
LEASE

between

Charter-Westgate, LLC

as Landlord

and

DKD Donuts LLC

as Tenant,

For Premises in:

Westgate Shopping Center
Congress Street
Portland, Maine

THIS LEASE (this "Lease") is made and dated as of the _____ day of _____, 2014 by and between **Charter-Westgate, LLC**, having an address c/o Charter Realty & Development Corp., 800 Westchester Avenue, Suite S-632, Rye Brook, NY 10573 ("Landlord") and **DKD Donuts LLC**, having an address at 104 Pleasant Street, Suite 1, Brunswick, Maine 04011 ("Tenant").

ARTICLE 1

BASIC DATA AND DEFINITIONS

1.01. Basic Data and Definitions. The following sets forth basic data and, where appropriate, constitutes definitions of the terms hereinafter listed.

- (a) "Shopping Center" Westgate Shopping Center, Portland, Maine, the present boundaries of which are delineated on the Site Plan attached hereto as **Exhibit A** and made a part hereof (the "Site Plan").
- (b) "Permitted Use" For the operation of a Dunkin Donuts restaurant with drive-thru, and for no other use or purpose whatsoever.
- (c) "Land" That certain piece or parcel of land shown on the Site Plan on **Exhibit B** attached hereto and made a part hereof
- (d) "Building" The existing former Tim Horton's building located on the Land, containing approximately 2,474 square feet as shown on **Exhibit B**.
- (e) "Premises" The Land, the Building and any existing improvements
- (f) "Commencement Date" As defined in Section 2.05.
- (g) "Expiration Date" The last day of the fifteenth (15th) Lease Year
- (h) "Lease Year" As defined in Section 2.02.
- (i) "Rent"
- | | | |
|---------------------|------------------------|----------------------|
| Lease Years 1 - 3 | \$85,000.00 per year; | \$7,083.33 per month |
| Lease Year 4 | \$90,000.00 per year; | \$7,500.00 per month |
| Lease Year 5 | \$95,000.00 per year; | \$7,916.66 per month |
| Lease Years 6 - 10 | \$103,550.00 per year; | \$8,629.16 per month |
| Lease Years 11 - 15 | \$112,869.50 per year; | \$9,405.79 per month |

If Tenant shall exercise a Renewal Option, the Rent for the respective Renewal Term shall be as follows:

First Renewal Term:

Lease Years 16 ó 20 \$123,027.75 per year; \$10,252.31 per month

Second Renewal Term:

Lease Years 21 ó 25 \$134,100.24 per year; \$11,175.02 per month

Third Renewal Term:

Lease Years 26 ó 30 \$146,169.26 per year; \$12,180.77 per month

- (j) õSecurity Depositö \$0.00.
- (k) õTermö Fifteen (15) Lease Years.
- (l) õRenewal Optionsö Three (3) renewal options of five (5) years each (each, a õRenewal Optionö) as set forth in Section 2.07.

ARTICLE 2

DEMISE, TERM, DELIVERY, OPENING, ETC.

Section 2.01. Demise. Landlord hereby demises and leases the Land to Tenant, and Tenant leases, rents, and agrees to accept the Land from Landlord, subject to and upon the terms and conditions set forth in this Lease, together with the Building and any other improvements existing on the Land as of the date hereof, together with any and all easements, appurtenances, rights and privileges now or hereafter belonging or appertaining thereto.

Section 2.02. Term and Lease Year. The term of this Lease (õTermö) shall commence on the Commencement Date and, unless sooner terminated or extended as provided in this Lease, shall terminate on the Expiration Date. The term "Lease Year" as used in this Lease shall mean the period of twelve (12) full calendar months commencing on the Commencement Date and each twelve (12) month period thereafter, provided, however, that if the Commencement Date occurs on a day other than the first day of a calendar month, the first Lease Year shall include the period from the Commencement Date until the last day of the twelfth (12th) full calendar month thereafter.

Section 2.03. Tenant DD Approval and Financing Contingencies. (a) Promptly after the date hereof Tenant shall (i) submit this Lease and a completed application to Dunkin Donuts for its approval of this Lease and the Premises (the õDunkin Approvalö) and (ii) apply for financing for Tenant's business operations at the Premises at a prevailing rate of interest for loans of the type contemplated by this Section 2.03 and on other customary commitment terms (õTenant's Financingö) (the õDunkin Approvalö and õTenant's Financing, collectively, the õTenant Non-Permitting Contingenciesö). Tenant shall promptly give notice to Landlord when each of the Tenant Non-Permitting Contingencies is satisfied, and shall promptly give notice to Landlord if the Dunkin Approval is rejected by Dunkin Donuts. If despite complying with the provision of this section Tenant shall fail to satisfy either of the Tenant Non-Permitting Contingencies within sixty (60) days after the date hereof (the õContingency Dateö), then Tenant shall have the right to terminate this Lease on notice to Landlord given prior to the Contingency Date, in which event if Tenant shall timely give such notice, Landlord shall refund to Tenant any amounts paid by Tenant to

Landlord upon Tenant's execution and delivery of this Lease and this shall be null and void and of no further force and effect. If Tenant shall fail to give such notice of termination on or prior to the Contingency Date, then Tenant shall be deemed to have conclusively waived its right to terminate this Lease on account of the Tenant Non-Permitting Contingencies.

Section 2.04. Landlord Permits. This Lease shall be contingent upon Landlord obtaining (a) a Traffic Movement Permit from the City of Portland, Maine as required for the Permitted Use at the Premises, and (b) if required by the City of Portland, an amendment to the existing conditional use permit for Tim Horton's permitting use of the Premises for a Dunkin Donuts ("Landlord's Permits"). Landlord shall apply for Landlord's Permits promptly after the date hereof and diligently endeavor to obtain them. Landlord shall give notice to Tenant with Landlord's Permits are obtained or if either is denied. If Landlord's Permits have not been obtained within sixty (60) days after the date hereof (such date, the "Landlord's Permits Date"), then either party shall thereafter have the right to terminate this Lease on notice given to the other party at any time after the Landlord's Permits Date and prior to the date that Landlord shall give notice to Tenant that it has obtained Landlord's Permits.

Section 2.05. Possession Date and Commencement Date.

(a) Provided Landlord has obtained Landlord's Permits and delivered a copy to Tenant, Landlord shall deliver exclusive possession of the Premises to Tenant in the condition required under Section 2.06 herein within five (5) business days after the date that Tenant has satisfied the Tenant Non-Permitting Contingencies and obtained Tenant's Permits (as hereinafter defined) or, subject to the provisions of Article 5 herein, such earlier date as Tenant is deemed to have waived all such contingencies. The date on which Landlord shall give deliver possession of the Premises to Tenant in accordance with the foregoing shall constitute the "Possession Date" under this Lease. If Landlord is delayed in delivering possession of the Premises to Tenant due to a Tenant Delay (as hereinafter defined), the Commencement Date shall be deemed to occur on the date that it would have occurred but for such Tenant Delay. The term "Tenant Delay" shall mean Tenant's failure to comply with its obligations within the time frames required under Article 6 hereof provided said delay is not a result of Landlord's failure to comply with its obligations under Section 2.04 and 5.02 herein.

(b) The Commencement Date shall be the date that is the earlier of (i) the date that Tenant opens for business in the Premises and (ii) sixty (60) days after the Possession Date.

Section 2.06. "As Is Condition." Tenant has examined the Premises and has made a complete inspection of same and is familiar with the physical condition thereof. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to the Premises, except as is in this Lease specifically set forth, and Tenant specifically acknowledges that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination, and inspection of the Premises and Tenant agrees to accept the same "as is". Landlord shall not be required to perform any work or render any service to make the Premises ready or suitable for Tenant's use. Notwithstanding anything to the contrary contained in this Lease, upon the delivery of the Premises to Tenant, (i) the existing HVAC shall be operational, (ii) all utilities then servicing the Premises shall be operational (iii) Landlord shall have removed all of the prior tenant's movable furniture, trade fixtures or other personal property and (iv) prior to the Possession Date, Landlord shall have the Grease Trap serving the Premises inspected and serviced.

Section 2.07. Renewal Options. Tenant shall have the option, provided it is neither in default under this Lease beyond any applicable cure period at the time of giving of notice of exercise of

option nor on the commencement of the respective renewal term, to extend the Term of this Lease for three (3) successive additional terms of five (5) years each (each, a "Renewal Term") upon the same terms and conditions as provided herein. Rent during each Renewal Term shall be adjusted as provided in Section 1.01(i). Tenant shall exercise each Renewal Option by giving notice to Landlord in accordance with the provisions of Section 30.09, no later than twelve (12) months before the expiration of the initial Term (with respect to the first Renewal Option) or twelve (12) months before the expiration of the then-existing Renewal Term or Tenant shall be deemed to have waived such Renewal Option and any succeeding Renewal Option. Time is of the essence with respect to the giving of such notice. If Tenant shall exercise a Renewal Option(s), the parties will, at the request of either, execute an agreement in form for recording, evidencing such extension. If Tenant shall exercise a Renewal Option(s), all references in this Lease to the Term hereof shall be deemed to mean the Term as so extended, except where expressly otherwise provided.

ARTICLE 3

RENTAL

Section 3.01. Rental. The rents reserved under this Lease (collectively, the "Rental"), shall consist of (i) Rent and (ii) all other sums as shall become due and payable by Tenant to Landlord under this Lease ("Additional Rent"). Effective the Commencement Date (except in the case of Tenant's payment of Common Area Maintenance Costs, excluding insurance costs, which shall commence as of the Possession Date), Tenant shall pay Rental to Landlord pursuant to the terms of this Lease. Tenant shall pay the Rental to Landlord at Landlord's address first set forth hereinabove, or at such other place as Landlord may designate in writing from time to time, without any deduction, reduction, recoupment or set-off except in accordance with this Lease. If mailed, payment of all Rental shall be mailed in sufficient time and with adequate postage to be received by Landlord not later than the date due. Tenant's failure to complete Tenant's Work prior to the Commencement Date shall not excuse Tenant from the obligation to commence payment of Rental as of the Commencement Date.

Section 3.02. Interest. If Tenant shall fail to pay when due any Rental within ten (10) days of the date due and payable, Tenant shall pay to Landlord, as Additional Rent, interest on the unpaid Rental, such interest accruing at the rate of four percent (4%) above the prime rate of interest announced from time to time by Citibank, N.A. (or any successor thereto, or if there shall be no such successor, such other bank or financial institution as Landlord may designate in writing to Tenant) (the "Default Rate"), from the date due until the date paid.

Section 3.03. Late Charge. If Tenant shall fail to pay when due any Rental within ten (10) days of the date of receipt of notice from Landlord that the same was due and unpaid, then Tenant shall pay to Landlord, as Additional Rent, a late charge equal to four (4%) percent of the unpaid Rental, as an agreed and liquidated amount as compensation for Landlord's additional administrative expenses relating to such late payment. The provisions of this Section 3.03 and Section 3.02 above are in addition to any other remedies available to Landlord with respect to non-payment of Rental.

Section 3.04. Net Lease. It is the intention of the parties that the Rental payable hereunder shall be absolutely net to Landlord, so that this Lease shall yield net to Landlord on a pre-income tax basis the entire Minimum Rent during the Term, and that except as otherwise expressly provided to the contrary in this Lease, all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due during or in respect of the Term shall be paid by Tenant and Tenant shall hold harmless, indemnify and defend Landlord from and against any such costs, expenses and obligations.

ARTICLE 4

RENT

Section 4.01. Rent. Commencing as of the Commencement Date and continuing thereafter on the first day of each month throughout the Term, Tenant shall pay to Landlord, in advance, without any notice or demand therefor, the monthly Rent. Rent shall be prorated on the basis of a thirty (30) day month for any partial month during the Term. Upon Tenant's execution and delivery of this Lease to Landlord, Tenant shall pay to Landlord an amount equal to the Rent for the first month of the Term in which Rent shall be payable.

ARTICLE 5

TENANT'S PERMITTING CONTINGENCY

Section 5.01. Tenant's Permits. Tenant, at its sole cost, shall use all reasonable efforts and proceed with all due diligence to obtain a building permit for the construction of Tenant's Work and to obtain permits required for Tenant's storefront and pylon signage, provided, however, that under no circumstances may Tenant apply for any signage which would require a variance ("Tenant's Permits"). Tenant acknowledges and agrees that the hours of operation currently approved for the Premises are 5:00 a.m. to 11:00 a.m. and Tenant shall be open for business to the general public only during such hours and Tenant's applications for Tenant's Permit shall not reflect hours greater than such hours.

Section 5.02. Permit Applications. Tenant shall submit to Landlord a true and complete copy of the applications necessary to obtain Tenant's Permits. Such applications shall be subject to the consent of Landlord as to the form and content of such application, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall respond to such applications within seven (7) days of submission with Landlord's consent thereto, or with disapproval and a recitation of the changes thereto which would be necessary to obtain Landlord's consent, or such applications shall conclusively be deemed approved by Landlord. In the event Landlord does not respond within seven days, the permit applications shall be deemed approved. No changes in such applications shall be made without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. No application shall seek a change in the zoning of the Building or seek approval for any signage which would require a variance. Tenant shall be solely responsible for all expenses incurred in seeking Tenant's Permits, including without limitation the cost of all surveys, plans and drawings. Promptly after Landlord's approval or deemed approval of Tenant's applications, Tenant shall (i) make diligent and good faith efforts to obtain Tenant's Permit, (ii) provide Landlord on a timely basis with copies of all correspondence and documentation related thereto, and (iii) give Landlord prior notice of any public meetings in sufficient time to permit Landlord to attend same. Landlord shall, at Landlord's expense, execute such documents, attend such meetings, and do such other things in connection with Tenant's obtaining of Tenant's Permits as shall

be reasonably required in connection therewith. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to apply for Tenant's Permits until Tenant has received approval from Dunkin Donuts for the Lease and operation at the Premises.

