

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070321

1. ACTION REQUESTED/PURPOSE: Approve lease with Bonita Beach 41 LLC, RRR Springs Plaza LLC and KJR Springs Plaza LLC for 5,240 square feet of space at the facility located at 8951 Bonita Beach Road, Suite #565 in Bonita Springs, Florida. Lease is for five (5) years with no renewal periods. Base rent for the first year will be \$78,600 or \$15.00 per square foot. CAM charges for the first year will be \$23,894.40 or \$4.56 per square foot. Base rental cost will increase annually as follows: Year 2 - \$81,744.00; Year 3 - \$84,992.80; Year 4 - \$88,398.80; Year 5 - \$91,909.60.

2. FUNDING SOURCE: Fund: General ; Program: Support Budgets - Sheriff

3. WHAT ACTION ACCOMPLISHES: Allows Sheriff's Department to remain in their current facility while seeking a permanent location.

4. MANAGEMENT RECOMMENDATION: Approve

5. Departmental Category: C2B		6. Meeting Date: MAR 13 2007
7. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	8. Requirement/Purpose: (specify) Statute _____ Ordinance _____ AC-41 Admin. Code _____ Other _____	9. Request Initiated: Commissioner _____ Department Construction & Design Division Facilities Management By: <u>Richard Beck, Dir.</u>

10. Background: The South District Sheriff's substation has been located in this facility since August of 2000. Since being in this location, the Sheriff's office has realized that, to minimize their response times and serve more areas, they need to be further north, in the Estero area, and this is where their permanent site for this substation should be. This will need to get into the budget cycle to find land and build a facility. This lease will terminate on July 31st of this year. Facilities Management has renegotiated with the owners for another 5 years, giving the Sheriff's Department a place for the South District substation to stay until a permanent location can be established. The current budget can support the additional lease fees for the remaining 2 months of FY 07.

FUNDING IS ALREADY AVAILABLE IN THE FOLLOWING ACCOUNT STRING:

CG5211600100.504410

Support Budgets/Sheriff Support/General Fund/Land & Building Rental

Attachments: Lease Agreements (4 originals)

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P. W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>	N/A			<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
					3/28/07	3/28/07	3/31/07	3/31/07	3/27/07

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN. *OK*

28 10:50 AM

COUNTY ADMIN
FORWARDED TO: *[Signature]*

31

3pm

Rec. by CoAtty

Date: *3/28/07*

Time: *8:30 AM*

Forwarded To:

SHOPPING CENTER LEASE AGREEMENT

LANDLORD: BONITA BEACH 41 LLC, RRR SPRINGS PLAZA
LLC, AND KJR SPRINGS PLAZA LLC, AS CO-
TENANTS

TENANT: LEE COUNTY

SHOPPING CENTER: SPRINGS PLAZA

DATE: _____, 20____

SHOPPING CENTER LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made on the ____ day of _____, 20__ by Bonita Beach 41 LLC, RRR Springs Plaza LLC and KJR Springs Plaza LLC, Florida limited liability companies as co-tenants, having an office at 3399 PGA Boulevard, Suite 450, Palm Beach Gardens, FL 33410 (herein collectively called "Landlord"), and Lee County, acting by and through the Board of County Commissioners for Lee County, a political subdivision and Charter County of the State of Florida, having an office at P.O. Box 398, Ft. Myers, Florida 33902-0398 (herein called "Tenant").

(A) Summary Of Defined Basic Lease Provisions

- (a) Shopping Center: Springs Plaza
- (b) Leased Premises: Store No. 465
- (c) Address of Premises: 8951 Bonita Beach Road #565
Bonita Springs, FL 33145
- (d) Gross Leasable Floor Area of Leased Premises: Approximately 5,240 square feet. Rent shall be calculated as if the Leased Premises contain 5,240 square feet, irrespective of any variance in the actual square footage of the Leased Premises.
- (e) Intentionally Omitted.
- (f) Lease Commencement Date: August 1, 2007
- (g) Rent Commencement Date: August 1, 2007
- (h) Lease Expiration Date: July 31, 2012
- (i) Lease Term: Five (5) Lease Years (the "Initial Term").
- (j) Base Rent:

<i>Lease Year</i>	<i>Annual</i>	<i>Monthly</i>
Year 1	\$78,600.00	\$6,550.00
Year 2	\$81,744.00	\$6,812.00
Year 3	\$84,992.80	\$7,082.73
Year 4	\$88,398.80	\$7,366.57
Year 5	\$91,909.60	\$7,659.13

- (k) Intentionally Omitted.
- (l) Permitted Use of Premises: As a Lee County Sheriff's office, and for no other use or purpose.
- (m) Tenant's Trade Name: Lee County
- (n) Security Deposit: N/A

- (o) Landlord's Notice Address: c/o RAM Realty Services
3399 PGA Boulevard, Suite 450
Palm Beach Gardens, Florida 33410
Attention: President
- (p) Tenant's Notice Address: P.O. Box 398
Fort Myers, Florida 33902-0398
Attn: Facilities Management
- (q) Minimum Tenant Business Hours: N/A
- (r) Restriction Area: None
- (s) Broker: Ram Realty Services
- (t) Guarantor(s): N/A

1. **List Of Exhibits**

- A. Site Plan
- B. Landlord's Work
- C. Shopping Center Sign Criteria
- D. Rules and Regulations
- E. Tenant's Work

2. **Leased Premises, Term and Lease Year.**

(A) Landlord hereby demises unto Tenant the Leased Premises pursuant to the terms hereof. The exterior walls and roof of the Leased Premises and the areas beneath the Leased Premises are reserved unto Landlord and Landlord shall have the right to install, maintain and repair utility lines in such areas. The Leased Premises is located in the Shopping Center in the approximate location set forth in Exhibit A herein. The Leased Premises is deemed to contain an amount of square feet of space equal to the Gross Leasable Floor Area set forth in Article 1. The Lease Term shall commence on the Lease Commencement Date. Tenant's duty to pay Rent shall commence on the Rent Commencement Date. Notwithstanding the foregoing, Tenant shall pay the first month's installment of Rent on the execution hereof, which amount shall be applied as a credit against such first monthly installment as and when due (and promptly refunded if, for any reason other than Tenant's default, this Lease should be terminated by reason of non-occurrence of the Lease Commencement Date). The Lease Term shall expire without notice on the Expiration Date. The first Lease Year shall commence on the Rent Commencement Date and end on the last day of the calendar month in which occurs the first anniversary of the day immediately preceding the Rent Commencement Date. Each succeeding Lease Year shall be each successive twelve (12) month period from and after the Rent Commencement Date. Landlord and Tenant hereby mutually agree that each, upon the request of the other party, shall execute a supplement to the Lease confirming and defining the Lease Commencement Date, Rent Commencement Date and Expiration Date of this Lease.

(B) Landlord reserves the right at any time, and from time to time, to enlarge, reduce, reconfigure, make alterations to or add to, and to build additional stories on, the building in which the Leased Premises is located, and to construct other buildings and improvements in the Shopping Center, including any modifications of the Common Areas in connection therewith, to enlarge or reduce the Shopping Center, to add, relocate or remove parking areas, and to sell or lease any part of the land comprising the Shopping Center. Tenant hereby consents to the exercise by Landlord of the rights set forth in this Article 2 and agrees that the exercise of such rights by Landlord shall not diminish Tenant's obligations under this Lease.

3. **Use of Premises.**

(A) **Permitted Use.** Tenant agrees that the Leased Premises will be used and occupied by Tenant and/or any assignees, sublessees or other occupants (which reference to assignees, sublessees and other occupants shall not be deemed to give Tenant any rights to assign or sublet not specifically set forth in this Lease) only for the Permitted Use, and for no other use or purpose whatsoever. Tenant shall not change the Trade Name of the business operated in the Leased Premises as specified herein without the prior written permission of the Landlord. Tenant hereby warrants and covenants that Tenant is duly authorized and licensed to use the Trade Name and any other marks and symbols of the business operated in the Leased Premises. Tenant represents, covenants and warrants that it is not currently engaged, and has no reasonable expectation that at any point during the term of the Lease it will become engaged, in any trade or business, either as a principal or an ancillary business, that involves, without limitation, any one or more of the following: developing or holding intangibles for sale or license; the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal activity of which is the sale of alcoholic beverages for consumption off premises.

