiration Date of the Lease will occur on _____.

3. Tenant commenced payment of Rent under the Lease on _____. The Annual Rent under the Lease for the current Lease Year is \$ _____ per square foot of Rentable Area per year, or \$ _____ per month, which includes the sum of \$ _____ per square foot of Rentable Area as the Initial Operating Expenses Basic Cost. Tenant is also responsible to pay, as Additional Rent, the excess of Tenant's Share of Computed Operating Expenses for the Building over the Initial Operating Expenses Basic Cost. Tenant has fully paid all Annual Rent, Additional Rent and other sums due and payable under the Lease on or before the date of this Certificate and Tenant has not paid any Rent more than one month in advance.

4. As of the date of this Certificate, (i) Landlord is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Landlord,

D-2-1

and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Tenant, or both, would constitute such a default, and (ii) Tenant is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Tenant, and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Landlord, or both, would constitute such a default.

5. As of the date of this Certificate, Tenant has no existing defenses, offsets or credits against the payment of Rent and other sums due or to become due under the Lease or against the performance of any other of Tenant's obligations under the Lease.

6. Tenant has accepted and is presently occupying the Premises, and the Premises have been completed in accordance with the terms of the Lease.

7. Tenant has no option or right of first refusal to purchase the Premises.

8. Tenant has paid to Landlord a security deposit in the amount of \$ _____. Tenant has delivered to Landlord a security deposit in the form of a letter of credit in the amount of \$ _____.

9. Tenant agrees that, from and after the date hereof, Tenant will not pay any rent under the Lease more than thirty (30) days in advance of its due date.

10. Tenant understands that this Certificate is required in connection with Purchaser's acquisition of the Property, and Tenant agrees that Purchaser and its assigns (including any parties providing financing for the Property) will, and will be entitled to, rely on the truth of this Certificate.

11. The party executing this document on behalf of Tenant represents that he/she has been authorized to do so on behalf of Tenant.

EXECUTED on this _____ day of _____, 200_____.

"TENANT"

By: _____
Name: _____
Title: _____

D-2-2

EXHIBIT E

SELLER ESTOPPEL CERTIFICATE

Property Name: _____

Tenant: _____

[If applicable, Seller will complete this Seller's Certificate consistent with respective tenant Estoppel Certificates previously prepared by Seller.]

TO: _____ ("Purchaser")

RE: Property Address: _____

Lease Date: _____

Between _____ ("Landlord")

And _____ ("Tenant")

Square Footage Leased: _____

Suite Number _____, Floor Number _____ ("Premises")

_____ ("Seller") hereby certifies to Purchaser the following with respect to the above-referenced lease (which together with all documents described in paragraph 1 below are collectively referred to as the "Lease"):

1. The Lease has not been canceled, modified, extended or amended except as follows:
_____.
2. Rent has been paid to _____. There is no prepaid rent, except _____. The amount of security deposit is \$_____.
3. The current rent is \$_____ per month which does (not) include the Tenant's share of operating expenses. The Tenant is currently in occupancy of the Premises.
4. Tenant has no option or right of first refusal to purchase the Premises or building of which it is a part.
5. All work to be performed for Tenant under the Lease has been performed as required and has been accepted by Tenant; and Tenant does not have any unused improvement allowance.
6. The Lease is in full force and effect. Tenant is not in default under any of the provisions of the Lease pertaining to Tenant, and no event has occurred and no circumstance exists, which with the passage of time or the giving of notice by Landlord, or both, would constitute a default.

7. Landlord is not in default under any of the provisions of the Lease pertaining to Landlord, and no event has occurred and no circumstances exist which, with the passage of time or the giving of notice by Tenant, or both, would constitute such a default.

8. The Lease is the only lease, agreement or understanding between Landlord and Tenant affecting the Premises and any rights to parking.

The undersigned is a duly appointed signatory of the Seller authorized to sign this Certificate.

EXECUTED on this _____ day of _____, 200__.