Section 5.03. Permit Approvals. This Lease and Tenant's obligations hereunder shall be conditioned upon Landlord's obtaining Landlord's Permits and Tenant obtaining Tenant's Permits and all applicable appeals periods having expired (the foregoing, the "Permitting Contingency") on or before the DD Contingency Date (as hereinafter defined). Tenant shall give written notice to Landlord of its having received Tenant's Permits promptly after receipt thereof. Tenant acknowledges that it has been advised by Landlord that Landlord has entered into a lease termination agreement with the existing tenant of the Premises, Tim Hortons ("TH"), allowing Landlord to obtain an early termination of the TH lease, but that such agreement is contingent upon Landlord giving notice to TH no later than Friday, June 27, 2014 (the "TH Contingency Date") that permits have been obtained as required for Landlord's new tenant (i.e., Tenant) or that the requirement for such permits has been waived. Accordingly, if the Permitting Contingency is not satisfied on or before Thursday, June 26, 2014 (the "DD Contingency Date"), then unless Tenant agrees in writing to waive the Permitting Contingency on notice to Landlord given on or before the DD Contingency Date, this Lease shall terminate on the DD Contingency Date and each party shall thereupon be released from all further rights and liabilities hereunder after the effective date of such termination except for those obligations which expressly survive the Term.

Section 5.04 Landlord's Self-Help Right. If Tenant has not obtained Tenant's Permits by the original DD Contingency Date, and TH agrees to extend the TH Contingency date by at least forty-five (45) days, then commencing thirty (30) days after the original TH Contingency Date, if Tenant has not obtained Tenant's Permits, then Landlord shall have the right, but not an obligation, to endeavor to obtain Tenant's Permit. In the event Landlord makes such election, then Tenant shall cooperate with Landlord's efforts and the reasonable costs that Landlord incurs to obtain Tenant's Permits shall be reimbursed by Tenant within ten (10) days of Landlord's request therefor (which covenant shall survive any termination of this Agreement under this Section 5.04). Any permit applications filed by Landlord on Tenant's behalf must be for Tenant's Work based on Tenant's Plans previously approved by Tenant, Dunkin Donuts and Landlord. If Landlord has duly elected to obtain Tenant's Permits, and fails to obtain Tenant's Permits on or before the DD Contingency Date as extended, then then this Lease shall terminate upon the DD Contingency Date as extended.

ARTICLE 6

CONSTRUCTION

Section 6.01. As-Is. Except as otherwise provided in this Lease, Tenant hereby accepts the Premises in its current "as-is" condition as of the date hereof and acknowledges that Landlord shall not have any obligation to perform any work in or to the Premises in order to ready the Premises for Tenant's occupancy.

Section 6.02. Tenant's Work. No later than forty-five (45) days after the date hereof and prior to submitting any building plans to any governmental authorities, Tenant shall submit to Landlord for its approval, not to be unreasonably withheld, two (2) sets of construction drawings and specifications (the "Proposed Tenant Plans") for all alterations and improvements which Tenant proposes to make to the Premises to ready the Premises for Tenant's occupancy ("Tenant's Work"). The Proposed Tenant Plans shall be prepared by an architect licensed in the State of Maine. Landlord may, at its election, require electronic drawings and specifications (both .PDF format or similar, and .DWG format or similar).

Promptly following Landlord's receipt of the proposed Tenant Plans, and no more than seven (7) days thereafter, Landlord shall either approve or disapprove of same and provide Tenant with a list of the rejected components. Upon receipt of Landlord's disapproval, Tenant shall, within ten (10) days, revise the Proposed Tenant Plans to address Landlord's comments and resubmit for approval. This process shall be repeated until the Proposed Tenant Plans have been approved, at which time they shall be considered the "Tenant's Plans" for all purposes under this Lease. No review or approval of Tenant's Plans by Landlord shall constitute a representation or warranty by Landlord that Tenant's Plans comply with applicable laws or correctly address existing field conditions or are otherwise suitable for their intended purposes, the responsibility for which shall remain with Tenant. Landlord shall not be responsible for items noted or inferred to be furnished and installed by Landlord unless such item is specifically listed as being Landlord's responsibility in this Lease. Promptly after the later to occur of the Possession Date or the date of Landlord's approval of Tenant's Plans, Tenant shall, at its sole cost and expense, commence and diligently prosecute to completion Tenant's Work.

ARTICLE 7

USE AND OPERATION OF THE PREMISES

Section 7.01. Use. (a) At all times during the Term, the Tenant may operate the Premises for the Permitted Use and for no other use or purpose whatsoever without Landlord's consent, said consent not to be unreasonably withheld provided that in Landlord's reasonable opinion such use would be appropriate for the then existing tenant mix at the Shopping Center and would not violate other then-existing tenant exclusives or other restrictions or prohibitions, if any, affecting the Shopping Center at the time of Tenant's change of use. The failure of Tenant to use and occupy the Premises as required herein shall entitle Landlord to exercise its rights hereunder, including, without limitation, its rights under subsection (b) herein.

(b) Nothing in this Lease shall be construed as a covenant by Tenant of continuous operations. In the event, however, that Tenant discontinues the operation of all business upon the Leased Premises for a period in excess of nine consecutive (9) months (other than as a result of normal periods for repairs, or alterations due to a casualty or condemnation or renovations or remodeling, then Landlord shall have the right, but not the obligation to elect to recapture the Leased Premises from Tenant upon forty-five (45) days' written notice to Tenant (the "**Recapture Notice**"). If Landlord exercises its option to recapture the Leased Premises pursuant to this paragraph, then (unless Tenant shall reopen its operation for business within such forty-five (45) day period) Landlord shall pay to Tenant by certified check on or before the date of termination of the Lease, which termination date shall occur on the forty-sixth (46th) day after the date of Landlord's Recapture Notice (the "**Recapture Date**") as consideration for such termination, an amount equal to the Unamortized Value (defined below) of Tenant's Work as of the date of the Recapture Notice. The Tenant will surrender the Leased Premises to Landlord in the condition called for under the Lease on the Recapture Date and the Lease and the Term will end and expire as if the Recapture Date were the date for expiration originally called for under the Lease. For purposes of this provision, "**Unamortized Value**" shall mean and be defined as the unamortized portion of the cost of Tenant's Work as of the date of the Recapture Notice, based on a straight line amortization schedule of one hundred and eighty (180) months commencing on the Commencement Date. Within thirty (30) days after receipt of written request from Landlord made at any time ninety (90) or more days after the substantial completion of Tenant's Work, Tenant shall provide Landlord with written documentation of cost of Tenant's Work.

Section 7.02. Compliance With Laws.

(a) Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, statutes, ordinances, codes, rules, regulations, orders and requirements of any governmental or quasi-governmental authority having jurisdiction over the Premises (collectively, "Laws") affecting or applicable to (i) the Building and, to the extent it is directly related to Tenant's Permitted Use, the Land or (ii) Tenant's business conducted in the Building, and, to the extent it is directly related to Tenant's Permitted Use, the Land, whether or not any such Laws are foreseen or unforeseen, ordinary or extraordinary, or shall interfere with the use and enjoyment of the Premises. Upon Landlord's written request, Tenant shall deliver to Landlord true and complete copies of any and all permits, licenses and/or certificates required for the lawful conduct of Tenant's business in the Premises.

(b) Landlord, at Landlord's sole cost and expense, shall promptly comply with all present and future laws, statutes, ordinances, codes, rules, regulations, orders and requirements of any governmental or quasi-governmental authority having jurisdiction over the Shopping Center (collectively, "Laws") affecting or applicable to portions of the Shopping Center other than the Building, and, to the extent it is directly related to Tenant's Permitted Use, the Land whether or not any such Laws are foreseen or unforeseen, ordinary or extraordinary and that may have an effect on Tenant's use of the Premises.

Section 7.03. Radius Restriction. Intentionally Omitted.

Section 7.04. Manner of Use. In no event shall the Premises or any portion thereof be used: (i) in violation of any Laws or the certificate of occupancy or other licenses or certificates covering the Premises; (ii) in a manner which creates or permits a nuisance or trespass; (iii) in a manner which produces, reproduces, or transmits sounds audible outside the Premises; (iv) in a manner which obstructs or encumbers the Common Areas; (v) in a hazardous or wasteful manner; (vi) in a manner which exceeds the floor load which such floor was designed, or is permitted by Laws, to carry; (vii) to conduct any auction, fire, bankruptcy, going out of business or similar sale (whether real or fictitious) except in the three (3) month period prior to the expiration of the term; (viii) in any manner which causes or permits any noise, odors, fumes, dust or vapors to emanate or to be dispelled from the Premises in violation of Laws; (ix) for any type of business commonly called a "cut price" or "cut rate" store, "discount house or store," shooting gallery, flea circus or temporary toy or gift outlet; (x) for the sale of lottery, raffle or other "chance" ticket; (xi) for any form of assignation or lewdness, or any form of establishment employing partially or totally nude entertainers, employees, waiters or waitresses, or any usage as an adult entertainment facility, massage parlor, bathhouse, or facility which caters to the prurient sale of books, magazines, other periodicals, or sex-centered objects; or (xii) in any other manner which, in the reasonable judgment of Landlord, adversely affects the character, operation, reputation or appearance of the Shopping Center. Notwithstanding the foregoing, the ordinary use of Premises by the Tenant as a quick service restaurant with drive-thru shall be deemed not to be a violation of this Section 7.04.

Section 7.05. Refuse. Tenant shall keep all garbage, trash, rubbish or other refuse in rat-proof containers and shall remove and dispose of such garbage, trash, rubbish and refuse from the Premises as necessary. Tenant shall contract with a trash removal contractor and is responsible for all charges relating to trash removal and the servicing and maintenance of trash dumpsters.

Section 7.06. Handbills. Tenant shall not distribute or cause to be distributed in the Shopping Center any handbills or other advertising devices, except in the Building. Landlord shall not enforce this provision on a discriminatory basis against Tenant. Tenant shall have the right to distribute gift certificates for its services to existing tenants of the Shopping Center and their employees.

Section 7.07. Hazardous Substances. (a) Tenant shall not cause or permit any

Hazardous Substance (as hereinafter defined) to be used, stored, generated or disposed of on, in or from the Premises by Tenant, its agents, employees, contractors, or licensees, (except where said Hazardous Substance is used or stored in a de minimus amount connected with Tenant's use of the Premises as a quick service restaurant and otherwise in compliance with applicable Laws) without Landlord's prior consent, which may be withheld in Landlord's sole and uncontrolled discretion. If any Hazardous Substance is used, stored, generated or disposed of on, in or from the Premises by Tenant, its agents, employees, contractors or licensees, whether or not permitted by Landlord, or if the Premises become contaminated in any manner as a result of the acts or negligent omissions of Tenant, its agents, employees, contractors or licensees, Tenant shall indemnify, hold harmless and defend Landlord from and against any and all claims, demands, suits, actions, damages, losses or expenses (Liabilities) (which shall include, without limitation, a decrease in value of the Premises or the Shopping Center, damages due to loss or restriction of leasable or usable space and damages due to adverse impact on marketing of the Premises or the Shopping Center), arising during or after the Term relating to such contamination. Such indemnification shall include, without limitation, all costs incurred by Landlord due to any investigation of the Premises or the Shopping Center or any part thereof or any cleanup, removal or restoration, whether or not required by Laws. If Tenant causes the presence of any Hazardous Substances on the Premises in violation of applicable Laws, Tenant shall promptly, at its sole expense, take all action necessary to remediate in compliance with applicable Laws and return the Premises to a condition existing prior to violation of the applicable Laws. Tenant shall obtain Landlord's prior consent to any such action and such action shall constitute Tenant's Changes, to be performed strictly in accordance with the terms and conditions of Article 12. As used in this Lease, "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive, or which is regulated by any governmental or quasi-governmental entity. Hazardous Substance includes all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to Laws. Hazardous substance includes, without limitation, asbestos, polychlorobiphenyls ("PCBs") and petroleum. The terms and conditions of this Section 7.07 shall survive the expiration or earlier termination of this Lease.

(b) Except as otherwise indicated in this Section, Landlord shall indemnify, defend, protect, and hold harmless Tenant from and against any and all Liabilities arising from, related to, or in connection with existence of any Hazardous Substance conditions existing as of the date hereof which are in violation of existing applicable Laws and including the reimbursement of any costs incurred by Tenant in completion of Tenant's Work (except where caused by Tenant or its agents, employees, contractors or licensees), provided Tenant first delivers to Landlord written notice of the existence of such Hazardous Substance conditions promptly upon obtaining knowledge thereof and provides the Landlord a reasonable opportunity to remediate such conditions. In the event Landlord remediates such conditions, all Rental shall abate and all time periods for Tenant's performance of its obligations under this Lease shall be extended from the time that Tenant is unable to conduct Tenant's Permitted Use at the Premises and shall give Landlord notice thereof until the sooner of (i) the completion of Landlord's remediation or (ii) the date Tenant is able to conduct Tenant's Permitted Use at the Premises.

Section 7.08. Tenant's Exclusive. Commencing the date hereof and provided and for so long as (a) this Lease is in full force and effect and Tenant is not in default hereunder beyond any applicable notice and/or grace period, and (b) Tenant is in occupancy of the entire Premises and is actively conducting the Permitted Use in the Premises in accordance with this Lease, Landlord agrees that it will not enter into any lease with any tenant for premises in the Shopping Center which primarily serves donuts, bagels, muffins, fresh brewed coffee and fresh brewed tea. Examples of such prohibited operations include, without limitation, Tim Horton's, Krispy Kreme, Mister Bagel, Tony's Donuts, Starbucks and Panera Bread. Notwithstanding anything contained herein, Tenant's Exclusive shall be of no further force or effect if Tenant discontinues the conduct of the Permitted Use in the Premises for more than sixty (60) consecutive days (unless due to

casualty, condemnation, force majeure or remodeling not to exceed ninety (90) days or such reasonable additional time as may be needed to complete such repair or remodel). In the event Landlord violates the provisions of this Section, Tenant may give Landlord notice of such violation (the "Exclusive Violation Notice"). In such event, Tenant may, thirty (30) days after giving the Exclusive Violation Notice to Landlord, commence paying Rental in the amount of fifty (50%) percent of Rental describe in Section 3.01 until the violation has been cured. Notwithstanding the foregoing, if the violation is continuing as of one year after the date of the Exclusive Violation Notice, then Tenant may terminate this Lease on notice to Landlord given no later than one (1) year after the date of the Exclusive Violation Notice, and if Tenant shall fail to timely exercise such termination option, then Tenant's right to terminate this Lease on account of such violation shall be null and void and of no further force and effect and effective one (1) year after the giving of the Exclusive Violation Notice, Tenant shall return to paying full Minimum Rent and Additional Rent. Tenant may, at Tenant's option, pursue injunctive relief against Landlord and any offending tenant provided that such action is commenced prior to one year after the date of the Exclusive Violation Notice. In the event of any dispute relating to a violation of this Section or the enforcement thereof, the prevailing party shall be entitled to all costs, fees and expenses, including reasonable attorney fees, incurred in connection with such dispute or enforcement.