(B) **Tenant's Business Operations.** (1) Tenant shall keep the Leased Premises open and operated continuously. Tenant agrees for its part: no auction, fire, bankruptcy, going out of business or similar sale will be conducted or advertised; no nuisance will be permitted; nothing shall be done which is unlawful, offensive or contrary to any law, ordinance, regulation or requirement of any public authority, or which may be injurious to or adversely affect the quality of the Leased Premises or the Shopping Center; no part of the Leased Premises (especially the electric and plumbing systems, the floor and walls) will be overloaded, damaged or defaced; no holes will be drilled in the stone or brickwork or in concrete; no emission of any objectionable odors, sounds or vibrations will be permitted. Tenant shall procure all licenses and permits required for the use or occupancy of the Leased Premises and the business being conducted therein; the storefront, show windows and signs will be repaired, kept clean, in good condition and lighted; all merchandise and other property will be delivered to or removed from the Leased Premises only by the rear or secondary entrance, to the extent one exists; all garbage, waste and refuse will be kept stored temporarily inside the Leased Premises and then regularly removed at Tenant's expense.

(2) Because of the difficulty or impossibility of determining Landlord's damages by way of loss of the anticipated percentage rent from Tenant or other tenants or occupants of the Shopping Center, or by way of loss of value of the Shopping Center, because of diminished saleability or mortgageability or adverse publicity or appearance by Tenant's action, should ^{Tenant} fail to continuously operate or conduct Tenant's business in accordance with the terms of this Article, then and in any of such events (hereinafter collectively referred to as "failure to do business"), Landlord shall have the right, in addition to any and all other rights or remedies Landlord may have under this Lease, or at law or in equity, at Landlord's option, (i) to collect not only minimum rent and all items of additional rent herein reserved, but also additional rent equal to the amount of minimum rent reserved for the period of Tenant's failure to do business, computed at a daily rate for each and every day or part thereof during such period (such additional rent shall be deemed to be liquidated damages) and, in addition, at Landlord's option, (ii) to treat such failure to do business as a default by Tenant hereunder. Failure of Tenant to do business as herein required shall entitle Landlord, in addition to all other remedies provided in this Lease, to mandatory injunctive relief in any state or federal court having jurisdiction and/or in any bankruptcy or insolvency proceeding involving Tenant.

(C) **Tenant's Covenants.** Tenant shall comply with all laws, rules, statutes, ordinances and regulations affecting the Leased Premises, including, without limitation, all environmental statutes, regulations or ordinances now or hereinafter enacted by government authorities. Tenant shall not permit the release, emission, disposal, dumping or storage of hazardous wastes (as defined in any such laws) into the septic tanks, sewers, or other waste disposal facilities of the Shopping Center or anywhere in the Shopping Center, or permit same to be brought into the Leased Premises at any time, and the provisions of this sentence shall survive the expiration of the Lease Term. Tenant shall keep the Leased Premises free of rodents, vermin, insects and other pests, and provide regular exterminator services at its own expense, and, if Landlord opts, only by an exterminator designated by Landlord, provided its price is competitive. Tenant agrees that nothing will be done or omitted which may either prevent the obtaining by Landlord or other tenants of insurance on any part of the Shopping Center or on any personal property thereon, or which may make void or voidable any such insurance, or which may create any extra premiums for any insurance carried by Landlord or other tenants. Tenant will comply with all requirements and recommendations of Landlord's and Tenant's insurance companies and any rating bureau or similar organization,

including maintaining and servicing fire extinguishers. Tenant shall keep the sidewalks, curbs and ramps (if any) adjacent to the Leased Premises (and also all delivery areas, ramps, loading areas and docks used exclusively by Tenant) in good and safe condition and free from rubbish. Tenant will not make or suffer any waste of the Leased Premises. Landlord shall not be liable for the act of any other tenant or person who may cause damage to or who may interfere with Tenant's use or occupancy of the Leased Premises or Tenant's business. Tenant will comply with the requirements of law and any requests of governmental agencies or Landlord in its recycling program, if any.

(D) **Quiet Enjoyment.** Upon payment by the Tenant of the rents and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease and all existing or future underlying leases or mortgages encumbering the Shopping Center.

4. **Rent.**

(A) **Base Rent.** Tenant shall pay Base Rent at the annual rates specified in Article 1 in monthly installments paid in advance on the first day of each calendar month in the amount specified herein. If the Rent Commencement Date is not the first of the month, the Base Rent for that month shall be prorated. Should any Lease Year contain more or less than twelve (12) months, Base Rent and other charges for such Lease Year shall be appropriately prorated. All other payments to be made by Tenant pursuant to this Lease are in addition to Base Rent. Tenant shall pay Base Rent and other Rent to Landlord or its designated agent at the Notice Address Landlord designates without Landlord giving any prior notice or demand and without any right of deduction or set-off. The obligation to pay Base Rent and other Rent is an independent, unconditional covenant.

(B) **Other Rent.** Base Rent and all other payments required to be made by Tenant (including, but not limited to, Percentage Rent, Sales Tax, Tax Expenses, Operating Expenses, and Late Rent) shall be deemed to be and are included in the term "Rent", which shall be due and payable on demand or together with the next installment of Base Rent, whichever first occurs, unless another time is expressly provided for payment. Landlord shall have the same rights and remedies for non-payment of any Rent or any Security Deposit as for a non-payment of Base Rent. Tenant shall pay to Landlord any tax or license fee measured by Tenant's Rents receivable by Landlord; these taxes shall be paid by Tenant each month with monthly payments of Rent. Notwithstanding anything contained in this Lease to the contrary, the total of charges to Tenant under Articles 5 and 6 of this Lease is estimated for the year 2007 at \$4.56 per square foot of floor area in the Leased Premises.

(C) **Sales Tax and other Assessments.** Tenant shall pay, as other Rent, all sales, use and other taxes assessed by any governmental authority against the Base Rent, and other Rent, as applicable, stated herein. The payment of all sales tax shall be made by Tenant on a monthly basis, concurrently with payment of the Base Rent. In addition, Tenant shall also pay before delinquency in its entirety all taxes and assessments on the furniture, fixtures, equipment, and other property of Tenant located in the Leased Premises; all taxes and assessments on additions and improvements in the Leased Premises belonging to Tenant; all taxes and assessments attributable to its signs, personal property and leasehold interests; all occupancy taxes or other taxes on its right to occupy the Leased Premises; and other taxes imposed on tenants generally. Notwithstanding anything contained herein, should Tenant provide Landlord with proof of Tax Exemption, no sales tax shall be collected from Tenant.

(D) **Late Rent.** If any payment of Rent is not paid when due under this Lease, then in addition to the payment then due Tenant shall pay Landlord, as other Rent, a late charge ("Late Rent"), which shall be the greater of (i) One Hundred and 00/100 (\$100.00) Dollars, or (ii) five percent (5%) of the amount then due. In the event Landlord provides Tenant written notice that Tenant has failed to pay an amount due under the Lease more than two (2) times in any Lease Year or calendar year, the amounts of such Late Rent charges shall be the greater of: (i) Three Hundred and 00/100 (\$300.00) Dollars, or (ii) ten percent (10%) of the amount then due. Any payment of Rent which is not paid when due shall also bear interest on the payable amount from the date when due until paid at the Default Interest Rate (see Article 29(D)). If any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason not attributable to Landlord, Tenant shall pay an administrative charge to Landlord of Fifty and 00/100 (\$50.00) Dollars. Tenant recognizes and agrees that these charges represent, at the time this Lease is made, a fair and reasonable estimate and liquidation of

the costs of Landlord resulting from the events described. The assessment or non-assessment of Late Rent charges pursuant to the terms hereof shall be in Landlord's sole discretion, and is in addition to all other rights and remedies Landlord may have under this Lease.