By: _____

Name: _____

Title: _____

EXHIBIT F

LAWSUITS

F-1

EXHIBIT G

LIST OF TENANTS

G-1

EXHIBIT H

LIST OF NEW LEASES

EXHIBIT I

GENERAL CONVEYANCE, BILL OF SALE,
ASSIGNMENT AND ASSUMPTION

_____ a _____ (“**Seller**”), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Seller paid by _____ a _____ (“**Purchaser**”), the receipt of which is hereby acknowledged, hereby bargains, sells, transfers, conveys and assigns to Purchaser the following described property:

(a) Seller's right, title and interest in and to all equipment, appliances, tools, supplies, machinery, furnishings and other tangible personal property, attached to, appurtenant to, located in the improvements (the “**Improvements**”) located on the real property described on Exhibit A attached hereto and made a part hereof for all purposes (the “**Real Property**”) and used exclusively in connection with the ownership or operation of the Improvements (the “**Personal Property**”), but specifically excluding items of personal property owned by lawful tenants (each a “**Tenant**”) of the Improvements and further excluding any items of personal property owned by third parties and leased to Seller;

(b) Any and all of Seller's right, title and interest in and to the service agreements, maintenance contracts, equipment leasing agreements, warranties, guarantees and contracts listed on Exhibit B attached hereto together with all other assignable service agreements, maintenance contracts, equipment leasing agreements, warranties, guarantees, bonds and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property or the Improvements or Personal Property to the extent assignable without the necessity of consent or assignable only with consent and such consent has been obtained (“**Service Contracts**”);

(c) All of Seller's right, title and interest, as lessor, under all leases, rental agreements or occupancy agreements, and all amendments, modifications and supplements thereto (“**Tenant Leases**”) with the Tenants set forth on Exhibit C attached hereto, together with all refundable security deposits (“**Tenant Deposits**”) of Tenants held by Seller as listed on Exhibit C attached hereto;

(d) Any and all of Seller's right, title and interest in and to all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted in connection with the Real Property and the Improvements, to the extent assignable without the necessity of consent or assignable only with consent and such consent has been obtained (the “**Licenses and Permits**”); and

(e) Any and all of Seller's right, title and interest in and to all assignable and transferable trade names, trademarks, logos and service marks (in each case, if any) owned by Seller and utilized by Seller solely in connection with the operation of the Real Property and Improvements (other than the names or variations thereof of Seller, its affiliates, the property manager and Tenants) to the extent assignable without the necessity of consent or assignable only with consent and such consent has been obtained (the “**Intangible Property Rights**”).

The Personal Property, Service Contracts, Tenant Leases, Tenant Deposits, Licenses and Permits and Intangible Property Rights are hereinafter collectively referred to as the **"Property."**

Seller has executed this General Conveyance, Bill of Sale, Assignment and Assumption (this **"General Conveyance"**) and BARGAINED, SOLD, TRANSFERRED, CONVEYED and ASSIGNED the Property and Purchaser has accepted this General Conveyance and purchased the Property AS IS AND WHEREVER LOCATED, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT OF PURCHASE AND SALE BETWEEN SELLER AND PURCHASER DATED _____, 200__, REGARDING THE PROPERTY (the **"Purchase Agreement"**) AND THE WARRANTIES SET FORTH HEREIN, IT BEING THE INTENTION OF SELLER AND PURCHASER TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN WITH RESPECT TO THE PROPERTY, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE AS NOW OR HEREAFTER IN EFFECT IN THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, OR CONTAINED IN OR CREATED BY ANY OTHER LAW.