Section 7.09. Restaurant Requirements. Tenant shall, at its sole expense, furnish and install in the Premises a ventilating, exhaust and drainage system meeting restaurant industry standards. In connection therewith, Tenant shall, at its sole cost and expense (i) maintain, service and repair the ventilating and exhaust system servicing the Premises and make all replacements thereto during the Term to Landlord's reasonable satisfaction, including installation of any necessary filters, and, in furtherance and not in limitation of the foregoing, maintain such ventilating exhaust system, and any ducts connecting thereto; (ii) keep the drain, waste and sewer pipes and connections with water mains servicing the Premises free from obstruction and maintain, at least quarterly, grease traps and filters in the main line of the Premises (and within twenty (20) days of Landlord's written request therefor, Tenant shall provide Landlord with service records and the related contractor maintenance and repair invoices relative to Tenant's maintenance and repair of the foregoing); (iii) keep the Premises free of noxious chemicals or inflammable materials other than those customarily employed in connection with restaurant use; and (iv) fireproof all window treatments in the Premises, including, without limitation, draperies and curtains. The use of any sparklers, fireworks or other incendiary devices in the Premises is expressly prohibited at all times. Pursuant to Article 6 herein, Tenant shall also install a grease trap for the Premises reasonably acceptable to Landlord as part of Tenant's Work, regardless of whether required by applicable Laws. Tenant shall keep the interior and exterior portions of the Premises free from rodents and other pests and shall maintain a pest/rodent control contract with a licensed pest/rodent control contractor in order to do so.

ARTICLE 8

COMMON AREA AND COMMON AREA MAINTENANCE COST

Section 8.01. Non-exclusive License. Tenant, its successors, assigns, licensees, employees, agents, contractors, customers and invitees, shall have a non-exclusive license, in common with other tenants of the Shopping Center and their successors, assigns, licensees, employees, agents, contractors, customers and invitees, to use the entrances, exits, parking areas, sidewalks, and other portions of the Common Area (as hereinafter defined in Section 8.02) for their intended purposes, including, without limitation, vehicular and pedestrian access to and from the Premises. Landlord may utilize the Common Areas for promotions, displays, outdoor shows, the leasing of kiosks and any other use which in Landlord's judgment may attract customers to the Shopping Center, provided however that Landlord shall not locate any of the foregoing within the Premises or use said Common Areas for the aforesaid purposes in a manner

that would materially and adversely affect Tenant's access to the Premises. **Exhibit A** shall not be deemed a representation or warranty of the continuing layout or configuration of the Shopping Center (including the Common Area), and Landlord shall have the unrestricted right to construct from time to time additional improvements on the Shopping Center, grant easements or increase, reduce, eliminate, relocate or change the size, dimensions, design, configuration or location of any or all of the Common Area (including, without limitation, the parking areas), the buildings, or other improvements in the Shopping Center in any manner whatsoever. The foregoing rights of Landlord shall be exercised only in such a manner that the access to or visibility of the Premises will not be materially adversely affected.

Section 8.02. Common Area Definition. The term "Common Area" shall include, as reasonably constituted and designated by Landlord from time to time: (i) all exterior areas provided for the common or joint use and benefit of tenants in the Shopping Center (including any expansion thereof to adjacent and contiguous land), their employees, agents and invitees, including, without limitation, parking areas (including, without limitation, the parking areas, access roads, landscaping and drive-thru lane, located within the Premises, but excluding Tenant's drive-thru windows and conduits and signage for Tenant's reader boards), access roads, driveways, retaining walls, landscaped areas, truck serviceways or tunnels, pedestrian walks, outside courts and curb cuts. Tenant, its employees, customers and invitees shall have the non-exclusive rights of ingress and egress in, on and over the Shopping Center to and from all streets, alleys and across ways adjacent to the Shopping Center. Landlord hereby grants and conveys to Tenant, its employees, customers and invitees a non-exclusive right and easement for access, ingress/egress and parking purposes over the common driveway areas that may exist from time to time within the Shopping Center. Where required, Landlord will grant to Tenant a non-exclusive right and easement for the installation, operation, maintenance, repair, and replacement of water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve the Premises; provided, however, that all of the foregoing, inclusive of pipes, wires, lines, conduits, mains, sewers, systems and related equipment, will be installed underground or otherwise enclosed and will be installed, located, operated and maintained in a manner which shall not unreasonably interfere with the use of the Shopping Center and which shall otherwise be subject to Landlord's reasonable prior approval, and further provided that same shall continue to be part of the Common Area, except as otherwise provided in Article 10 herein. Landlord agrees to keep the Shopping Center Common Area (excepting as otherwise expressly provided herein with respect to the Premises) in good maintenance and repair and in a safe, clean and sanitary condition. Landlord shall maintain the Common Area in a good and workmanlike manner as would a reasonable Landlord for comparable Shopping Centers and will clear ice and snow at all times that the Tenant is permitted to be open for business (except from the sidewalks surrounding the Building). As part of its Common Area maintenance obligations hereunder, Landlord shall be responsible for maintenance, capital and non-capital repairs to the Land (other than those required due to the negligent or otherwise tortious acts of Tenant, its agents, contractors and employees), but not the Building, and snow removal from the Land within the Premises (exclusive of the sidewalks surrounding the Building) inclusive of the drive-thru lane, and shall charge the cost thereof back to Tenant through Common Area Maintenance Costs pursuant to the provisions of Section 8.03 herein.

Section 8.03. Common Area Maintenance Costs. Common Area Maintenance Costs shall mean the total costs and expenses incurred in operating, maintaining, managing, insuring, repairing and replacing all or any part of the Common Area, including, without limitation, the costs and expenses of: painting; decorating; repairing, maintaining, resurfacing, paving and re-striping of the parking lots; lighting; electrical power; sanitary control; removal and other treatment of trash, garbage and other refuse; cleaning; gardening and landscaping; snow removal; heating, ventilating and air conditioning, if any; fire protection; water and sewage charges; management fees; insurance covering any portion of the

Shopping Center, including, without limitation, commercial general liability and automobile coverage, fire and extended coverage, terrorism coverage, vandalism and malicious mischief and all other broad form coverage, rent and any other insurance, including umbrella coverage, all in limits selected by Landlord or by the anchor tenant of the supermarket, and including the costs of financing any premium or the cost of paying any premium in installments; installation and operation of public toilets, if any; installation, repair, replacement and renting of signs; maintenance, repair and replacement of utility systems serving the Common Area and any buildings in the Shopping Center, including water, sanitary sewer and storm water lines, electric and other utility lines and pipes; security costs; the cost of purchasing, operating, repairing, replacing and insuring machinery and equipment used in the operation, policing, maintenance and repair of the Common Area and/or the rental charges for such machinery and equipment; holiday promotions and decorations; the cost of personnel (including applicable payroll taxes, worker's compensation and disability insurance, uniforms and other benefits) reasonably allocated to the extent of their time spent in implementing the foregoing; and depreciation of the capital cost of any machinery, equipment and vehicles used in connection with such operation, maintenance, repair and replacement of the Common Area; and a charge for administrative costs equal to fifteen percent (15%) of the cost of all of the foregoing. Landlord may cause any or all of such services to be provided by an independent contractor or contractors or by related contractor or contractor so long as the charges of any related contractor(s) are locally competitive. The foregoing notwithstanding, Common Area Maintenance Costs shall not include (a) any costs considered to be capital expenses in accordance with generally accepted accounting principles consistently applied, except (i) the costs of repaving of the parking areas and walkways, which cost shall be amortized over a ten (10) year period and only the installment of such amortization applicable to the calendar and/or fiscal year in question, shall be included in Common Area Maintenance Costs for the respective calendar and/or fiscal year, and (ii) those capital expenditures which are intended to reduce Common Area Maintenance Costs, or are required to comply with Laws (or changes in Laws) first taking effect after the date of this Lease, with respect to which the cost of such item(s) shall be amortized over its (their) useful life as determined in accordance with generally accepted accounting principles and only the installment of such amortization applicable to the calendar and/or fiscal year in question, shall be included in Common Area Maintenance Costs for the respective calendar and/or fiscal year, (b) professional fees incurred in connection with leasing, and (c) Taxes.

Section 8.04. Tenant's Payment. With the exception of those costs attributable to Landlord's insurance, which shall become due as of the Commencement Date, commencing as of the Possession Date and continuing on the first day of each calendar month in advance during the Term, Tenant shall pay to Landlord, as Additional Rent, such amount as Landlord shall reasonably estimate to equal one-twelfth of Tenant's Proportionate Share (as hereinafter defined) of the Common Area Maintenance Cost for the then current calendar year, which estimate shall be determined by multiplying Landlord's estimate of the monthly Common Area Maintenance Cost by Tenant's Proportionate Share. The term "Tenant's Proportionate Share" as used in this Lease shall mean a fraction, the numerator of which is the area of the Land and the denominator of which is the area of entire Shopping Center Land. Landlord represents that for calendar year 2013, Tenant's Proportionate Share of the Common Area Maintenance Cost would have been approximately \$964 per month, including \$60 per month for Landlord's insurance. Such figure shall not constitute any limitation on Tenant's Proportionate Share of Common Area Maintenance Costs under this Lease.

Section 8.05. Year End Adjustment. Within one hundred twenty (120) days after the expiration of each calendar year, Landlord shall determine the total actual Common Area Maintenance Cost for such calendar year, together with Tenant's Proportionate Share thereof and shall forward to Tenant a detailed statement of Common Area Maintenance Cost and calculation of Tenant's Proportionate Share thereof. If the amounts paid by Tenant for such preceding calendar year are less than Tenant's

Proportionate Share thereof, the deficiency shall be paid by Tenant to Landlord upon thirty (30) days of written demand therefor; if Tenant shall have previously paid in excess of Tenant's Proportionate Share, the amount of such excess shall be credited to the next payment of Common Area Maintenance Cost under this Lease, unless such payment has been made with respect to the last Lease Year of the Term, in which case Landlord shall refund the amount of such overpayment to Tenant within thirty (30) days, provided Tenant is not then in monetary default under this Lease. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Section 8.06. Access Easement. Landlord further grants and conveys to Tenant, for the use and benefit of Tenant, its successors, assigns, licensees, employees, suppliers, customers and invitees, a non-exclusive but fixed easement appurtenant to the Premises for the term of the Lease and all extensions thereto and any period of holding over for the purpose of vehicular and pedestrian ingress, egress and access to and from the Premises, over, upon, across and through that portion of the Shopping Center which is depicted on the attached **Exhibit A** as the "**Access Easement**". Notwithstanding anything contained herein, Landlord shall have the right to relocate or modify the Access Easement without Tenant's consent provided none of such changes would materially interfere with vehicular or pedestrian ingress to or egress from the Premises.

ARTICLE 9

TAXES

Section 9.01. Taxes. (a) Tenant shall pay, as additional rent, all taxes, duties, assessments and charges commonly and generally referred to as "real estate taxes" and assessments, whether general or special governmental assessments for public improvements or benefits, sanitary and trash removal assessments, water charges, sewer rents and any and all other taxes and assessments, of every kind and nature whatsoever which shall during or in respect of the Term or any renewal thereof, be levied, assessed, or otherwise imposed upon, the Land or any part thereof, the Building(s) and any improvements which may be thereon or which may hereafter during the Term (including, without limitation, Tenant's Work and Tenant's Changes), or any renewal thereof, be erected or constructed thereon, the rent payable by Tenant under this Lease, or upon any sales made at or from the Premises, and shall include any taxes levied in lieu of or as a substitute for the foregoing (the foregoing being individually and collectively referred to in this Lease as "Taxes"). The term "Taxes" for purposes of this Lease shall not include any transfer or documentary stamp taxes or charges which may be payable by virtue of the execution of this Lease or the recording of a memorandum hereof and which charges shall be split equally by the parties. The term "Taxes" for purposes of this Lease shall also exclude income, franchise, estate or inheritance taxes levied against Landlord or any future taxes or charges in replacement of income, franchise, estate or inheritance taxes. For the calendar years in which this Lease commences and terminates, Tenant's liability for Taxes for such years shall be subject to a pro rata adjustment based on the number of days of said calendar years during the Term. Landlord represents that for 2013, the Taxes were approximately \$14,000 and that Landlord will pay its pro rata share of such Taxes through the Commencement Date. Such figure shall not constitute any limitation on the Taxes which Tenant is required to pay under this Lease.

(b) Landlord covenants that as of the Commencement Date, the Premises will be separately assessed for the purposes of Taxes. Tenant shall be responsible for all Taxes levied, assessed or otherwise imposed on the Premises and any improvements which may be thereon or which may hereafter during the Term, or any renewal thereof, be erected or constructed thereon.