(E) **Unconditional Obligation.** Notwithstanding any alleged defense, counterclaim or offset against Rent, Tenant's obligation to pay Rent hereunder is an independent covenant and Tenant shall continue to pay Landlord all Rent faithfully when due, including during the continuance of any dispute or legal action, subject to reimbursement if directed by a court of competent jurisdiction. Tenant hereby consents to the entry in any court action of an order requiring Tenant to make Rent payments during the pendency of a lawsuit. All Rent due to Landlord under this Lease shall, unless and to the extent expressly otherwise provided herein, be due and payable without any notice, demand, offset, credit, deduction or abatement.

5. **Taxes.**

(A) **Taxes.** "Taxes" shall mean and include: real estate taxes for the Shopping Center; special and general assessments; water and sewer rents and charges including connection or hookup charges; governmental license and permit fees; charges for public or private easements benefiting the Shopping Center; taxes on other areas made available for the common use or benefit of tenants; and all other governmental impositions and charges (extraordinary as well as ordinary, foreseen and unforeseen) which are either a lien on the Shopping Center or any part thereof or which are charged, levied or assessed on, or imposed in connection with, the use, occupancy or possession of the Shopping Center, and/or which appear as a charge on a tax bill given to Landlord by any official taxing authority, regardless of whether such Taxes are included on one tax bill or separately allocated by the taxing authority on more than one tax bill between different segments of the Shopping Center; and also: interest on Tax installment payments; and costs, expenses and fees (including attorneys' and other experts' fees) incurred by Landlord in contesting and/or negotiating Taxes with the public authorities (regardless of the outcome). If any method of taxation prevailing on the date of this Lease is altered, so as a substitute for the whole or any part of Taxes there is levied or assessed a different kind of tax, the different tax shall be deemed included in "Taxes". However, "Taxes" shall not include any inheritance, estate, succession, transfer, gift, franchise or corporation tax, or any net income tax, profit tax or capital tax imposed on Landlord nor any administrative fee to Landlord. A copy of any official tax bills with respect to a governmental tax or assessment shall be conclusive evidence of the amount of a Tax.

(B) **Tax Expenses.** As additional and other Rent for each year of this Lease (herein called "Tax Expenses"), Tenant shall pay to Landlord, in the manner hereinafter described, the product obtained by multiplying the aggregate amount of all Taxes payable by Landlord for the then-current calendar year (or other fiscal or accounting year selected by Landlord) by a fraction ("Tenant's Proportionate Share"), the numerator of which is the Gross Leasable Floor Area of the Leased Premises, and the denominator of which is the Gross Leasable Floor Area of the Shopping Center (which shall be established initially by determining the amount of building floor space in the Shopping Center, measured from interior walls, which is leasable on the first day of the Lease Term and which will change from time to time in the event of alterations to the Shopping Center and shall be recalculated for the month in question based on any such changes). Notwithstanding the foregoing, at Landlord's option, Tenant's Proportionate Share may be appropriately adjusted with regard to Tax Expenses to exclude from the denominator thereof any land and/or building(s) in the Shopping Center leased to or occupied by third parties with separate tax lots or parcels for which they directly or indirectly pay taxes; provided that in such event the Taxes paid by such third parties shall also be excluded in the computation of Taxes.

(C) **Payment of Tax Expenses.** On the first day of each month in advance, Tenant shall pay to Landlord together with Base Rent one-twelfth (1/12th) of Tenant's annual Proportionate Share of Tax Expenses, based on Landlord's estimates. If after the end of a calendar year (or other accounting period used by Landlord) the total of the monthly payments by Tenant for the year has exceeded or is less than the annual Tax Expenses actually due, then an adjustment shall be made with appropriate payments to or repayment by Landlord. If the amount of any Tax Expenses payable during the current year shall not yet have been billed by the taxing authority, the monthly Tax Expenses then payable shall be based on the amount of the corresponding Taxes for the immediately preceding tax year, subject to immediate adjustment (and payment of the adjusted amount by Tenant) when such Taxes are billed or determined. For a portion of a calendar month at the beginning of the Lease Term, Tenant's Tax Expenses

shall be prorated for that month. Tenant covenants and agrees that Tenant shall remain liable for and shall pay its Proportionate Share of Tax Expenses, notwithstanding the expiration or earlier termination of this Lease.

6. **Common Areas.**

(A) **Right to Use.** Subject to subparagraph (C) below, Tenant and its employees, agents, and customers shall have the non-exclusive right to the use or benefit of the Common Areas of the Shopping Center to the extent and in the manner reasonably designated by Landlord. Except as otherwise specified in this Lease, Landlord agrees to make all necessary repairs and maintenance to the Common Areas and to keep same in good condition.

(B) **Definition.** "Common Areas" is hereby defined as the areas, equipment and facilities of the Shopping Center or of any other land or property made available by Landlord for the safety, benefit or convenience of tenants or their employees, subtenants, customers or invitees, including (as illustrations and not in limitation): parking areas, driveways, truck service ways, sidewalks and curbs; entrances and exits from the adjacent streets; traffic lights, traffic islands, landscaped areas; meter rooms outside individual stores; fencing; lighting facilities; sprinkler system serving landscaped areas or buildings; sewage system outside tenants' stores; roofs, gutters and downspouts and the exterior of outside walls (excluding storefronts) of buildings (without implying Tenant may use the roofs or outside walls); directional or safety signs; Landlord's pylon signs (but not individual tenant panels) and sign panels which identify the Shopping Center. Tenant acknowledges that the Common Areas may also be used by occupants and/or invitees of properties adjoining the Shopping Center, whether or not owned, leased or managed by Landlord.

(C) **Changes to Common Areas/Parking.** Landlord reserves the right at any time and from time to time to change or reduce or add to the Common Areas. Common Areas shall be under the exclusive control and management of Landlord. Tenant and its employees shall park their vehicles only in areas Landlord designates for employee parking; if after one (1) written violation notice is given to Tenant a violation recurs by Tenant or its employees parking vehicles in other than the employee parking areas, Landlord shall have the right to tow such vehicle at Tenant's expense and/or levy an assessment against Tenant of Ten (\$10.00) Dollars per day for each vehicle. Tenant shall not permit trucks or delivery vehicles used by it to be parked in the Common Areas except where Landlord permits. Landlord may impose parking charges by meter or otherwise, and may close parts of the Common Areas for such time necessary in its opinion to prevent a dedication or accrual of rights in other persons, or to discourage non-customer parking. Landlord shall not be obligated (although it may do so at its option) to keep the Common Areas illuminated to any extent after 9:00 P.M. or on any Sunday or legal holiday.