Purchaser accepts the foregoing bargain, sale, transfer, conveyance and assignment and assumes and agrees to be bound by and to perform and observe (i) all of the obligations and covenants of Seller under the Tenant Leases assigned to Purchaser, which are to be performed or observed on or subsequent to the date hereof, (ii) all of the covenants and obligations of Seller under the Service Contracts and the Licenses and Permits, which are to be performed or observed on or subsequent to the date hereof, (iii) all obligations and covenants of Seller under the Tenant Leases and the Service Contracts and the Licenses and Permits assigned to Purchaser relating to the physical or environmental condition of the Real Property, Improvements and Assigned Property, regardless of whether such obligations arise before or after the date hereof, and (iv) all leasing commissions, brokerage commissions, tenant improvement allowances, legal fees and other expenditures incurred in connection with the lease of space in the Real Property and Improvements to the extent (i) unpaid as of the date hereof and payable after the date hereof under or with respect to Tenant Leases entered into prior to _____, 200__, or (ii) payable prior to, on or after the date hereof under or with respect to Tenant Leases entered into on or after _____, 200__ (collectively, the **"Leasing Costs"**). Purchaser further agrees to indemnify Seller and hold Seller harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to attorneys' fees and expenses) asserted against or incurred by Seller by reason of or arising out of any failure by Purchaser to perform or observe the obligations, covenants, terms and conditions assumed by Purchaser hereunder.

To facilitate execution of this General Conveyance, this General Conveyance may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this General Conveyance, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

EXECUTED as of the _____ day of _____, 200__.

SELLER:

a _____

By: _____
Name: _____
Title: _____

PURCHASER:

a _____

By: _____
Name: _____
Title: _____

General Conveyance, Bill of Sale,
Assignment and Assumption

EXHIBIT J

FORM OF SPECIAL WARRANTY DEED

SPECIAL WARRANTY DEED

_____, a _____ ("Grantor"), whose street address is c/o _____, for the consideration of _____ Dollars (\$ _____), in hand paid, hereby sells and conveys to _____, a _____ whose street address is _____, the real property described on Exhibit A attached hereto and incorporated herein by this reference, with all its appurtenances, and warrants the title against all persons claiming under Grantor, but not otherwise, subject to the matters set forth on Exhibit B attached hereto and incorporated herein by this reference.

Signed this ____ day of _____, 200__.

GRANTOR:

a _____

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 200__
by _____ of _____, a _____
_____, on behalf of said _____.

Notary Public, State of Texas

Printed Name of Notary
My Commission Expires: _____

EXHIBIT A to EXHIBIT J
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B to EXHIBIT J
PERMITTED EXCEPTIONS

1. General and special real property taxes and assessments, a lien not yet due and payable.

[List all other specific Permitted Exceptions]

ONLINE REAL ESTATE RESOURCES FOR GENERAL COUNSEL

EXHIBIT K

NON-FOREIGN ENTITY CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a _____ (the "Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is _____; and
3. Transferor's office address is

Transferor understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made within this certification could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that he has examined this certification and that to the best of his knowledge and belief it is true, correct and complete, and the undersigned further declares that he has the authority to sign this document on behalf of the Transferor.

TRANSFEROR:

a _____

By: _____
Name: _____
Title: _____

ACC Resources:

ACC provides first-rate resources including InfoPaks, articles and listservs.

In particular, the Small Law Department Committee has an excellent listserv covering a wide range of topics, including many in real estate. Participants have provided sample leases, letters of agreement, detailed checklists on financing projects and many other useful tools.

To participate, you must join the SLD Committee. From the ACC home page, go to "Publications & News" then to "Listservs."

The Archives are especially useful: <http://discuss.acc.com/read/?forum=sldcomm>.

BROKERDIRT

The one indispensable on-line tool for real estate attorneys, this listserv is edited by Prof. Patrick A. Randolph, Jr. of the University of Missouri at Kansas City School of Law. Prof. Randolph sends out a "Daily Development" covering decisions in courts from across the United States, legislative changes and highlighting trends in community association management, environmental law and many other topics. Participants range from well-known, highly regarded real estate practitioners and professors to those brand-new to real estate. The Archives provide an amazing source of sample documents, articles and checklists.

To subscribe: Send the message "subscribe BrokerDIRT (your name)" to listserv@listserv.umkc.edu.

(Brief note: there are 2 associated DIRT listservs: I have highlighted BrokerDIRT because it covers all aspects of real estate, including residential, and involves a wider spectrum of real estate professionals. You may find that the DIRT listserv fits your needs better. Both are superb.)