Section 9.02. Manner of Payment. Landlord shall instruct the applicable taxing

authority to send copies of all bills for Taxes directly to Tenant. Unless and until a default shall occur under this Lease, all Taxes payable by Tenant pursuant to this Section shall be paid by Tenant directly to the applicable taxing authority at least ten (10) days prior to the date such Taxes are payable without premium or penalty. Concurrent with the making of such payment, Tenant shall provide to Landlord evidence thereof. If Tenant shall fail to timely make such payment, Landlord shall have the right to pay such Taxes on Tenant's behalf after ten days' notice to Tenant and in such event Tenant shall reimburse to Landlord the amount paid within thirty (30) days of demand therefor, as Additional Rent under this Lease. From and after the occurrence of a default under this Section, Taxes shall be payable by Tenant to Landlord in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord based on the previous year's actual Taxes plus an additional amount equal to annual increases of recent history; Landlord may, but shall not be obligated to, use the amount (if any) required to be escrowed with Landlord's mortgagee as a basis for its estimate of the monthly installments due from Tenant hereunder. In such circumstances, as soon as shall be reasonably practicable following each calendar year during the Term, Landlord shall furnish Tenant with a written statement of the actual amount of Taxes for such year. If the total amount paid by Tenant under this Section for any calendar year during the Lease Term shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within thirty (30) days after demand therefor by Landlord; and if the total amount paid by Tenant hereunder for any such calendar year shall exceed such actual amount due from Tenant for such calendar year, such excess shall be applied by Landlord to the next accruing payment of Taxes due from Tenant or, at Landlord's option, to any other charges payable by Tenant. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Section 9.03. Tax Contests. Tenant, at its sole cost and expense, shall have the right to protest or otherwise contest the amount, enforceability or legality of any tax, assessment or other charge which it is obligated to pay, and to make application for the reduction or refund thereof, or of any assessment upon which the same may be based. Landlord shall, at the request of Tenant, execute or join in the execution of any reasonable instruments or documents necessary in connection with such contest or application, but Landlord shall incur no cost or obligation thereby. If Tenant shall make any such protest, contest or application, it will prosecute the same with reasonable diligence and continuity, and, after final determination thereof, will promptly pay the amount of any such tax, assessment, or charge as so determined, together with any interest, penalties and costs which may be payable in connection therewith. Tenant agrees to keep the Landlord apprised of the status of any such contest proceedings. Tenant agrees that any compromise, settlement or discharge of any such proceedings shall be subject to Landlord's prior written approval, not to be unreasonably withheld or delayed, and conditioned upon and subject to the option of Landlord to take over such proceedings prior to the settlement or discharge thereof. In the event Landlord takes over such proceedings Tenant shall be entitled to the full benefit of such compromise or settlement of any contest with respect to the Land and Building after payment of Landlord's reasonable expenses. Tenant shall nevertheless immediately make any payment necessary to protect the Premises or any part thereof from foreclosure of any lien resulting from any Taxes which Tenant may elect to contest. Tenant covenants to pay all interest and penalties on deferred payments incurred by Tenant in contesting, resisting or appealing Taxes. Notwithstanding the foregoing, Tenant shall promptly pay all Taxes if at any time the Premises or any part thereof shall then be subject to forfeiture in the succeeding thirty (30) days, or if Landlord shall be subject to any criminal liability, fines or penalties arising out of the non-payment thereof. Tenant shall be entitled to reimburse itself for all costs and expenses incurred in connection with such contest or appeal out of any tax savings actually realized and shall be entitled to receive the benefit or retain all other tax rebates, refunds, reductions or savings.

Section 9.04. Taxes on Improvements, Fixtures and Personal Property. Tenant shall be liable for all taxes on or against the Building, its property, trade fixtures and equipment, including, but not limited to, shelves, counters, vaults, wall safes, partitions, fixtures, furniture, machinery, refrigerators, and heating, ventilating, and air conditioning equipment placed by Tenant in or about the Premises, or taxes on Tenant's right to occupy the Premises. Tenant shall also be responsible for the payment of any taxes assessed against any Rent or Additional Rent payable by Tenant under this Lease, excluding Landlord's income taxes, or upon Tenant's sales made at or from the Premises.

ARTICLE 10

UTILITIES AND SERVICES

Tenant shall pay when due all costs, charges, deposits and assessments related to the hook-up, furnishing, consumption, maintenance and installation of water, water pressure, gas, electricity, fuel, light, heat, power, telephone, sanitary and storm sewer, and any other utilities or services (collectively, "Utilities") attributable to or servicing the Premises, at the point of connection with the Building on the Premises, except as specifically provided for herein. Landlord shall be responsible for the maintenance and repair of all lines, pipes and systems outside of the Building as part of Common Area Costs, except for any repairs required due to the negligent or otherwise tortious acts or omissions of Tenant, its agents, employees and contractors and except for those portions of any lines, pipes and systems which have been installed or materially altered by Tenant, its agents, contractors and employees, which portions shall be maintained, repaired and replaced by Tenant at its expense. Landlord shall have no liability to Tenant or any other party for any inadequacy, cessation, or interruption of any Utilities, excluding interruption of Utilities resulting from the negligence or willful acts of Landlord, its agents or employees. In no event is Landlord required to offer, maintain or install any security services or devices at the Premises and Tenant shall be responsible for providing and maintaining all necessary security measures at the Premises considering the Permitted Use at Tenant's sole cost and expense.

ARTICLE 11

MAINTENANCE AND REPAIRS

Section 11.01. Maintenance and Repairs. (a) Except as provided in Article 15, from and after the Commencement Date, Landlord's repair obligations with respect to the Premises shall be limited to repairing and maintaining, as part of Common Area Costs, the areas beyond the Building, including the drive-thru lane and planters abutting the Building but excluding Tenant's drive-thru windows and conduits and signage for Tenant's reader boards; provided, however, that Landlord shall not be required to make any such repairs occasioned by the act or omission of Tenant, its agents, employees, licensees or contractors or which are otherwise expressly made Tenant's responsibility under Article 10 above. Landlord shall not be required to make any other improvements or repairs of any kind upon the Premises and appurtenances. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair, and Landlord's obligation to repair as set forth in this section is conditioned upon receipt by Landlord of such written notice. Landlord's obligation to repair as set forth in this Section is also conditioned upon Tenant not then being in default under this Lease.

(b) Tenant shall keep the Building in good and safe condition, and Tenant shall be responsible for all repairs and replacements, structural and/or nonstructural, foreseen and unforeseen, including, but not limited to, the interior and exterior (except as otherwise expressly set forth herein) of the Building, the foundation, floors, walls and roof, all windows, doors, and openings, all electrical, heating, utility,

plumbing, septic or sewage disposal and air conditioning and other equipment, facilities or systems within the Building or otherwise exclusively serving the Building (including portions outside the Building and up to Common Area mains, and in particular the grease trap exclusively serving the Building, which shall be inspected and serviced quarterly), required to keep the Building and such facilities in good and safe condition. Tenant shall replace any glass which may be damaged or broken. Tenant shall also make all necessary structural and/or non-structural repairs, replacements and alterations to the interior and exterior of the Building required by any governmental, state, county, or local authority.

Section 11.02. Landlord's Self-Help Right. If Tenant shall fail to make any repairs which Tenant is obligated to make within thirty (30) days after written notice of the necessity thereof from Landlord, or such lesser time as may be required by any governmental authority or if Tenant shall fail to make any repairs of an emergency nature (after Landlord shall have given Tenant reasonable written notice thereof, if any, as may be feasible under the circumstances), Landlord may, at its option, perform same and any amounts so expended by Landlord shall be paid by Tenant as Additional Rent with the next succeeding installment of Minimum Rent, together with interest thereon at the Default Rate. However, if the non-monetary default cannot with due diligence be cured prior to the expiration of thirty (30) days from the date of Landlord's receipt of the notice provided for above, and if Tenant commences within thirty (30) days after said date to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then Landlord shall not have the right to declare this Lease terminated by reason of such default and shall not have the right to make such repairs.

ARTICLE 12

ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Section 12.01. Permitted Alterations. Except in the case of emergency, where Tenant is authorized to take reasonable steps to prevent damage or destruction but shall give Landlord such notice thereof, prior to or concurrent with such steps, as shall be reasonably practicable under the circumstances, no alterations or additions which are structural, exterior (other than those which are purely decorative) or which materially affect the Building's electrical, HVAC, plumbing or mechanical systems shall at any time be made by or at the instance of Tenant without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, provided that any consent to any request by Tenant to perform any work at the Premises that would impair the view corridor available to any other tenant space at the Shopping Center from the adjoining public roads, such as adding height to the Building or expanding the footprint of the Building, may be given or withheld by Landlord in its sole and absolute discretion. Tenant may complete any other alterations, additions or improvements without the Landlord's consent, provided that the costs of any such alterations, additions or improvements do not exceed \$25,000.00 in any one instance. All work, repairs, and/or alterations, including, without limitation, Tenant's Work and other Improvements ("Tenant's Changes") shall be done in a good and workmanlike manner, with first class new materials, in compliance with any applicable governmental rules and regulations, and the cost thereof shall be paid by Tenant in cash or its equivalent (subject to any reasonable contractual retainage) so that the Premises shall at all times be free of liens for labor or materials supplied or claimed to have been supplied to the Premises. Upon the expiration or sooner termination of the Term, title to Tenant's Work and other Tenant's Changes (not removed by Tenant pursuant to Section 12.03 below) shall vest in and become the full and absolute property of Landlord, subject to Section 12.03 below. If Tenant is in default hereunder and is dispossessed by Landlord pursuant to summary proceeding or other legal process, or Tenant vacates the Premises, then and in such event, any property, equipment and fixtures remaining in the Premises, not encumbered by Tenant's financing, shall be deemed, at the option of Landlord, to be abandoned.

Section 12.02. Requirements. With respect to any Tenant's Change requiring Landlord's consent, Tenant shall, at least ten (10) days prior to commencing any such change, deliver to Landlord a statement describing with precision and in detail the proposed change. All Tenant's Changes shall be performed in accordance with the following terms and conditions:

(i) Tenant shall obtain all necessary permits and approvals required under applicable Laws for the performance of Tenant's Changes;

(ii) Tenant shall perform Tenant's Changes in a good and workmanlike manner and, if such changes require Landlord's consent, materially in accordance with the drawings and specifications previously approved by Landlord, which approval shall not be unreasonably withheld or delayed, subject, however, to the provisions of Article 6 hereof if in respect of the initial construction of the Building and other Improvements;

(iii) Tenant shall perform Tenant's Changes only with licensed and reputable contractors;

(iv) Tenant's contractor shall, at its sole cost and expense, carry, or cause to be carried, (i) worker's compensation insurance in statutory limits covering all persons employed in connection with Tenant's Changes, (ii) personal injury liability and property damage insurance in the aggregate sum of One Million Dollars (\$1,000,000) per occurrence, (iii) Builder's risk insurance, completed value form with replacement cost endorsement, in an agreed amount sufficient to avoid any coinsurance; and (iv) such other insurance and in such amounts, as Landlord shall deem reasonably necessary;

(v) During Tenant's Changes, Tenant shall obtain waivers of lien from all contractors, laborers and materialmen, and shall discharge or bond, in accordance with the provisions of Section 12.04, any liens filed against the Premises or the Shopping Center;

(vi) Tenant shall perform Tenant's Changes in such a manner as shall not interfere with the construction, use or enjoyment of the remainder of the Shopping Center;

(vii) If Tenant shall need to make any roof penetrations whatsoever to the Building, Tenant shall utilize Landlord's roofing contractor; and

(viii) Tenant shall hold harmless, indemnify and defend Landlord from and against any and all Liabilities (as hereinafter defined) arising from or relating to Tenant's Changes.

Section 12.03. Removal. All Tenant's Changes (with the exception of trade fixtures, furnishings or equipment) shall be deemed to have attached to the leasehold. Upon the expiration or earlier termination of this Lease, Tenant or Tenant's designee shall not remove any of such Tenant's Changes except that trade fixtures, furnishings and equipment installed by Tenant shall be removed by Tenant provided that Tenant repairs any damage to the Premises or the Shopping Center caused by such removal.

Section 12.04. Liens. Tenant shall pay promptly all persons furnishing labor or materials in connection with Tenant's Changes. Tenant shall not suffer or permit any liens to be filed against the Premises or the Shopping Center or any portion thereof or against Tenant's leasehold estate therein, by reason of any work, labor, material or services done for, or supplied to or claimed to have been done for or supplied to Tenant or anyone claiming by, through or under Tenant. If any such lien shall be

filed, Tenant shall, within thirty (30) days after notice from Landlord of the filing thereof, either cause such lien to be vacated and cancelled of record or, if Tenant in good faith determines that such lien should be contested, furnish such security, by surety bond or otherwise, as may be necessary or prescribed by Laws (as hereinafter defined) to release the lien and prevent any foreclosure of such lien during the pendency of such contest. If Tenant shall fail to vacate or cause the release of any lien within thirty (30) days after notice from Landlord of the filing thereof, in addition to any other right or remedy of Landlord resulting from Tenant's default, Landlord may, but shall not be obligated to, vacate or release such lien either by paying the amount claimed to be due or by giving security or in such other manner as may be prescribed by Laws. Tenant shall pay to Landlord, on demand, as Additional Rent hereunder, all reasonable sums incurred by Landlord in connection therewith, including, without limitation, Landlord's costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date incurred until the date paid.

ARTICLE 13

SIGNS

Tenant shall not place, install or maintain any sign upon or outside the Building until approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such sign conforms to all applicable Laws and would not require the obtaining of a variance, and in the case of the freestanding (pylon) sign, is of the same size and in the same location as the existing tenant's sign. Tenant shall, at its expense, apply for and obtain all permits necessary in connection with any signs desired by Tenant, including building signage, but this Lease shall not be contingent upon obtaining any permits for signage. Notwithstanding anything contained herein to the contrary, in no event shall any signage installed by Tenant at the Premises contain any flashing lights or be erected on the roof of any building constructed at the Premises. Tenant shall be solely responsible for furnishing and installing its signs and for all costs, utilities, maintenance and repairs respecting its signs, including the cost of electricity for illuminating Tenant's signs. Upon vacating the Premises, Tenant shall remove all of its signage and repair any damage to the Premises and the Building caused by such removal at Tenant's expense. Any sign placed or maintained in violation of this Article may be removed by Landlord upon five (5) business days prior notice and without such removal constituting a breach of this Lease or entitling Tenant to claim damages on account thereof.