(D) **Operating Expenses.** "Operating Expenses" shall mean and include all costs and expenses incurred by Landlord or Landlord's managing agent during each twelve (12) month period selected by Landlord for operating, managing, maintaining, insuring, repairing, replacing, painting and improving the Shopping Center, available for use by Tenant and the employees, agents, servants, customers and other invitees of Tenant. The items and charges comprising Operating Expenses shall specifically include, without limitation, gardening and landscaping, the cost of public liability, property damage and other insurance carried by Landlord in its sole discretion and at premiums deemed reasonable by Landlord in the circumstances, all building and Shopping Center repairs, line painting, paving and resurfacing, lighting (including electric cost and maintenance, repair or replacement of fixtures, poles and replacement of bulbs), roof repairs, irrigation and fertilization, drainage and controlling of puddling or flooding, interior and exterior pest control, fire monitoring and prevention, electricity, sewer and water, and all other utilities allocable to the Shopping Center, sign repair and maintenance, Shopping Center advertising, music systems, sanitary control, security or other personnel retained to direct parking and to police the Common Areas (if such equipment and personnel are employed, which decision shall be in Landlord's sole discretion), removal of trash, rubbish, garbage and other refuse from the Shopping Center and Common Areas, taxes or fees payable by Landlord for any pylons, equipment or other facilities, depreciation on machinery and equipment used in such maintenance, those capital expenditures which are designed to and which do result in savings or reductions in any of the elements of Operating Expenses, reasonable operating reserves (as determined by Landlord in its sole discretion), janitorial services for the Shopping Center, service and maintenance agreements for the Shopping Center and Common Areas, attorneys' and accountants' fees, and a management fee representing the cost to Landlord of personnel or third parties necessary or convenient to implement the services specified in this Lease, whether such personnel are employed at the Shopping Center or not. In addition to the Expenses set forth above, Landlord shall

also be entitled to charge an administrative fee not to exceed 15% of the total Operating Expenses for the Shopping Center. Landlord shall have the right with regard to any and all management and maintenance obligations of Landlord under this Lease, to contract with such person(s) or entity or entities for the performance and accomplishment of such of the obligations as Landlord shall deem proper, including entities in which Landlord may hold an ownership or other interest. Notwithstanding anything contained in this Lease, Landlord shall be under no obligation to provide security personnel for the Shopping Center, and to the extent such services are provided Landlord shall not be responsible, does not warrant the sufficiency of and shall not be responsible for any and all claims, liabilities, costs and expenses and the like which arise therefrom, all of which Tenant expressly waives. The cost and expense of providing such personnel shall be included in Operating Expenses.

(E) Payment of Operating Expenses. As additional and other Rent for each year of this Lease, Tenant shall pay to Landlord on the first day of each month in advance, one-twelfth (1/12th) of Tenant's Proportionate Share as defined herein of the Operating Expenses, which costs shall be based upon Landlord's estimates. Tenant's annual share shall be determined by multiplying the aggregate estimated Operating Expenses for the then-current calendar year (or other fiscal or accounting year selected by Landlord) by a fraction ("Tenant's Proportionate Share"), the numerator of which is the Gross Leasable Floor Area of the Leased Premises, and the denominator of which is the Gross Leasable Floor Area of the Shopping Center (which shall be established by determining the amount of building floor space in the Shopping Center, measured from interior walls, which is leasable on the first day of the month in question). Notwithstanding the foregoing, at Landlord's option, Tenant's Proportionate Share may be appropriately adjusted with regard to Operating Expenses to exclude from the denominator thereof (i) common area or common area service corridors, shopping center offices, storage areas, utility rooms, sprinkler rooms and other non-selling areas; (ii) the square footage of floor area of the Major Stores located in the Shopping Center; (iii) the square footage of floor area of any premises not having a customer entrance, and (iv) any land and/or building(s) in the Shopping Center leased to or occupied by third parties who are responsible for maintenance of portions of the Shopping Center; provided that in such event the Operating Expenses paid by such third parties shall also be excluded in the computation of Tenant's Operating Expenses. Landlord and Tenant shall prorate Tenant's Operating Expense for any partial calendar month during the Lease Term. The Common Area Maintenance Costs in which Tenant is required to share pursuant to this Section 6 shall be reduced by the amounts, if any, received by Landlord from the occupants of Major Stores as their contribution towards Common Area Maintenance Costs. For purposes of this Lease, a "Major Store" is defined to mean a tenant occupying more than seven thousand five hundred (7,500) square feet of floor area.

(F) Right To Review. Within a reasonable time after the end of each Lease Year, or other accounting period as used by Landlord, Landlord shall furnish to Tenant a statement of the actual Yearly Operating Expenses. If the statement shows that the aggregate of the estimated Operating Expenses paid by Tenant during such year was less than Tenant's Proportionate Share of actual Operating Expenses, Tenant shall pay the balance due to Landlord within ten (10) days after receipt of the statement; and if the statement shows that the aggregate paid exceeded the actual Operating Expenses payable, Landlord shall either refund the excess or credit Tenant's next accruing Operating Expenses payment(s). Tenant's failure to give Landlord written notice of any objection to the statement within sixty (60) days after the statement is sent shall constitute a waiver of any objection or inquiry Tenant may have about the statement or for any examination of Landlord's records, and such statement(s) shall be conclusively deemed to be correct as between the parties. If Tenant objects in writing to the statement within said sixty (60) days, Tenant shall have the right to review, at Tenant's sole expense, using a non-contingency fee based independent certified public accountant reasonably acceptable to Landlord, and at the offices of Landlord or such other place as Landlord designates in its sole discretion, detailed receipts, invoices, or other supporting documentation of the Operating Expenses for the disputed Lease Year, but in no event shall Tenant have the right to review documentation for any prior Lease Years. Tenant shall not have the right to review and audit Operating Expenses more than once during any three (3) year period. Tenant covenants and agrees that Tenant shall remain liable for and shall pay its Proportionate Share of Operating Expenses payable hereunder, notwithstanding the expiration or earlier termination of this Lease.

(G) Proportionate Share. Tenant acknowledges that Tenant's Proportionate Share of Tax Expenses and Operating Expenses under this Lease shall be calculated as provided herein, but is subject to change based upon, among other things, changes to the Gross Leasable Floor Area of the Shopping Center. Tenant further acknowledges that Landlord reserves the right to change Tenant's Proportionate Share or other method of allocation of any costs, charges or assessments, in any manner which Landlord may, in its discretion, deem to be a fairer or

more equitable allocation thereof, including without limitation to change Tenant's Proportionate Share based upon direct charges for services provided for the exclusive benefit of the Leased Premises which are subject to precise cost measurement, or allocation of charges based upon relative intensity or quantity of use of services shared with others. Tenant acknowledges Landlord has not made any warranty, agreement or representation of any kind as to the actual dollar amount of Taxes or Operating Expenses payable hereunder or Tenant's Proportionate Share thereof.

7. Construction and Condition of Premises; Tenant's Work and Landlord's Work

(A) **Tenant's Work.** Tenant shall, at its sole expense, in doing any work, making any installations, or in using, occupying or conducting business at the Leased Premises, comply with all present and future laws, regulations, building codes and/or fire codes applicable to the Leased Premises or to Tenant's use or occupancy or business operations, including those that relate to installation, maintenance, upgrading, repair or replacement of sprinkler systems, and Tenant shall defend, indemnify and hold Landlord harmless from all losses, damages, claims, liabilities, costs and expenses (including legal fees) arising out of any failure to do so. Tenant acknowledges Landlord has made no representations, and that Tenant has conducted all inspections it deems necessary (including environmental), and Tenant accepts the Leased Premises and all the equipment, apparatus, plumbing, heating, air conditioning, electric, water, waste disposal and other systems relating thereto and the parking lot and the other Common Areas of the Shopping Center "AS IS," "Where-is" with all faults.

(B) **Landlord's Work.** Landlord is not obligated with respect to either the Leased Premises or the Shopping Center to make any improvements, changes, installations, do any work, make any alterations, repairs or replacements, clean out the Leased Premises, obtain any permits, licenses or governmental approvals, or spend any money either to put Tenant in possession or to permit Tenant to open for business. All work other than that to be performed by Landlord, if any, shall be accomplished by Tenant. Tenant is currently in possession of the Leased Premises. Except for signs, merchandise counters or other easily removable similar trade fixtures installed by Tenant at Tenant's expense, all alterations, decorations, additions and improvements made by Tenant to the Leased Premises and including all heating and air-conditioning units, equipment and apparatus at the Leased Premises and other fixtures such as ceiling tiles and grids, lighting fixtures, electric panel boxes, plumbing, boilers, floor and wall coverings, alarm systems, lights, toilet fixtures, partitions, doors and utilities shall be deemed attached to the freehold and be Landlord's property.