BAR ASSOCIATIONS

The American Bar Association Real Property Section (www.abanet.org) has a number of useful reference tools, including the *RPPT eReport*. In addition to informative articles, checklists and links to other sites, ABA offers on-line courses. For example, ABA currently offers a 3-part series of one-hour courses on the basics of real property conveyancing and the function of title insurance policies – in short, the basics for those new to real property.

State and local Bar Associations vary widely in the access they provide to non-members, but it is worth the time to explore the sites. In addition to providing links to other resources, these sites typically give information about local practices and court requirements. Start with the Real Property sections; they sometimes offer “guest” privileges, or allow attorneys licensed in other jurisdictions to access articles or references.

PROFESSIONAL ASSOCIATIONS

All of these sites provide references, links, articles and information, often more than just basic research.

www.nahb.org: National Association of Home Builders

www.realtor.org: National Association of REALTORS®

www.caionline.org: Community Associations Institute (condominiums, co-ops, etc.)

www.alta.org: American Land Title Association (title insurance)

www.mbaa.org: Mortgage Bankers association

www.appraisalinstitute.org: Appraisal Institute

FEDERAL AND STATE GOVERNMENT

The federal government’s official portal, FirstGov.gov, can lead you to many informative sites, including specialized information for consumers and businesses. Here are some particularly useful sites:

www.hud.gov: Housing and Urban Development’s website has information for consumers, real estate professionals, lenders

www.irs.gov: All the tax forms, explanatory pamphlets, and regulations you will ever need.

The Library of Congress maintains thomas.loc.gov, the federal legislative information system. Legislative histories, bill tracking and many other features make this site worth bookmarking.

State government websites can provide information about building codes, business formation, registered agents and much more. The information specific sites can be found through the search function on most states’ portals, or, if you know the agency’s name, through a direct link. For example: go to www.dpor.virginia.gov to check on licensing for real estate agents and

construction companies, among others. At www.scc.virginia.gov/division/clk you can sign into the Clerk’s Information System, which has information about corporations, partnerships, limited liability companies and other business entities licensed in Virginia.

QUASI-GOVERNMENT AGENCIES

www.efanniemae.com : Fannie Mae loan documents (Notes, Mortgages, Deeds of Trust, riders) for all U.S. states and territories.

www.freddiemac.com: information about loan programs, financial definitions, and other information related to residential real estate.

www.rer.org: The Real Estate Roundtable provides a form for discussion of real estate policy issues.

CODES AND STATUTES

The most comprehensive site, the Legal Information Institute (www.law.cornell.edu) is sponsored by Cornell, and has U.S. Supreme Court decisions, links to all U.S. Courts of Appeal, the U.S. Constitution, the U.S. Code, the UCC, the Copyright Act, the Patent Act, and the Trademark Act. It has several links to other useful sites and features articles on other topics, such as commercial law.

The Legislative Information System provides state statutes for all U.S. states and territories. The web addresses vary by state, but you can easily Google each state’s legislative site and statutes.

www.municode.com: On-line municipal codes.

OTHER RELATED SITES

www.costar.com: Commercial real estate information, including news, analytic market research, lease listings and more. Bills itself as “the industry’s most comprehensive commercial real estate date base.”

www.real-estate-law.com: Joshua Stein, a highly-regarded real estate attorney, maintains this web site with commercial real estate information, including a real estate lexicon with definitions for terms unique to the trade.

www.landam.com, www.vuwriter.com, www.chicagotitle.com,

www.firstam.com/ncs/resources/jack_murray_underwriting_articles.html: LandAmerica, Stewart Title, Chicago Title and First American's websites. All have articles and educational materials.

www.seclaw.com: Information, discussion forums and research links.

www.ired.com: International Real Estate Digest.

GENERAL LEGAL RESOURCES

While not entirely devoted to real estate topics, most of these sites have real property sections or list links to references and resources.

www.FindLaw.com and its sub-site, www.lawcrawler.com.

www.hg.org/realest: Hieros Gamos property law site

www.thelawengine.com

www.lawguru.com: Has sections for the public, professionals and students.

www.catalaw.com: Legal reference desk

Law school libraries provide on-line references, research capabilities and links of all kinds. Try

www.washlaw.edu – it offers REFLAW, a virtual reference desk.