ARTICLE 14

INSURANCE AND INDEMNITY

Section 14.01. Tenant's Insurance. Tenant, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term the following insurance coverages with respect to the Premises:

(i) Commercial general liability insurance, with contractual liability endorsement, with a combined single limit per occurrence for personal injury and property damage (including water damage and sprinkler leakage liability) of not less than Two Million Dollars (\$2,000,000);

(ii) "Special Form" (formerly known as "all-risk") property insurance insuring loss of or damage to the Building and all buildings systems and equipment and all Tenant's personal property located therein, including, without limitation, Tenant's goods, trade fixtures, equipment and inventory, written at 100% of replacement cost (exclusive of footings, foundations and underground utilities) with an amount sufficient to avoid coinsurance;

(iii) during any period of construction or renovation, Builder's Risk insurance as set forth in Article 12;

(iv) Boiler and Pressure Vessel Insurance on all of Tenant's equipment, parts thereof and appurtenances attached or connected to the Premises which by reason of their use or existence are capable of bursting, erupting, collapsing or exploding, in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00) for damage to property resulting from such perils;

(v) Worker's Compensation insurance as required by Laws; and

(vi) Such other insurance as reasonably requested by Landlord from time to time.

Section 14.02. Form. The insurance policies referred to in Section 14.01 (other than subsection (v) therein) shall list the Landlord and Tenant as named insureds or additional insureds to the extent their interests exist and shall also add other additional insureds, as their interests may appear. In regard to the building itself, Tenant, Landlord and Landlord's mortgagee shall be named as loss payees and mortgagee, respectively, under the policies referred to in clauses (ii), (iii) and (iv) (the "Fire Policies"). Proceeds payable under the policies referred to in clauses (ii), (iii), and (iv) shall be payable solely to Tenant unless this Lease is terminated as provided for in Article 15, in which event the proceeds shall be distributed pursuant to Section 15.01 (b). Each insurance policy shall be written in the name of Tenant, and shall name (except the worker's compensation policy) Landlord and any mortgagees as additional insureds to the extent that their interests appear. Each policy shall be written by a nationally recognized insurance company with a Best's Rating of A-VIII or better, or an equivalent rating by a similar or successor authority, and legally licensed to do business in the State of Maine. The coverage limits of each policy shall be increased from time to time as reasonably required by Landlord.

Section 14.03. Special Clauses. Each such policy shall contain the following endorsements, provisions and/or clauses: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance (this provision shall be applicable to Tenant's property insurance policy only); and (ii) a provision that the insurer will not cancel, change in any material or adverse respect or fail to renew the coverage provided by such policy without first giving Landlord and all additional insureds at least thirty (30) days' prior written notice (a statement in such policy or certificate that the Company "will endeavor to" give Landlord such notice shall be absolutely unacceptable for purposes of satisfying the foregoing requirement).

Section 14.04. Delivery of Policies. Tenant shall deliver to Landlord on or before the Commencement Date and thereafter at least fifteen (15) days prior to the expiration of each policy, an insurance certificate evidencing each policy required under this Lease to be procured by Tenant, together with evidence satisfactory to Landlord of full payment of the premiums therefor. Tenant shall deliver to Landlord on or before the Delivery Date certificates from Tenant's general contractor evidencing the insurance required under Section 14.01 clauses (i) and (iii) above (with Landlord to be named as an additional insured, as its interests may appear, on such policies).

Section 14.05. Landlord's Right to Obtain Insurance on Tenant's Behalf. If Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified in this Article 14, any insurance required under this Lease, or fails to carry any other insurance required by Laws, if such failure

is not cured by Tenant within ten (10) days of written notice thereof by Landlord, Landlord may (but without obligation to do so) at any time or from time to time, and without further notice, procure such insurance and pay the premiums therefor on Tenant's behalf, in which event Tenant shall pay to Landlord, as Additional Rent, all reasonable sums so paid by Landlord and any reasonable costs or expenses incurred by Landlord in connection therewith, together with interest thereon at the Default Rate from the date incurred until the date paid.

Section 14.06. Intentionally Deleted

Section 14.07. Non-Liability of Landlord. Landlord shall not be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, nor shall the aforesaid parties be liable for any damage to property of Tenant or of others entrusted to employees of Landlord nor for loss of or damage to any such property by theft or any other reason whatsoever, including, without limitation, damage caused by or resulting from bursting, stoppage, leaking or freezing of water, gas, sewer or steam pipes.

Section 14.08. Indemnification by Tenant. Except for Liabilities caused by the negligent or tortious acts or omissions of Landlord, its agents, employees or contractors, Tenant shall indemnify, hold harmless and defend Landlord, its officers, directors, stockholders, beneficiaries, partners, representatives, agents and employees, from and against any and all Liabilities arising from or relating to: (i) any occurrence in, upon or at the Premises unless and only to the extent caused by the negligence of Landlord, its agents, employees and contractors, or (ii) the occupancy or use of the Premises or any part thereof by Tenant, its subtenants, licensees and concessionaires. If Landlord or any other party so indemnified shall, without fault, be made a party to any litigation commenced by or against Tenant or otherwise relating to the Premises, then Tenant shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by such party in connection with such litigation.

Section 14.09. Indemnification by Landlord. Except for Liabilities caused by the negligent or tortious acts or omissions of Tenant, its agents, employees or contractors Landlord shall indemnify, hold harmless and defend Tenant, its officers, directors, stockholders, beneficiaries, partners, representatives, agents and employees, from and against any and all Liabilities arising from or relating to: any occurrence in, upon or at the Shopping Center (inclusive of the Premises but exclusive of Liabilities arising from or relating to occurrences within the Building or on the sidewalks surrounding the Building) unless and only to the extent caused by the negligence of Tenant, its agents, employees and contractors. If Tenant or any other party so indemnified shall, without fault, be made a party to any litigation commenced by or against Landlord, or otherwise relating to the Shopping Center, then Landlord shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by such party in connection with such litigation.

Section 14.10. Waiver of Direct Action and Subrogation. Landlord and Tenant hereby release each other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage specifically insured against or required by the terms hereof to be insured or self-insured against by such party, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

Section 14.10. Survival. This Article 14 shall survive the expiration or earlier termination of this Lease.

ARTICLE 15

DAMAGE BY FIRE OR OTHER CASUALTY

Section 15.01. Landlord's Restoration. If the Premises shall be partially or totally damaged or destroyed by fire or other casualty (øCasualtyø), Tenant shall immediately notify Landlord of the details of such damage or destruction and, if this Lease is not terminated pursuant to the provisions of Section 15.03 or 15.04, Landlord shall promptly repair and restore the Premises to substantially the condition existing on the Possession Date, provided, however, that Landlord shall be obligated to perform such restoration only to the extent of the net insurance proceeds therefor paid to Landlord under Landlord's property damage insurance policy covering the Premises or the Shopping Center. In no event shall Landlord be required to repair or replace Tenant's Work or other Tenant's Changes (including Tenant's trade fixtures), or Tenant's merchandise, furnishings or equipment.

Section 15.02. Tenant's Restoration. If this Lease is not terminated by Landlord or Tenant pursuant to the provisions of Section 15.03 or 15.04, within ninety (90) days of the completion of Landlord's restoration work, Tenant shall, at Tenant's sole cost and expense, repair and restore Tenant's Changes (including Tenant's trade fixtures), and Tenant's merchandise, furnishings and equipment in a manner and to a condition at least equal to that existing prior to the Casualty and reopen the Premises for business with the public.

Section 15.03. Landlord's Termination Right. If (i) at any time during the Term more than thirty percent (30%) of the gross leasable area of the Building shall be damaged or destroyed, or (ii) during the last two (2) years of the Term more than twenty percent (20%) of the full insurable value of the Premises shall be damaged or destroyed, or (iii) if at any time during the Term all or any part of the Building or the Premises, is damaged or destroyed by the occurrence of any risk not fully insured under Landlord's property damage insurance policy carried with respect to the Premises or the Shopping Center, then Landlord may terminate this Lease upon giving ten (10) days' notice thereof to Tenant, such notice to be given within ninety (90) days of the date of the Casualty.

Section 15.04. Tenant's Termination Right. If at any time during the Term (i) more than thirty percent (30%) of the gross leasable area of the Building shall be damaged or destroyed, or (ii) more than twenty (20%) of the gross leasable area of the Building has been damaged or destroyed during the last twenty-four (24) months of the Term, then Tenant may terminate this Lease by giving ten (10) days' notice thereof to Landlord, such notice to be given within sixty (60) days of the date of the Casualty.

Section 15.05. Abatement of Rent. If the Premises shall be partially or totally damaged by a Casualty, Minimum Rent and all Additional Rent shall be abated in proportion to the gross leasable area of the Premises rendered untenable by the Casualty and thereafter actually not used by Tenant for the conduct of its business, such abatement to commence on the date of the Casualty and to continue until the earlier to occur of (i) thirty (30) days after the date of substantial completion of Landlord's restoration work as set forth in Section 15.01, or (ii) the date Tenant shall occupy all or such respective portion of the Premises for the conduct of its business. No abatement shall occur if Tenant continues to use the damaged area or if the casualty is the result of Tenant's gross negligence or willful acts or misconduct. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business, or annoyance arising from or relating to any Casualty or restoration work relating thereto unless caused by the gross negligence or willful acts or misconduct of Landlord.

Section 15.06. Express Agreement. The provisions of this Article 15 shall be considered an agreement of the parties governing in the event of any damage to or destruction of the

Premises by Casualty, and any Laws now or hereinafter in effect providing for such a contingency in the absence of an express agreement shall have no application.

ARTICLE 16

EMINENT DOMAIN

Section 16.01. Termination upon Taking. If the whole of the Premises shall be taken by any governmental authority under the power of condemnation, eminent domain, or expropriation, or in the event of a conveyance in lieu thereof, the Term of this Lease shall cease as of the day possession shall be taken by such governmental authority. If less than the whole of the Premises shall be so taken or conveyed, and as a result thereof the Premises are no longer reasonably usable for the business being conducted thereon at the time of the taking, including any taking which (A) the part so taken includes the building on the Land or any part thereof, or (B) the part so taken shall remove from the Land twenty-five percent (25%) or more of the total parking area thereof or more than five (5) parking spaces for automobiles, whichever is greater, or (C) such partial taking shall impair the use of or access to the drive-in window, pick-up window or drive-in lane, or (D) such partial taking shall result in cutting off direct access from the Land to any access drive, adjacent public street or highway, or results in the permanent closing or relocation of any street adjoining the Land to which there is access to and from the Land or materially impairs or adversely affects Tenant's use of the Land and Landlord is unable to promptly provide Tenant with a suitable alternate means of access, then Tenant shall have the right to terminate this Lease upon notice to Landlord, effective as of the day possession shall be taken by such governmental authority. If this Lease is so terminated, Rent shall be prorated as of the date that possession must be surrendered to the condemning authority. Any dispute as to whether there shall occur a taking permitting a right of termination of this Lease shall be resolved by arbitration conducted in accordance with the provisions of Article 34 hereof.

Section 16.02. Proceeds Application for Restoration. In the event of a taking which shall not result in the termination of this Lease, the net award or payment, if any, (the "Net Restoration Fund") shall be received and used by Landlord to restore the Premises. If the Net Restoration Fund shall be insufficient to pay the entire cost of such restoration, either Tenant or Landlord may terminate this Lease. In the event that the neither party terminates this Lease, Landlord shall pay and be responsible for the deficiency. Following such taking, the annual Rent shall be reduced (as of the date of such taking) based on the number of square feet of the Land taken, unless Landlord shall make available to Tenant substantially equivalent land in size and functionality to the portion of the Premises so taken (in Tenant's reasonable business judgment) and abutting the Premises as affected by such Taking.

Section 16.03. Damage Claims. In the event that this Lease shall be terminated in accordance with Section 16.01 or 16.02, Landlord shall be entitled to receive that portion of any and all awards necessary to compensate it for the present value of the rents which it would have received in the future and for the present value of its reversionary interest, and notwithstanding the termination of this Lease, Tenant shall be entitled to that portion of any and all awards necessary to compensate it for the value of Tenant's Work and other Tenant's Changes and for removal and relocation expenses.

Section 16.04. Disputes. Any dispute in connection with this Article 16 shall be resolved by arbitration conducted in accordance with the provisions of Article 34 hereof.

ARTICLE 17

ASSIGNMENT AND SUBLETTING

Section 17.01. No Assignment or Subletting Except Permitted Transfers. Except as otherwise provided in this Article 17, Tenant shall not assign or in any manner transfer, mortgage or encumber this Lease or any estate or interest therein, nor lease or sublet the Premises or any part thereof or any right or privilege appurtenant thereto, nor allow anyone to conduct business at, upon or from the Premises (whether as a concessionaire, franchisee, licensee, permittee, subtenant, department operator or otherwise) or to come in, by, through or under it, in all cases either by the voluntary or involuntary act of Tenant or by operation of law or otherwise. Except in the case of sales or transfers among existing shareholders or members of Tenant on the date hereof or sales or transfers to their children, (öPermitted Transfersö) or redemption of stock or membership interest by the Tenant limited liability company, the sale, issuance or transfer of any voting capital stock or membership interest of Tenant, or of any corporate entity which directly or indirectly controls Tenant (if Tenant or such controlling corporate entity is a corporation the stock of which is not publicly traded), or any interest in any non-corporate entity which directly or indirectly controls Tenant, which results in a change in the direct or indirect voting control of Tenant, shall be deemed to be a prohibited assignment of this Lease within the meaning of this Section. If Tenant is a partnership, trust or unincorporated association, then the sale, issuance or transfer of a controlling interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership, trust, unincorporated association, or corporation which directly or indirectly controls Tenant, or the transfer of any portion of any general partnership or managing interest in Tenant or in any such entity, other than Permitted Transfers, shall be deemed to be a prohibited assignment of this Lease within the meaning of this Section. Any assignment, subletting, transfer or other act prohibited under this Section shall be null and void and constitute a default under this Lease.