8. Utilities. Tenant shall provide and pay for its own heat, air conditioning, water, gas, electricity, sewer, sprinklers and other utilities, including application deposits and installation charges for meters and for consumption or use of utilities. Tenant shall pay its share of sewer charges, if any, reasonably determined by Landlord. If Tenant receives utilities through a meter which supplies utilities to other tenants, Tenant will pay to Landlord Tenant's proportionate share (based on the relative square footage of the Leased Premises) of the total meter charges. If Tenant receives water from Landlord's well or other sources made available by Landlord (instead of from an independent water company), Tenant shall pay for the water, and all costs and expenses for the maintenance, repair, replacement and installation of tanks, electricity, machinery, apparatus and facilities shall be included in Operating Expenses. Landlord shall notify Tenant of the procedures for removal of trash from the Premises and Tenant shall be responsible for all costs and expenses associated with same. All such removal shall be completed in strict accordance with all local governmental requirements.

9. Repairs and Alterations

(A) **Landlord's Repairs and Maintenance.** Landlord agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, the foundation, roof, roof drains, the exterior of the perimeter demising walls, and the load-bearing structural columns and beams in the Leased Premises, except that if such repairs or replacements arise from (i) repairs, installations, alterations, or improvements by or for Tenant or anyone claiming under Tenant, or (ii) the fault or misuse of Tenant or anyone claiming under Tenant, or (iii) default under the Lease by Tenant, then Tenant shall make such repairs or replacements or, if Landlord elects, Landlord may perform the work for Tenant's account and Tenant shall reimburse Landlord for expenses incurred. Tenant specifically agrees that Landlord's repair obligations do not include (i) the storefront, any glass (except in case of damage by fire or other casualty covered by Landlord's fire and extended coverage insurance policy), windows, window sashes or frames, doors, door frames or hardware, trim or closure devices, or any part of the interior side of perimeter walls; or (ii) rooftop heating or air conditioning units, ducts, vents, coolers, exhausts, etc. and the roof curbing or flashing

associated with same, all of which shall be Tenant's duty to repair, maintain, and replace. In no event shall Landlord be liable for damages or injuries arising from the failure to make said repairs, nor shall Landlord be liable for damages or injuries arising from defective workmanship or materials in making any such repairs. Landlord shall have no obligation to repair until a reasonable time after the receipt by Landlord of written notice of the need for repairs. Tenant waives the provision of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense. Such repair and maintenance obligations of Landlord shall be included in and constitute Operating Expenses as defined herein.

(B) Tenant's Repairs and Maintenance. Except as provided in Subsection (A) above, all other portions of the Leased Premises shall be kept in good repair and condition by Tenant. Tenant shall maintain and make all repairs and alterations of every kind with respect to the Leased Premises (including but not limited to necessary replacements) to keep it in good condition (including the storefront, glass, all interior and exterior doors, signs, ceilings, interior walls, interior side of perimeter walls, floor, floor coverings, plumbing, electric, heating and air conditioning and all duct(s), vent(s), exhaust(s) and roof curbing and flashing associated with same, sprinklers and lighting fixtures, and other non-structural interior portions of the Leased Premises), and do all repairs required by any laws, ordinances or requirements of public authorities. Beginning at the point from which they serve the Leased Premises exclusively, whether located inside or outside, Tenant shall make all repairs, replacements and alterations necessary to maintain in good condition all lines, apparatus, ducts, and equipment relating to utilities (including heating, air conditioning, water, gas, electricity and sewerage). Landlord shall make available to Tenant manufacturer or other warranties, if any, covering the air conditioning and heating unit(s) serving the Leased Premises. At all times during the Lease, Tenant shall maintain a service contract with a reputable air conditioning repair firm, fully licensed to repair air conditioning units in the State of Florida, for the regular maintenance of the heating, ventilating and air conditioning ("HVAC") system servicing the Leased Premises, which firm shall regularly service and inspect the air conditioning unit(s) on the Leased Premises. Landlord shall have the right at any time during the term of this Lease to approve or disapprove the HVAC contractor used by Tenant and to require Tenant to use only an air conditioning firm approved by Landlord. Additionally, if any air conditioning or heating equipment (or other utility equipment) is damaged by vandalism, fire, lightning or other casualty, Tenant shall repair (and if necessary, replace) the equipment, notwithstanding Article 13. Tenant's sole right of recovery shall be against Tenant's insurers for loss or damage to stock, furniture and fixtures, equipment, improvements and betterments.

(C) Failure to Repair. If Tenant refuses or neglects to repair properly as required hereunder and to the reasonable satisfaction of Landlord, or its representative, as soon as reasonably possible after demand, Landlord, or its representative, may make such repairs without liability to Tenant for any loss or damage that may occur to Tenant's merchandise, fixtures, or other property, or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay as additional and other Rent Landlord's cost for making such repairs plus twenty (20%) percent for overhead and interest at the Default Interest Rate as defined herein from the date Tenant is notified of the completion of repairs by Landlord. In the event that Landlord shall undertake any maintenance or repair in the course of which it shall be determined that such maintenance or repair work was made necessary by the negligence or willful act of Tenant or any of its employees or agents or that the maintenance or repair is, under the terms of this Lease, the responsibility of Tenant, Tenant shall pay Landlord's costs therefore plus overhead and interest as above provided in this Section.

(D) Alterations. At the end of the term of this Lease, Tenant shall deliver the Leased Premises to Landlord in good repair and condition, reasonable wear and tear arising from Tenant's Permitted Use of the Leased Premises as specified herein excepted. No alterations, installations, additions or improvements will be made to the Leased Premises by Tenant without Landlord's prior written approval. All installations, alterations, additions and improvements, whether by Landlord, Tenant or any other person (except only sign panels and movable trade fixtures installed at Tenant's cost) shall become, when made, a part of Landlord's real estate, and on termination of the Lease Term shall be surrendered with the Leased Premises in good condition. Tenant shall not have the right to remove sign boxes affixed to the exterior of the Leased Premises. Tenant shall defend, indemnify and save Landlord harmless from and against all claims for injury, loss or damage to person or property caused by or resulting from doing any work. FOR ANY WORK APPROVED BY LANDLORD THAT INVOLVES PENETRATION OF THE ROOF SURFACE, TENANT SHALL PROVIDE LANDLORD PRIOR WRITTEN NOTICE AND, IF REQUESTED BY LANDLORD, SHALL EMPLOY LANDLORD'S CONTRACTOR. IF TENANT FAILS TO

SO NOTIFY LANDLORD, IN NO EVENT SHALL LANDLORD BE OBLIGATED TO REPAIR SAME AT ANY POINT DURING THE LEASE TERM.

(E) Permits; Liens. All repairs, installations, alterations, improvements and removals by Tenant will be done in a good and workmanlike manner, only after Tenant has procured all permits. Tenant shall comply with all laws, ordinances and regulations of public authorities and with all Landlord's and Tenant's insurance requirements and with insurance inspection or rating bureaus; and the work shall not adversely affect the structure of the building. Tenant shall pay promptly when due all charges for labor and materials in connection with any work done by or for Tenant or anyone claiming under Tenant. Tenant shall remove, by payment, bonding or otherwise, within ten (10) days after notice, all liens placed on the public record or in any way against Landlord's interest or the Shopping Center resulting from any act of Tenant or from labor or materials being alleged to have been supplied at the request of Tenant or anyone claiming under Tenant, failing which Landlord may remove such lien and collect all expenses incurred from Tenant as additional and other Rent, including an administrative fee of Twenty Percent (20%) of the amount of the lien. Tenant shall protect, defend, save harmless and indemnify Landlord and any fee owner of the Shopping Center from and against all losses, claims, liabilities, injuries, expenses (including legal fees), lawsuits and damages arising out of any lien described above. NOTICE IS HEREBY GIVEN THAT LANDLORD IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR TO ANYONE HOLDING THE LEASED PREMISES OR ANY PART THEREOF, AND THAT NO CONSTRUCTION OR OTHER LIEN FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO THE LEASED PREMISES OR THE SHOPPING CENTER. ALL MATERIALMEN, CONTRACTORS, LABORERS, OR OTHER PERSONS FURNISHING ANY SERVICES OR MATERIALS TO TENANT ARE HEREBY NOTIFIED THAT THEY MUST LOOK EXCLUSIVELY TO TENANT TO OBTAIN PAYMENT FOR SAME. TENANT SHALL DELIVER WRITTEN NOTICE OF THE PROVISIONS OF THIS SECTION TO ALL PERSONS PERFORMING WORK IN THE LEASED PREMISES.