Section 17.02. Tenant's Request to Assign or Sublet. If Tenant desires to assign this Lease or sublet all or a portion of the Premises other than pursuant to a Permitted Transfer, Tenant shall, at least thirty (30) days prior to the effective date of such assignment or subletting, deliver to Landlord the name, address and trade name of the proposed transferee, a detailed description of its proposed use, a copy of a current financial statement for such transferee, and such other information concerning the proposed transferee as Landlord shall reasonably require (öTenant's Noticeö).

Section 17.03. Landlord's Consent. Upon Tenant's compliance with the provisions of Section 17.02, Landlord's consent shall not be withheld to the proposed assignment or subletting, provided and upon condition that:

(i) the assignee or sublessee shall have a financial condition reasonably acceptable to Landlord;

(ii) the assignee or sublessee shall have a business reputation at least comparable to that of Tenant's business reputation on the date hereof;

(iii) the assignee or sublessee proposes to use the Premises for the Permitted Use or for the sale of retail goods as permitted by Laws that (a) would not violate or conflict with any restrictions or "exclusives" then affecting the Shopping Center and (b) in Landlord's reasonable opinion would be appropriate for a Shopping Center such as the Shopping Center, given the tenant mix then existing at the Shopping Center;

(iv) The proposed assignee or sublessee is not an entity who is then a tenant in the Shopping Center or an entity with which Landlord is then negotiating or within six (6) months has

negotiated for space in the Shopping Center;

(v) Tenant shall not be in default under this Lease beyond the applicable cure period either at the time Landlord's consent to such assignment or subletting is requested or on the date of commencement of the term of such proposed sublease or on the effective date of the proposed assignment; and

(vi) If a subletting, the subletting is made subject to all of the obligations of Tenant under this Lease and, without limiting the generality of the foregoing, the sublease specifically provides that there shall be no further subletting of the sublet premises or an assignment thereof other than in strict accordance with the terms of this Article 17.

Section 17.04. Approved Sublettings. Tenant shall furnish Landlord with a copy of an executed counterpart of each sublease (other than a permitted sublease under Section 17.01(i)) within ten (10) days after the date of its execution, which copy may have the rent and other financial terms redacted therefrom. Tenant shall furnish Landlord with a copy of an executed counterpart of a sublease described in Section 17.01(i) within fifteen (15) days after Landlord's written request therefore but such sublease may have the rent and other financial terms redacted therefrom. No sublease shall be valid and no subtenant shall take possession of the Premises or any part thereof until such executed counterpart has been delivered to Landlord. The form of sublease shall be reasonably acceptable to Landlord and shall provide for a sublease term ending not later than one (1) day prior to the expiration date of the Term. Such sublease shall further provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of a termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, succeed to all of the right, title and interest of Tenant, as sublessor under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, provided, however, that Landlord shall not (i) be liable for any previous act or omission of Tenant under such sublease, (ii) be subject to any offset not expressly set forth in such sublease which theretofore accrued to such subtenant against Tenant, or (iii) be bound by any previous prepayment of more than one month's fixed rent under such sublease.

Section 17.05. Approved Assignments. Tenant shall furnish Landlord with a counterpart of each assignment within ten (10) days of the date of its execution. No assignment shall be binding upon Landlord and no assignee shall take possession of the Premises or any part thereof unless Tenant shall, concurrent with the delivery of an executed counterpart of such assignment, deliver to Landlord an agreement executed by the assignee, in appropriate form for recording, whereby such assignee agrees unconditionally to be bound by and to perform all of the obligations of Tenant under this Lease arising after the date of the assignment and further agrees that notwithstanding such assignment, the provisions of this Article 17 shall continue to be binding upon such assignee with respect to all future assignments and transfers.

Section 17.06. Landlord's Costs. Except with regard to a Permitted Transfer, Tenant shall pay, as Additional Rent, Landlord's reasonable out-of-pocket costs incurred in connection with any subletting or assignment proposed by Tenant, whether or not consented to by Landlord, including, without limitation, reasonable attorneys' fees and the costs of credit checks and reports, which costs shall not exceed \$2,500 provided that neither the Tenant nor the transferee shall request modifications to this Lease in connection with such transfer. Such Additional Rent shall be payable by Tenant within ten (10) days after Landlord's demand therefor.

Section 17.07. Tenant Remains Liable. Notwithstanding any assignment of this Lease

or subletting of all or any portion of the Premises, Tenant shall remain fully liable for the payment of the Rental due and to become due under this Lease and the terms, provisions, and conditions contained in this Lease on the part of Tenant to be performed. The consent by Landlord to an assignment or subletting shall not in any way be construed to relieve Tenant from its obligation to obtain the consent in writing of Landlord to any further assignment or subletting. If Tenant assigns, transfers, mortgages or encumbers this Lease or any interest therein or sublets all or any portion of the Premises in violation of the provisions of this Article 17, or if the Premises are occupied by anyone other than Tenant, Landlord may collect rent from any such assignee, sublessee or anyone who claims a right to this Lease or who occupies the Premises, and Landlord may apply the net amount collected to the Rental, and no such collection shall be deemed a waiver by Landlord of any of the terms, provisions, and conditions contained in this Article 17 nor an acceptance by Landlord of any such assignee, sublessee, claimant or occupant as Tenant, nor be deemed to release Tenant from the further performance of all of Tenant's obligations under this Lease (except the money collected shall be credited against rent obligations). If Landlord shall decline to give its consent to any proposed assignment or subletting and acts reasonably in doing so, Tenant shall indemnify and hold harmless and defend Landlord from and against any Liabilities arising from or relating to any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

ARTICLE 18

CONDITIONS OF LIMITATION

Section 18.01. Bankruptcy or Insolvency of Tenant. To the extent permitted by Laws, this Lease, and the Term and estate hereby granted, are subject to the limitation that, whenever Tenant shall make an assignment for the benefit of creditors, or shall consent to, or acquiesce in, the appointment of a liquidator, receiver, trustee, or other custodian for itself or for the whole or any part of its properties or assets, or shall commence a voluntary case for relief under the United States Bankruptcy Code ("Bankruptcy Code") or file a petition or take advantage of any bankruptcy or insolvency act or applicable law of like import, or whenever an involuntary case under the Bankruptcy Code shall be commenced against Tenant and which the Tenant does not discharge within sixty (60) days, then, Landlord (a) at any time after Landlord learns of any such event, or (b) if such event occurs without the acquiescence of Tenant, at any time after the event continues for sixty (60) days, may give Tenant a notice of intention to end the Term upon the expiration of ten (10) days from the date of service of such notice of intention, and upon the expiration of such ten (10) day period, this Lease and the Term and estate hereby granted shall terminate with the same effect as if such date were the Expiration Date, provided, however, that Tenant shall remain liable for damages as provided in Article 20.

Section 18.02. Rights and Obligations Under the Bankruptcy Code. Landlord and Tenant agree that this Lease is a "Shopping Center Lease" and is a lease of premises "within a Shopping Center" within the meaning of Section 365 of the Bankruptcy Code. Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and/or as debtor in possession, and any trustee who may be appointed, agree to perform each and every obligation of Tenant under this Lease, including, without limitation, the manner of "operation" as provided in Article 7, until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court. If this Lease is assumed, whether by Tenant or any trustee or by any assignee or successor to Tenant or such Trustee (the "Assuming Entity"), in addition to any other conditions or obligations imposed upon the Assuming Entity, shall be the following obligations and conditions:

(i) the cure of any monetary defaults and the reimbursement of any pecuniary loss of Landlord, such cure to be made immediately upon entry of a court order providing for assumption by and/or assignment to the Assuming Entity; (ii) the deposit of a sum equal to one (1) month's Rent and other charges, to be held as security for the performance of Tenant's obligations under this Lease; (iii) the use of the Premises for the Permitted Use and the quality, quantity and/or lines of merchandise of any goods or services required to be offered for sale remaining substantially unchanged; (iv) the payment of Tenant's Proportionate Share of any Taxes and Common Area Maintenance Cost which may then be due or which may thereafter become due pursuant to the provisions of Articles 8 or 9; (v) the Assuming Entity demonstrates in writing that it has sufficient background, including, without limitation, substantial retailing experience and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease, and meets all other reasonable criteria of Landlord, as did Tenant at the time of the execution of this Lease; (vi) the prior consent has been obtained of any mortgagee or holder of a deed of trust to which this Lease has been assigned as collateral security; and (vii) no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption as Landlord shall reasonably request.

Section 18.03. Other Conditions of Limitation. This Lease, and the Term and estate hereby granted, are subject to the further limitations that:

(a) If Tenant shall fail to pay on the day same is due and payable any Rent and any such Rental shall remain unpaid for ten (10) days or thirty (30) days in the case of Additional Rent, after Landlord shall have given a written notice to Tenant specifying Tenant's failure to do so; provided, however, that Landlord shall not be required to give notice of default in the payment of Rental more than two (2) times during any calendar year and on the third (3rd) and any subsequent occasion in any calendar year that Tenant shall fail to pay any Rental within ten (10) days of the date due, Landlord may exercise the rights hereinafter provided in the event of Tenant's default without further notice; or

(b) If Tenant shall do or permit anything to be done, whether by action or inaction, contrary to any of Tenant's obligations or covenants under this Lease, and if such situation shall continue and shall not be remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant a written notice specifying the same, or in the case of a happening or default which cannot with due diligence be cured within a period of thirty (30) days and the continuance of which for the period required for cure will not subject Landlord to the risk of criminal liability or termination of any superior lease or foreclosure of any superior mortgage or deed of trust, if Tenant shall not (i) within such thirty (30) day period advise Landlord of Tenant's intention to duly institute all steps necessary to remedy such situation, (ii) duly institute within such thirty (30) day period, and thereafter diligently prosecute to completion all steps necessary to remedy the same, and (iii) complete such remedy within such time after the date of the giving of such notice to Landlord as shall reasonably be necessary;

Then, in any of the foregoing events, Landlord may give Tenant a notice of intention to end the Term at the expiration of ten (10) days from the date of such notice and, upon the expiration of such ten (10) day period, this Lease and the Term and estate hereby granted shall expire and terminate with the same effect as if such day were the Expiration Date, provided, however, that Tenant shall remain liable for damages as provided in Article 20.

ARTICLE 19

RE-ENTRY BY LANDLORD

Section 19.01. Re-entry. If any of the events described in Section 18.01 or subparagraphs (a) or (b) of Section 18.03 shall occur beyond the applicable cure period, whether or not Landlord has elected to terminate this Lease, or upon the Expiration Date, Landlord or Landlord's agents and employees may immediately or at any time thereafter re-enter the Premises or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law (each of which shall be conducted through due process of law), without being liable to indictment, prosecution, or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises again as and of its first estate and interest therein. The word "re-enter" as used in this Article 19 is not restricted to its technical legal meaning. If this Lease is terminated under the provisions of Article 18, or if Landlord shall re-enter the Premises under the provisions of this Article 19 or in the event of the termination of this Lease or of re-entry, by or under any summary dispossession or other proceeding or action or any provision of Laws by reason of Tenant's default under this Lease, Tenant shall pay to Landlord the Rental payable by Tenant to Landlord through the date of such termination, or through the date of such recovery of possession, as the case may be, and shall also pay to Landlord damages as provided in Article 20.

Section 19.02. Other Remedies. In the event of a breach by Tenant of any of its obligations under this Lease beyond the applicable cure period, Landlord shall also have the right of injunction. The special remedies to which Landlord may resort under this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may lawfully be entitled at any time, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for in this Lease.

Section 19.03. Retention of Monies in Landlord's Possession. If this Lease is terminated under the provisions of Article 18, or if Landlord shall re-enter the Premises under the provisions of this Article 19, or in the event of the termination of this Lease or of re-entry, by or under any summary dispossession or other proceeding or action (each of which shall be conducted through due process of law) or any provision of Laws by reason of Tenant's default under this Lease, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance Rental, security, or otherwise, but such monies shall be credited by Landlord against any Rental due from Tenant at the time of such termination or re-entry or, at Landlord's option, against any damages payable by Tenant under Article 20 or pursuant to Laws.

ARTICLE 20

DAMAGES

Section 20.01. Measure of Damages. If this Lease is terminated under the provisions of Article 18, or if Landlord shall re-enter the Premises under the provisions of Article 19, or in the event of the termination of this Lease or of re-entry, by or under any summary dispossession or other proceeding or action or any provision of Laws by reason of Tenant's default under this Lease, Tenant shall pay to Landlord upon demand as damages, in a single lump sum; the total of:

- (a) all Rent and Additional Rent due and payable and unpaid under this Lease as of the date of Landlord's reentry, termination and/or dispossession by summary proceedings or otherwise;

- (b) all Additional Rent and damages payable pursuant to the provisions of Section 3.02 and 3.03 hereof;
- (c) all reasonable costs and expenses incurred by Landlord in connection with its termination of this Lease and/or recovery of possession of the Premises and/or in removing all persons and property therefrom and/or recovering from Tenant the Rental and damages specified in this Article 20 or any other sums and damages to which Landlord may be entitled under applicable Laws; and
- (d) all reasonable costs and expenses incurred by Landlord in curing any covenant or condition on the part of Tenant to be observed or performed under this Lease which Tenant shall have failed to perform as of the date of such termination or reentry absent termination.