10. Signs; Painting; Displays. No advertising or signs of any kind may be placed by Tenant or anyone claiming under Tenant on the exterior of the Leased Premises or doors other than signs as set forth in Exhibit "C" and small lettering on the door to the Leased Premises stating hours of operation. Tenant shall not utilize any banners, flashing, painted, neon or moving signs or lights. All interior signs shall be in strict compliance with all applicable laws, ordinances and regulations, and shall be professionally prepared and placed only on the interior of any windows. No signs will be placed on the exterior of any windows, doors or walls. Tenant shall not paint, decorate or mark any part of the exterior of the Leased Premises or interior of the windows of the Leased Premises. Tenant shall install an exterior lighted sign or signs in compliance with Landlord's sign specifications as set forth on Exhibit "C" and keep the sign(s) (which must first be approved by Landlord in writing) lit to at least 10:00 p.m. or to such later hour as requested by Landlord, on all days of the year.

11. Indemnity; Insurance.

(A) All property of any kind that may be on the Leased Premises during the continuancy of this Lease shall be at the sole risk of Tenant. Except for negligence of Landlord, the Landlord shall not be liable to Tenant or any other person for any injury, loss or damage to property or to any person on the Leased Premises. Landlord shall not be liable under any circumstances for any injury or any loss or damage to or interference with any merchandise, equipment, fixtures, furniture, furnishings or other personal property or the business operations of Tenant or anyone in the Leased Premises occasioned by (i) the act or omission of persons occupying other premises, or (ii) any defect, latent or otherwise, in any building or the equipment, machinery, utilities, or apparatus, or (iii) any breakage or leakage of the roof, walls, floor, pipes or equipment, or (iv) any backing up, seepage or overflow of water or sewerage, or (v) flood, rain, snowfall or other elements or Acts of God.

(B) Tenant's Insurance. Tenant shall maintain (i) a commercial general public liability insurance policy with respect to the Leased Premises and its appurtenances (including signs) as allowed by Florida Statute 768.28; (ii) an insurance policy to cover heating and air-conditioning units against damage for one hundred (100%) percent replacement cost; (iii) an all-risk ("special form") property insurance policy for no less than One Hundred Percent (100%) of the full replacement cost of the covered property and in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars insuring all merchandise, leasehold improvements, furniture, fixtures and other personal property, all at their replacement cost; (iv) plate glass insurance covering all the plate glass of the Leased

Premises, in amounts satisfactory to Landlord; and (v) worker's compensation and employer's liability insurance in compliance with applicable legal requirements. Any insurance policies required hereunder shall have terms of not less than one (1) year and shall provide that the policies may not be modified or terminated without thirty (30) days advance notice to Landlord. In addition, Landlord shall be named as a loss payee. Tenant shall deliver these insurance policies or certificates thereof, satisfactory to Landlord, issued by the insurance company to Landlord with premiums prepaid upon the signing of this Lease and thereafter at least thirty (30) days prior to each expiring policy or at any point upon Landlord's written request. Tenant's failure to deliver the policies or certificates specified hereunder shall constitute a default.

(C) **Increase in Fire Insurance Premium.** Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Leased Premises any article which may be prohibited by the standard form of fire and extended risk insurance policy. Tenant agrees to pay any increase in premiums for fire and extended coverage insurance that may be charged during the term of this Lease on the amount of such insurance which may be carried by Landlord on the Leased Premises or the building of which it is a part, resulting from the type of merchandise sold by Tenant in the Leased Premises or resulting from Tenant's use of the Leased Premises, whether or not Landlord has consented to the same.

12. **Access to Premises.** Landlord shall have the right (but shall not be obligated) to enter the Leased Premises at all times upon reasonable prior notice (and in case of emergency with only such notice as the emergency may require) to make any repairs, alterations, or improvements, including the installation or removal of pipes, wires and other conduits serving other parts of the Shopping Center or to inspect or to show the Leased Premises to prospective purchasers or mortgagees. Commencing six (6) months prior to expiration of the Lease Term, Landlord may enter the Leased Premises pursuant to the terms hereof to show the Leased Premises to prospective tenants and/or to maintain "For Rent" signs on the front or any other part of the exterior of the Leased Premises. Landlord further reserves to itself the exclusive right at any time to use the roof, foundation or exterior walls (other than Tenant's storefront) for placing of signs or equipment or for the purpose of additional construction.

13. **Fire or Other Casualty.**

(A) **Notice.** Tenant shall give prompt notice to Landlord in case of fire or other damage to the Leased Premises.

(B) **Termination.** If (i) the Shopping Center buildings are damaged to the extent of more than twenty-five (25%) percent of the replacement cost, or (ii) the Leased Premises are damaged to the extent of more than fifty (50%) percent of the replacement cost (as determined by a reputable contractor selected by Landlord), or (iii) the Leased Premises are damaged and Tenant is not operating for business as required by Article 9(C) at the time the damage occurs, or (iv) the Leased Premises are damaged and less than one (1) year of the Lease Term remains unexpired at the time of the fire or other casualty; then in any of such events, Landlord may terminate this Lease by notice to Tenant within ninety (90) days after such event, and on the date specified in the notice this Lease shall terminate. If the damage renders the Leased Premises wholly or partially untenable, there shall be a fair and equitable proportionate abatement of all Rent during that period based on the proportion of the Leased Premises rendered untenable.

(C) **Replacement of Leased Premises.** If this Lease is not terminated by Landlord as aforesaid, this Lease shall continue in full force and effect (Tenant waives any right conferred by any applicable law to terminate this Lease based on the damage), and Tenant shall, immediately on notice from Landlord, remove its fixtures, other property and debris as required by Landlord, and then Landlord shall rebuild the Leased Premises to the condition existing when the Leased Premises was originally delivered to Tenant (but only to the extent insurance proceeds are adequate and available for such purposes); and upon Landlord providing Tenant written notice of the completion thereof, Tenant shall restore Tenant's property and promptly reopen for business and commence the payment of all Rent required hereunder. Tenant shall use the proceeds of any recovery on Tenant's insurance policies for restoration of improvements made by Tenant to the Leased Premises, and for restoration and/or replacement of Tenant's equipment, trade fixtures and inventory, and to cover any business interruption loss.

14. **Eminent Domain.**

(A) **Defined.** If the whole of the Leased Premises are taken in connection with eminent domain, the Lease Term shall expire when Landlord shall be divested of its title, and Rent shall be apportioned as of that date. If only part of the Leased Premises is taken in connection with eminent domain, and the Gross Leasable Floor Area of the Leased Premises is reduced by more than twenty (20%) percent and the part remaining shall not be reasonably adequate for the operation of Tenant's business, Landlord or Tenant may terminate this Lease by giving the other notice within thirty (30) days after such taking, effective as of the date possession of the taken part shall be required for public use; and Rent shall be apportioned as of that date. Tenant shall not have any claim for an award based on the loss of its leasehold estate. If this Lease is not so terminated pursuant to this provision, then Landlord shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect except that the Rent shall be reduced in proportion to the portion of the Leased Premises lost in the taking.

(B) **Damages.** Landlord shall be entitled to all damages in connection with eminent domain. Tenant shall execute any instrument required by Landlord for the recovery of damages and to remit to Landlord any damage proceeds recovered, except, however, Tenant may recover for itself damages for personal property or movable trade fixtures which were installed by Tenant, provided Landlord's award is not reduced thereby.