In addition to the foregoing amounts, Tenant shall remain liable for and shall pay, on the days originally fixed under this Lease for the payment thereof, amounts equal to the installments of Rental reserved under this Lease as would, under the terms of this Lease, become due and payable if this Lease had not been terminated or Landlord had not reentered the Premises absent termination, less any net proceeds of any reletting after deducting all of Landlord's reasonable costs and expenses incurred in connection with such reletting of the Premises or any portion thereof for the whole or any part of the remainder of the then current Term or for a longer period (which reletting Landlord may do at its election, either in its name or as agent for Tenant), including, without limitation, brokerage and attorneys' fees in connection with any new lease, and reasonable costs of Landlord in repairing or altering the Premises for the new tenant and any reasonable tenant allowance or other concessions granted or paid by Landlord. The failure of Landlord to re-let the Premises or any part thereof (where Landlord makes commercially reasonable efforts to do so to the extent required under Maine law) shall not release Tenant or affect Tenant's liability for damage. If the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot basis (for equivalent space) shall be made of the rent received from such reletting and of the expenses of reletting. If the Premises or any part thereof be relet by Landlord for the unexpired portion of the Term or any part thereof, upon commercially reasonable terms, then the amount of rent reserved upon such reletting shall, prima facie, be the fair and reasonable rental value for the Premises, or part thereof, so relet during the term of the reletting. Suit or suits for the recovery of such deficiency or damages, or for a sum equal to any installment or installments of Rental payable under this Lease, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date on which the lease term hereof would have expired by its own terms had there been no such default by Tenant or no such termination or reentry absent termination. In no event shall Tenant be entitled to receive any excess of such net rents over the Rental payable by Tenant to Landlord under this Lease, nor shall Tenant be entitled, in any suit for the collection of damages pursuant to this Article 20 to a credit in respect of any net rents from a reletting except to the extent that such net rents are actually received by Landlord.

Section 20.02. No Limitation of Remedies. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the Expiration Date. Except to the extent stated elsewhere in this Lease, nothing herein contained shall be construed to limit or preclude recovery by Landlord of any sums or damages to which, in addition to the damages provided above, to which Landlord may lawfully be entitled by reason of Tenant's default under this Lease, including, without limitation, Landlord's right (if expressly existing under Maine law) to deliver notice to Tenant accelerating into a single lump sum the net present value of all Rental reserved under this Lease for the remainder of the Term. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for, and obtain, as liquidated damages by reason of the termination of this Lease or re-

entry into the Premises, an amount equal to the maximum allowed by any Laws in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than any of the sums referred to in Section 20.01.

ARTICLE 21

WAIVERS

Section 21.01. Waiver of Right to Jury Trial. Tenant and Landlord hereby waive trial by jury in any action, proceeding, or counterclaim brought by Landlord against Tenant or Tenant against Landlord, as the case may be, with respect to any matter whatsoever in connection with this Lease, or the use or occupancy of the Premises.

Section 21.02. Waiver of Right to Counterclaim. Tenant hereby waives any right to interpose any noncompulsory counterclaim in any action or proceeding for eviction or dispossession brought by Landlord in connection with this Lease.

ARTICLE 22

ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

Section 22.01. Estoppel Certificates. Each of Tenant and Landlord shall, without charge, at any time and from time to time, within twenty (20) days after receipt of written notice therefor from Landlord or Tenant, as the case may be, or from any mortgagee under any mortgage encumbering the Premises, deliver, in recordable form, a duly executed and acknowledged certificate or statement to the party requesting such certificate or statement or to any other person, firm or corporation reasonably designated, certifying: (a) that this Lease is unmodified and in full force and effect, or, if there has been any modification, that this Lease is in full force and effect as modified, and stating any such modification; (b) the Commencement Date; (c) where accurate, that the Rental is paid currently without any off-set or defense thereto; (d) the dates to which the Rental has been paid, and the amount of Rental, if any, paid in advance; (e) whether or not there is then existing any claim of Landlord's or Tenant's default under this Lease and, if so, the nature thereof; (f) that Tenant has no right or option to purchase the Premises, and (g) any other matters relating to the status of this Lease as shall be requested, provided that, in fact, such facts are accurate and ascertainable.

Section 22.02. Attornment. If any proceedings are brought for the foreclosure of, or in the event of the conveyance by deed in lieu of foreclosure of, or in the event of exercise of the power of sale under, any mortgage made by Landlord covering the Premises, or if Landlord sells, conveys or otherwise transfers its interest in the Premises or any portion thereof, or in the event the lessor under any superior lease shall succeed to Landlord's interests under this Lease, this Lease shall remain in full force and effect and Tenant hereby attorns to, and covenants and agrees to execute an instrument in writing reasonably satisfactory to the new owner and Tenant whereby Tenant attorns to such successor in interest and recognizes such successor as the Landlord under this Lease. The provisions of this Section are only applicable upon such attornment, whereupon this Lease shall continue in full force and effect as, or as if it were, a direct lease between the successor landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease, except that the successor landlord shall not:

- (a) be liable for any previous act or omission of Landlord under this Lease;
- (b) be subject to any offset not provided for in this Lease, which shall have theretofore accrued to Tenant against Landlord; and
- (c) be bound by any previous modification of this Lease not provided for in this Lease, or by any previous prepayment of more than one month's Minimum Rent, unless such modification or prepayment shall have been approved in writing by the lessor of such superior lease or the holder of such mortgage through or by reason of which the successor landlord shall have succeeded to the rights of Landlord under this Lease. Landlord shall promptly attempt to obtain the consent of the lessor of each superior lease and the holder of each superior mortgage to any modification of this Lease or prepayment agreed to by Landlord and Tenant if such consent is required under the terms of the superior lease or mortgage, as the case may be.

Section 22.03. Notices to Lessors and Mortgagees. In the event of any act or omission of Landlord which would give Tenant the right, immediately or upon notice, to terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to the holder of each mortgage and the lessor of each superior lease whose name and address shall previously have been furnished to Tenant in writing, and (ii) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice (which reasonable period shall be equal the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided, however that such period shall run consecutively (and not concurrently with Landlord's cure period where notice is given to the mortgagee at the same time notice is given to the Landlord.

Section 22.04. Subordination. Subject to the receipt of a commercially reasonable Non-Disturbance Agreement as provided below in this Section 22.04, this Lease shall be subordinate to any mortgages that are now, or may hereafter be, placed upon the Premises and to any and all advances to be made thereunder, and to the interest thereon, and to all renewals, replacements and extensions thereof and no further instrument shall be required to evidence the foregoing, provided, however, that any mortgagee may elect to have this Lease constitute a lien prior to its mortgage, and in the event of such election and upon notification by such mortgagee to Tenant to that effect, this Lease shall be deemed prior in lien to such mortgage, whether this Lease is dated prior to or subsequent to the date of such mortgage. Upon the request of Landlord, or any mortgagee, Tenant shall execute whatever instruments may be reasonably required by Landlord or by any mortgagee to carry out the intent of this Section 22.04 and, in addition, shall execute and deliver such further instruments containing modifications of this Lease, so long as such modifications do not increase Tenant's monetary obligations under this Lease or otherwise materially and adversely affect Tenant's rights or privileges under this Lease. Landlord represents to Tenant that, as of the date hereof, there is no ground lease affecting the Shopping Center and that the only mortgage affecting the Shopping Center is held by Santander Sovereign Bank (f/k/a Sovereign Bank). Landlord shall use commercially reasonable efforts to cause Sovereign Bank to execute and deliver to Tenant a commercially reasonable non disturbance, subordination and attornment within forty (40) days after the date of this Lease.

Section 22.05. Remedies. Failure of Tenant or Landlord to execute any statements, certificates or instruments necessary or desirable to effectuate the foregoing provisions of this Article 22, within thirty (30) days after written request so to do by the other party, shall constitute a breach of this Lease.

ARTICLE 23

CURING DEFAULTS

Section 23.01. Landlord's Right to Cure Tenant's Defaults. If Tenant shall default in the performance of any of Tenant's obligations under this Lease after the giving of notice and the expiration of the applicable grace period therefore as provided in this Lease (which in no case shall be less than ten (10) days after receipt of written notice except in the event of an emergency threatening imminent harm to life or property), Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Tenant.

Section 23.02. Landlord's Expenses of Cure. Bills for any expenses incurred by Landlord in connection with any performance by it for the account of Tenant (where conducted with appropriate notice pursuant to this Lease), and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees, involved in collecting or endeavoring to collect the Rental or any part thereof not paid when due or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to Laws, including any such cost, reasonable expense and disbursement involved in re-entering the Premises, instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided, furnished, or rendered, by Landlord or at its instance to Tenant (all of which expenses shall constitute items of Additional Rent), may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable immediately upon presentation of such bills to Tenant.

Section 23.01. Tenant's Right to Cure Landlord's Defaults. If Landlord shall default in the performance of any of Landlord's obligations under this Lease after the giving of notice and the expiration of the applicable grace period therefore as provided in this Lease (which in no case shall be less than thirty (30) days after receipt of written notice except in the event of an emergency threatening imminent harm to life or property), Tenant, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Landlord.

Section 23.02. Tenant's Expenses of Cure. Bills for any expenses incurred by Tenant in connection with any performance by it for the account of Landlord (where conducted with appropriate notice pursuant to this Lease), and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees, involved in collecting or endeavoring to collect amounts due under this Lease or any part thereof not paid when due or enforcing or endeavoring to enforce any rights against Landlord, under or in connection with this Lease, or pursuant to Laws, including any such cost, reasonable expense and disbursement involved instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided, furnished, or rendered, by Tenant, shall be due and payable immediately upon presentation of such bills to Landlord.

ARTICLE 24

ACCESS BY LANDLORD

Landlord or Landlord's agents shall have the right upon reasonable prior written notice to enter the Premises at all times during Tenant's normal business hours to examine the same and to show them to prospective purchasers or mortgagees. Landlord or Landlord's agents shall have the further right to enter the Premises upon reasonable prior written notice to make such repairs, alterations, improvements or

additions where necessary to cure Tenant's default, as set forth in Section 23.01 or to perform Landlord's obligations under this Lease. Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business by virtue of the foregoing. Landlord shall be permitted to enter the Premises without notice and at all times in connection with an emergency.

ARTICLE 25

TENANT'S PROPERTY

Tenant shall be responsible for, and shall pay, prior to delinquency, any and all taxes, assessments, levies, fees and other governmental charges of every kind or nature (collectively, "Charges") levied or assessed by and municipal, county, state, federal or other taxing or assessing authority upon, against or with respect to (i) the Premises or any leasehold interest therein, or any use thereof, including, without limitation, any use and/or occupancy tax, (ii) all fixtures, furnishings, equipment, merchandise and personal property of any kind owned by Tenant and placed, installed or located in, within, upon or about the Premises, and (iii) all or any portion of the Rentals payable by Tenant to Landlord; irrespective of whether any of such items described in clauses (i) through (iv) above are assessed as real or personal property, and irrespective of whether any of such items are assessed to or against Landlord or Tenant. The term "Charges" for purposes of this Lease shall exclude, however, income, franchise, estate or inheritance taxes levied against Landlord or any future taxes or charges in replacement of income, franchise, estate or inheritance taxes. If at any time during the Term any of such Charges are not levied and assessed separately and directly to Tenant (for example, if the same are levied or assessed to Landlord, or upon or against the Shopping Center and/or the land underlying the Shopping Center), Tenant shall pay to Landlord Tenant's reasonable share thereof as reasonably determined by Landlord.

ARTICLE 26

HOLDING OVER

Section 26.01. Holding Over. If this Lease is not renewed or extended or a new lease is not entered into between the parties, and if Tenant shall then hold over after the Expiration Date, irrespective of whether or not Landlord accepts Rental from Tenant for a period beyond the Expiration Date, Tenant's occupancy of the Premises after the Expiration Date shall be upon all the terms set forth in this Lease except Tenant shall pay on the first day of each month of the holdover period as Rental an amount equal to one hundred fifty percent (150%) of the monthly installment of the total Rental payable by Tenant during the last year of the Term (i.e., the year immediately prior to the holdover period).

ARTICLE 27

SECURITY (INTENTIONALLY OMITTED)

ARTICLE 28

LANDLORD'S LIABILITY

Section 28.01. Transfer of Landlord's Interest. In the event of any transfer or transfers of Landlord's interest in the Premises, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer, provided that (a) the

interest of the transferor, as Landlord, in any funds then in the hands of Landlord in which Tenant has an interest shall be turned over, subject to such interest, to the then transferee; and (b) notice of such sale or other transfer shall be delivered to Tenant, and (c) the transferee shall specifically acknowledge that it shall assume all obligations of transferor. No lessor under a superior lease, holder of a mortgage or beneficiary of a deed of trust to which this Lease is or may be subordinate, shall be responsible for the Security, unless such lessor, mortgagee or beneficiary of such deed of trust shall have actually received the Security.

Section 28.02. Limitation of Landlord's Liability. Notwithstanding anything to the contrary provided in this Lease, there shall be absolutely no personal liability on the part of Landlord or any officer, director, shareholder, partner, member, employee or agent of Landlord, whether disclosed or undisclosed (or any successor corporate landlord or any partner of any limited or general partnership which may become Landlord or any individual or other entity), with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the interest, income or equity, if any, of Landlord in the Shopping Center for the satisfaction of each and every remedy of Tenant in the event of a breach or default by Landlord of any of the terms, covenants and conditions of this Lease, such exculpation of personal liability to be absolute and without any exception whatsoever. No other property or assets of Landlord, any successor to Landlord, or any officer, director, shareholder, partner, member, employee or agent of Landlord or any successor to Landlord, shall be subject to judgment, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease or the use or occupancy of the Premises.

ARTICLE 29

BROKERAGE CLAIMS

Each party represents and warrants to the other that it has dealt with no broker or agent in connection with this Lease other than Charter Realty & Development Corp. (the "Broker") and agrees to indemnify, hold harmless and defend the other party from and against any and all Liabilities arising from or relating to a breach of the foregoing representation and warranty. Landlord shall pay any commission or fee due the Broker pursuant to a separate agreement.

ARTICLE 30

MISCELLANEOUS

Section 30.01. Successors and Assigns. All rights and liabilities given to or imposed under this Lease upon the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of such parties, and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and conditions of this Lease.

Section 30.02. Rules and Regulations. Tenant shall comply with and observe all reasonable rules and regulations established by Landlord from time to time and of which Landlord has given Tenant prior written notice. The rules and regulations shall be applicable to all occupants of the Shopping Center, and all such rules and regulations shall be enforced by Landlord in a non-discriminatory manner. In the case of any conflict between the terms and conditions of such rules and regulations and the terms and conditions of this Lease, the terms and conditions of this Lease shall be controlling.

Section 30.03. Joint and Several Liability. If more than one person or entity is

executing this Lease as Tenant, each such person or entity shall be jointly and severally liable for the obligations of Tenant under this Lease.

Section 30.04. Signatures and Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The parties may execute and deliver the counterparts of this Lease and any ancillary documents electronically by facsimile or email. The electronic copies of the signatures of the parties will be as valid and binding on the parties as original ink signatures. The receiving party may rely on the receipt of the document executed and delivered electronically as if the original had been received. The parties authorize each other to detach and combine signature pages and consolidate them into a single document. Any one of the completely executed counterparts shall be sufficient proof of this Lease.

Section 30.05. Covenant of Quiet Enjoyment. Upon payment by Tenant of the Rental and upon the observance and performance of all of the covenants, terms and conditions on Tenant's part to be observed and performed under this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

Section 30.06. Waiver. The subsequent acceptance of Rental by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any of the terms, covenants or conditions of this Lease, other than the failure of Tenant to pay the particular Rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rental. In particular, but without limitation, if Tenant assigns or transfers its interest in this Lease contrary to the terms of this Lease, any acceptance by Landlord of such assignee's or transferee's payment shall not be deemed to be a waiver of the restrictions set forth in Articles 17 or 18. One or more waivers of a breach of any covenant or condition shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent to or approval of any act requiring consent or approval shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent similar act. The failure of Landlord or Tenant to insist upon the strict performance of any of the terms, covenants or conditions contained in this Lease shall not be deemed a waiver of any rights or remedies that Landlord or Tenant may have and shall not be deemed a waiver of any subsequent breach or default in the performance of the terms, covenants or conditions herein contained. No breach by Tenant or Landlord of a covenant or condition of this Lease shall be deemed to have been waived by the other party unless such waiver is in writing and signed by that party. No act or thing done by Landlord or Landlord's agents shall be deemed an acceptance of surrender of the Premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord.

Section 30.07. Interpretations. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, and neither the method of computation of Rental, nor any other provision contained herein, nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

Section 30.08. Force Majeure. If either party hereto shall be delayed in the performance of its construction or maintenance and/or repair obligations, by reason of strikes, lockouts, labor troubles or inability to procure materials, or shall at any time be so delayed by reason of failure of power, restrictive

Laws or reasons of a similar nature not the fault of the party delayed in performing or doing the acts required under this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In no event shall the provisions of this Section 30.08 operate to excuse Tenant from payment of any Rental.

Section 30.09. Notices. Unless specifically stated to the contrary in this Lease, any notice, demand, request or other instrument which may be or is required to be given by Tenant or Landlord under this Lease or by Laws ("Notices") shall be in writing and sent by national overnight delivery service and shall be deemed to have been given, as of the first weekday upon which delivery is first attempted. Notices given in accordance with this Section 30.09 shall be addressed (a) if to Landlord, at the address first set forth for hereinabove or at such other address as Landlord may designate by notice given in accordance with this Section 30.09, together with copy to Warren S. Sacks, Esq., Sacks Law Group, P.C., 707 Westchester Avenue, White Plains, NY 10604 or to such other parties as designated by Landlord, and (b) if to Tenant, at c/o Mr. David DaRosa, 104 Pleasant Street, Suite 1, Brunswick, Maine 04011 with a copy to Soctt E. Herrick, Esq., Drumond and Drumond, LLP, 1 Monument Way, Portland, Maine 04101 Notices may be given by the attorneys for the respective parties.

Section 30.10. Captions and Section Numbers. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease, nor in any way affect this Lease.

Section 30.11. Recording. Tenant shall not record this Lease without the prior consent of Landlord. Landlord agrees that upon request from Tenant and prior to the Commencement Date, Landlord will promptly execute and deliver to Tenant a memorandum of lease (hereinafter the "**Memorandum of Lease**"), prepared by Tenant, to be recorded in the public office in which records relating to the Premises are kept at Tenant's expense.

Section 30.12. Accord and Satisfaction. Payment by Tenant or receipt by Landlord of a lesser amount than the Rental may, at Landlord's sole option, be deemed to be on account of the earliest due Rental or deemed to be on account of Rental owing for the current period only, notwithstanding any instructions by or on behalf of Tenant to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any check or payment as Rental shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such Rental or pursue any other remedy in this Lease or at law or in equity against Tenant.

Section 30.13. Execution of Lease; No Option. The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises situated in the Shopping Center. The return to Landlord of Tenant-executed copies of this Lease shall not be binding upon Landlord, notwithstanding any preparation or anticipatory reliance or expenditures by Tenant or any time interval, until Landlord has in fact executed and actually delivered a fully-executed copy of this Lease to Tenant.

Section 30.14. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Maine. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease

shall not be affected thereby and each remaining provision of the Lease shall be valid and enforceable to the fullest extent permitted by Laws.

Section 30.15. Certain Rules of Construction. Time is of the essence in this Lease. Landlord and Tenant are business entities having substantial experience with the subject matter of this Lease and have each fully participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

Section 30.16. Corporate Authority. The Landlord and Tenant hereby represent and warrant to each other that they are duly incorporated and validly existing corporations or limited liability companies, and are both qualified to do business in the State of Maine, that their franchise and corporate taxes have been paid to date, that they have the full right, power and authority to enter into and perform this Lease, and that each person signing this Lease is authorized to do so and to bind that party to the terms of this Lease.

Section 30.17. Guaranty. Concurrent with Tenant's execution and delivery of this Lease and as a material inducement to Landlord's execution and delivery of this Lease, Tenant shall cause David DaRosa to deliver a guaranty of this Lease in the form of Exhibit D attached hereto and made a part hereof.

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amended and Restated Lease as of the date first above written.

LANDLORD:

Charter-Westgate, LLC

By: 

Paul Brandes
President

TENANT:

DKD Donuts LLC

By: 

Name: David DeRoss
Title: Manager

EXHIBITS:

- Exhibit A – Site Plan of the Shopping Center
- Exhibit B – Site Plan Showing the Premises
- Exhibit C – Omitted
- Exhibit C-1 – Omitted
- Exhibit D – Guaranty

EXHIBIT A

The site plan is presented solely for the purpose of identifying the approximate location and size of the improvements in the Shopping Center. Subject to the terms and conditions of this Lease, building sizes, dimensions, access and parking area, existing tenant locations and identities are subject to change.

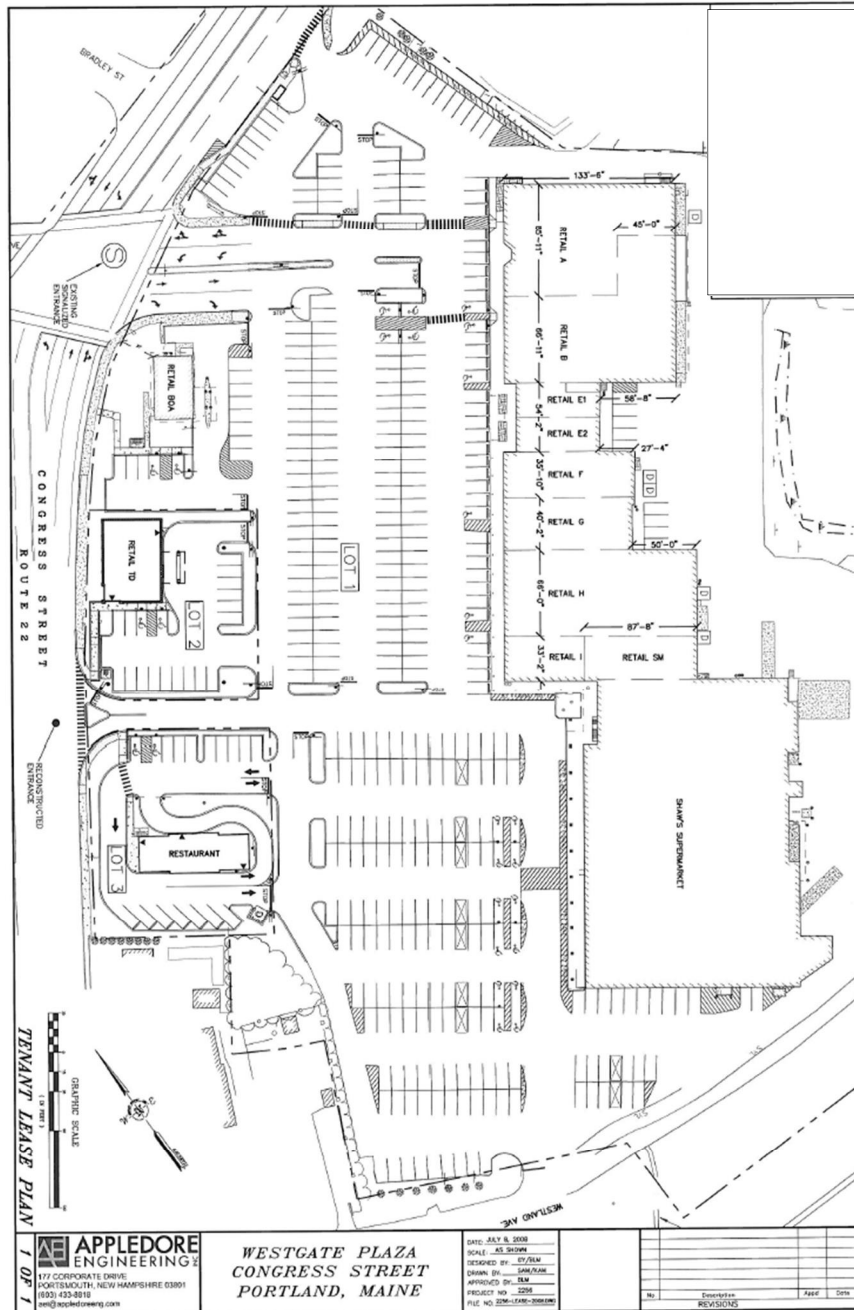


EXHIBIT C

OMITTED

EXHIBIT C-1

OMITTED

EXHIBIT D

GUARANTY

David DaRosa, an individual residing at _____, Maine and having a Social Security Number of _____ ("Guarantor") has requested Charter Westgate, LLC ("Landlord") to enter into a Lease of even date herewith (the "Lease") with DKD Donuts LLC ("Tenant"), covering certain premises located at 1412 Congress Street, Portland, Maine, as more particularly described in the Lease. In order to induce Landlord to enter into the Lease and in consideration of Landlord's entering into the Lease, Guarantor hereby guarantees, unconditionally and absolutely, to Landlord, its successors and assigns (without requiring any notice of non-payment, non-keeping, non-performance or non-observance or proof of notice or demand whereby to charge Guarantor all of which Guarantor hereby waives) the full and faithful keeping, performance and observance of all the covenants, agreements, terms, provisions and conditions provided to be kept by Tenant under the Lease, including, without limitation, the payment as and when due of all rent, additional rent, charges and damages payable by Tenant under the Lease, and the payment of any and all other damages for which Tenant shall be liable by reason of any act or omission contrary to any of said covenants, agreements, terms, provisions or conditions. All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

As a further inducement to Landlord to enter into the Lease and in consideration thereof, Guarantor hereby covenants and acknowledges as follows:

- (1) Guarantor is the record and beneficial owner of an equity interest in Tenant.
- (2) The obligations of Guarantor shall not be terminated or affected in any way or manner whatsoever by reason of Landlord's omission to resort, to any summary or other proceedings, actions or remedies for the enforcement of any of Landlord's rights under the Lease or with respect to the Leased Premises (as defined in the Lease) or by reason of any extensions of time or indulgences granted by Landlord, or by reason of the assignment or surrender of all or any part of the Lease or the term and estate thereby granted or all or part of the Leased Premises. The liability of Guarantor is co-extensive with that of Tenant and all other guarantors of the Lease (if any) and also joint and several, and action or suit may be brought against Guarantor and carried to final judgment and/or completion and recovery had, either with or without making Tenant or any other guarantor a party thereto. Insofar as the payment by Tenant of any sums of money to Landlord is involved, this Guaranty is a guaranty of payment and not of collection and shall remain in full force and effect until payment in full to Landlord of all sums payable under this Guaranty. Guarantor waives any right to require that any action be brought against Tenant or to require that resort be had to any secured interest, security or to any other credit in favor of Tenant.
- (3) If, pursuant to law or to any option granted by the Lease, the Lease shall be renewed, or its terms extended, for any period beyond the termination date of the Lease or if the Lease be amended or modified by agreement between Landlord and Tenant in any other respect, the obligations of Guarantor shall extend and apply with respect to the full and faithful keeping, performance and observance of all of the covenants, agreements, terms, provisions and conditions which under such renewal of the Lease or extension of its terms or which under any supplemental

indenture or new lease or amendment or modification agreement, entered into for the purpose of express or confirming any such renewal, extension, inclusion, substitution or modification, are to be kept, performed and observed by Tenant (including, without being limited to, the payment as and when due of rent, additional rent, charges and damages provided for thereunder) and the payment of any and all after damages for which Tenant shall be liable by reason of any act or omission contrary to any of said covenants, agreements, terms, provisions or conditions.

(4) Neither Guarantor's obligation to make payment in accordance with the terms of this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed, stayed, released or limited in any manner whatsoever by any impairment, modification, change, release, limitation or stay of the liability of Tenant or its estate in bankruptcy or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Bankruptcy Act of the United States or other statute or from the decision of any court interpreting any of the same, and Guarantor shall be obligated under this Guaranty as if no such impairment, stay, modification, change, release or limitation has occurred.

(5) This Guaranty, and all of the terms hereof, shall be binding on Guarantor and the successors, assigns, and legal representatives of Guarantor.

(6) Guarantor waives the right to trial by jury in any action or proceeding that may hereafter be instituted by Landlord against Guarantor in respect of this Guaranty.

(7) The Lease and this Guaranty shall be interpreted under the laws of the State of Maine.

(8) Guarantor shall pay to Landlord all Landlord's reasonable expenses, including, but not limited to, reasonable attorneys' fees, in enforcing this Guaranty.

Dated: _____, 2014

Witness:

Name:

DAVID DAROSA