15. Defaults and Remedies.

(A) **Events of Default.** Any one of the following shall be a default by Tenant: (1) if Tenant fails to pay Security Deposit, Base Rent, Tax Expenses, Operating Expenses, or other Rent as and when same becomes due; (2) if Tenant fails to perform or observe any other agreement or condition on its part to be performed or observed pursuant to this Lease, including but not limited to Tenant's obligations under Articles 3, 7, 9, 11, 18 or 24 herein, and fails to remedy same after twenty (20) days written notice thereof is given by Landlord to Tenant; (3) if Tenant defaults under any other lease or agreement between Tenant and Landlord or an affiliate of Landlord; (4) if Tenant's leasehold interest is levied on, attached or taken by any process of law; (5) if Tenant makes an assignment of its property for the benefit of creditors; (6) if any bankruptcy, insolvency or reorganization proceeding or arrangement with creditors (whether through court or by proposed composition with creditors) is commenced by or against Tenant; (7) if a receiver or trustee is appointed for any of Tenant's property; (8) if this Lease is transferred to or devolves on, or the Leased Premises is occupied by, anyone other than Tenant except if specifically permitted by this Lease; (9) if Tenant closes the Leased Premises or uses the same for purposes other than the purposes for which the same are hereby leased; or (10) if Tenant ceases doing business at the Leased Premises for more than seven (7) consecutive Shopping Center business days as determined by Landlord.

(B) **Remedies.** If a default described in subsection 15(A) occurs then Landlord or its agent shall have any or all of the following rights:

- (i) To terminate this Lease by giving Tenant written notice specifying the day of termination (which shall be not less than five (5) days from the date of the notice), on which date this Lease and all of Tenant's rights will cease as a conditional limitation, as if that date specified in Landlord's notice was the original date for expiration of this Lease; but in all cases Tenant shall remain liable as hereinafter provided; and/or
- (ii) To enter the Leased Premises and dispossess Tenant and all other occupants and their property by legal proceedings or otherwise without terminating this Lease, Tenant hereby waiving any claim it might have for trespass or conversion or other damages if Landlord exercises such remedy; and/or
- (iii) To remove all or any part of the Tenant's property from the Leased Premises and without notice to Tenant sell same for the sole benefit of Landlord or store same in any public warehouse or elsewhere at the cost of, and for the account of Tenant, in which case the Landlord shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise, Tenant hereby waiving any claim it might have for trespass or conversion or other damages if Landlord exercises such remedy; and/or
- (iv) To, in the event of a breach or threatened breach of the Lease by Tenant, obtain an injunction against Tenant or invoke any remedy allowed at law or in equity. Mention of any particular remedy shall not preclude Landlord from any other remedy in law or in equity; and/or

- (v) To declare all the aggregate Rent for the remaining balance of the Lease Term, as well as all accrued Rent, to be immediately due and payable, and to recover immediately against Tenant all such Rent, including Base Rent, Tax Expenses, Operating Expenses and all other Rent, which amount shall be for the reasonable damages for default of this Lease and not a penalty.

(C) **Continuing Liability.** Notwithstanding any re-entry, dispossession or termination of the Lease by Landlord, Tenant will remain liable for damages to Landlord in an amount equal to the aggregate of all Rents and other charges required to be paid up to the time of such re-entry, dispossession or termination. In addition, for each month of the period which would otherwise have constituted the balance of the Lease Term, Tenant shall pay any deficiency between the monthly installment of Base Rent plus the Tax Expenses, Operating Expenses and all other Rent that would have been payable, less the net amount of the rents actually collected by Landlord from a new tenant, if any. Tenant will not be entitled to any surplus. Tenant shall also be liable to Landlord for all the expenses Landlord incurs for legal and brokerage fees related to obtaining possession and making a new lease with another tenant and expenses incurred in preparing the Leased Premises for re-rental, regardless of whether Landlord relets the Leased Premises or any part thereof for a term less or more than the period which would have constituted the balance of the Lease Term or grants reasonable concessions or free rent to a new tenant. Landlord's refusal or failure to relet the Leased Premises shall not release or affect Tenant's liability hereunder and Landlord shall not be liable for failure or refusal to relet, or for failure to collect rent under such reletting.

(D) **Failure of Performance by Tenant.** If Tenant shall default under this Lease, Landlord may, at its election, immediately or at any time thereafter, without waiving any claim for breach of agreement, and without notice to Tenant, cure such default or defaults for the account of Tenant, and the cost to Landlord thereof plus interest at the Default Interest Rate shall be deemed to be additional and other Rent and payable on demand. Tenant shall pay all reasonable attorneys' fees, costs and expenses incurred by Landlord in enforcing the provisions of this Lease, suing to collect Rent or to recover possession of the Leased Premises, whether the lawsuit or other action was commenced by Landlord or by Tenant.

(E) **Security Interest.** In addition to the other remedies set forth herein, in the event Tenant defaults hereunder, Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Leased Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all rent and other sums agreed to be paid by Tenant herein. The provisions of this paragraph relating to such lien and security interest shall constitute a security agreement under and subject to the Uniform Commercial Code of the State of Florida so that in the event Tenant is in Default hereunder Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Leased Premises, in addition to and cumulative of the Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Tenant hereby appoints Landlord as its attorney-in-fact to execute any financing statement (or continuation thereof) Landlord deems prudent to perfect the security interest granted hereby if Tenant does not timely execute as debtor such financing statement or statements and such other documents as Landlord may now or hereafter request in order to protect or further perfect Landlord's security interest.

16. **Subordination.**

(A) **Subordination.** This Lease is and shall be subject and subordinate to (i) all ground or underlying leases and all mortgages or other security instruments now or hereafter affecting such leases, and (ii) all mortgages or other security instruments now or hereafter affecting the fee title of the Shopping Center, and (iii) all renewals, modifications, consolidations, replacements and extensions of any such ground or underlying leases and mortgages. In addition, Tenant shall not enter into, execute or deliver any financing agreement that can be considered as having priority to any mortgage or deed of trust that Landlord may have placed upon the Leased Premises. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessee or by any mortgagee. In confirmation of such subordination, Tenant agrees to execute promptly any instrument that Landlord or its mortgagee may reasonably request. However, at the option of Landlord or such mortgagee or ground lessor or secured party, this Lease shall be paramount to such mortgage or ground or underlying lease or other security instrument.

(B) **Attornment.** If Landlord transfers its interest in the Leased Premises, or proceedings are brought for foreclosure of any such mortgage or in case of sale in lieu thereof, or termination of any such ground or underlying lease, Tenant shall, if requested, attorn to the transferee, mortgagee, ground or underlying lessor and deliver, without charge, instruments acknowledging the attornment.

(C) **Notice and Right to Cure.** Provided Tenant was given notice in writing of the names and addresses to which the notices should be sent, Tenant shall give prompt written notice of any default by Landlord to the holder of all mortgages, ground or underlying leases and security holders if the default is such as to give Tenant a right to (i) terminate this Lease, or (ii) reduce the Rents or any other sums reserved, or (iii) credit or offset any amounts against Rents. Any mortgagee, ground lessor or security holder shall have the right to cure Landlord's default within sixty (60) days after receipt of Tenant's notice; and no such rights or remedies shall be exercised by Tenant until the expiration of said sixty (60) days (or such additional time reasonably required to cure such default).

17. **Waiver of Subrogation.** Landlord and Tenant hereby release the other and all other persons claiming under it from any and all liability for loss or damage caused by any casualty, even if the casualty is brought about by the fault or negligence of the other or of any persons claiming under the other. Tenant and Landlord will cause their respective insurance companies to endorse their respective insurance policies to permit a waiver of subrogation.

18. **Assignment Or Subletting.**

(A) **Landlord's Consent.** Tenant shall not assign, mortgage, pledge, or otherwise transfer or encumber this Lease or any interest therein, either voluntarily or by operation of law or otherwise, or sublet the whole or any part of the Leased Premises, or permit occupancy by anyone else, without obtaining on each occasion Landlord's prior written consent, which consent Landlord shall not unreasonably withhold. It shall not be unreasonable for Landlord to withhold consent to a proposed assignment or other transfer based upon a distinction in, by way of example only, the proposed assignor's or transferor's creditworthiness, national or regional reputation, intended use, or operating history from that of Tenant, or for any such similar business reason. The transfer of any corporate stock, partnership interest or membership interest in Tenant, or a merger, consolidation, acquisition or liquidation of or by Tenant, either voluntarily or by operation of law, shall be deemed an assignment and require Landlord's consent as stated above, except if Tenant is a public corporation and such transfer of stock is through a recognized stock exchange. In any assignment the assignee must assume this Lease in writing on Landlord's form.

(B) **Application.** In the event Tenant desires to assign this Lease or sublet or otherwise transfer the Leased Premises or any portion thereof, Tenant shall make written application to Landlord at least sixty (60) days prior to the proposed commencement date of such subletting or assignment, which application shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment, a copy of the proposed sublease or assignment agreement, and copies of financial reports and other relevant financial information of the proposed subtenant or assignee which Landlord may reasonably require, including but not limited to tax returns, credit reports and details of operating history. Any request for Landlord's consent to assignment or subletting shall be accompanied by the non-refundable payment of an application fee ("Application Fee"), which shall be equal to One Thousand Dollars (\$1,000.00), to compensate Landlord for the costs and expenses to be incurred by Landlord in evaluating such assignment or subletting.

(C) **Continuing Liability.** Notwithstanding an assignment or subletting or occupancy of the Leased Premises by anyone other than Tenant, Tenant shall not be released (nor shall any of Tenant's constituents, partners, or members be released) from any obligations, liabilities or covenants under this Lease and shall continue to remain responsible. Landlord shall have the right to collect Rent from any assignee, subtenant or other occupant without releasing Tenant or waiving any right against Tenant for its default under this Article and without accepting the payor as a permitted tenant. In addition, Tenant shall pay to Landlord any positive difference between any rent or other amounts payable under any sublease or assignment to which Landlord grants its consent hereunder, and the Rent payable hereunder. Under any circumstances, Landlord shall not be liable for any money damages to Tenant or Tenant's proposed assignee, transferee or subtenant for refusal to consent to any assignment or transfer of this Lease or transfer of Tenant's corporate stock or sale of Tenant's business or for refusal to consent to any subletting; Tenant's sole remedy shall be specific performance.

(D) Permitted Assignments. Notwithstanding the foregoing, an assignment of this Lease to a parent corporation of Tenant, to a wholly owned subsidiary of Tenant or to an entity which is under common ownership and control with Tenant, shall be permitted provided (1) Tenant shall not at the time of such assignment be in default under any of the terms, covenants and conditions of this Lease, (2) such assignee shall agree in writing to perform all of the unperformed terms, covenants and conditions of this Lease (whether accruing prior to, on, or after the effective date of the assignment), and (3) Tenant and Tenant's Guarantor (if any) shall agree in writing to at all times remain primarily obligated for the performance of the terms, covenants and conditions of this Lease. As used in this paragraph, the term 'control' shall mean the ownership of and the power to vote more than fifty percent (50%) of the voting stock of a corporation or more than fifty percent (50%) of the ownership interests in any partnership or other business entity.

19. Surrender and Holding Over.

(A) Surrender. At the expiration or sooner termination of the tenancy hereby created, Tenant shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereof to Tenant, reasonable wear and tear excepted, and Tenant shall surrender all keys for the Leased Premises to Landlord. Prior to the expiration or sooner termination of this Lease, Tenant shall remove any and all trade fixtures, equipment and other unattached items which Tenant may have installed, stored or left in the Leased Premises or elsewhere in the Shopping Center, and Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including but not limited to wall-to-wall carpeting), walls or ceilings, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Landlord, nor shall Tenant remove any fixtures or machinery that were furnished or paid for by Landlord (whether initially installed or replaced). The Leased Premises shall be left in a broom-clean condition. If Tenant shall fail to remove its trade fixtures or other property as provided in this Article 19, such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and at the option of Landlord shall become the property of Landlord, or at Landlord's option may be removed by Landlord at Tenant's expense, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Landlord. In the event Tenant does not make any repairs as required by this Article 19(A), Tenant shall be liable for and agrees to pay Landlord's costs and expenses in making such repairs. Tenant's obligations and covenants under this Article 19(A) shall survive the expiration or termination of this Lease.

(B) Holding Over. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant timely to surrender possession of the Leased Premises as aforesaid will exceed the amount of the Base Rent theretofore payable hereunder, and accurate measurement will be impossible. Tenant therefore agrees that if Tenant or anyone claiming under Tenant remains in possession of the Leased Premises after the expiration of the Lease Term, that person shall be a tenant at sufferance; and during such holding over, Base Rent shall be twice the rate which was in effect immediately prior to the Lease Term expiration, which Landlord may collect without admission that Tenant's estate is more than a tenancy at sufferance, and all the other provisions of this Lease shall apply insofar as the same are applicable. In the event Tenant holds over in the Premises, then, whether or not Tenant is charged twice the Base Rent as set forth herein, Tenant hereby relinquishes any right Tenant may have to receive a return of the Deposit at the end of such hold over period, and Tenant shall remain liable for all costs, expenses, claims, liabilities and damages of whatever kind and nature which arise from such holdover.

20. No Waivers by Landlord. No waiver by Landlord of any breach by Tenant or requirement of obtaining Landlord's consent shall be deemed a waiver of any other provision of this Lease or any subsequent breach of the same provision or a waiver of any necessity for further consent. No payment by Tenant or acceptance by Landlord of a lesser amount than due from Tenant shall be deemed to be anything but payment on account, and Tenant's payment of a lesser amount with a statement that the lesser amount is payment in full shall not be deemed an accord and satisfaction. Landlord may accept the payment without prejudice to recover the balance due or pursue any other remedy. Landlord may accept payments even after default by Tenant without prejudice to subsequent or concurrent rights or remedies available to Landlord under this Lease, at law or in equity. Any acceptance by Landlord of any payment by Tenant after termination or expiration of the Lease Term shall not constitute an acceptance of Rent but rather a payment to Landlord on account of Tenant's use and occupancy of the Leased Premises. All rights and remedies which Landlord may have under this Lease, at law or in equity shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and any or all of such rights and remedies may be exercised at the same time.

21. **Rules and Regulations.** Tenant shall observe and comply with, and cause its employees, agents, subtenants and concessionaires, and their employees and agents, to observe and comply with all reasonable rules and regulations as set forth in Exhibit D herein or as promulgated by Landlord in the future by notice to Tenant. Future rules and regulations shall have the same force and effect as if originally contained in this Lease.

22. **Landlord and Tenant Defined.** "Tenant" includes the persons named expressly as Tenant and its transferees, successors and assigns. Except as otherwise provided in the next sentence, the agreements and conditions contained in this Lease shall be binding on and inure to the benefit of the parties hereto and their transferees, legal representatives, successors and assigns. "Landlord" means only the then-owner of the lessor's interest in this Lease, and in the event of a transfer by Landlord of its interest in this Lease, the transferor shall be automatically released from all liability and obligations as Landlord subsequent to the transfer. Notwithstanding anything to the contrary, Tenant agrees it will look solely to Landlord's estate in the Shopping Center as the sole asset for collection of any claim, judgment or damages or enforcement of any other judicial process requiring payment of money. Tenant agrees that no other assets of Landlord shall be subject to levy, execution or other procedures to satisfy Tenant's rights or remedies.

23. **Sole Broker.** Tenant represents that no broker, finder, or other person entitled to compensation (other than the Broker identified in Article 1 whose commission shall be paid by Landlord pursuant to a separate agreement) was involved in this Lease, and that no conversations or prior negotiations were had with any broker, finder or other possible claimant other than the Broker concerning the renting of the Leased Premises. Tenant shall defend, indemnify and hold Landlord harmless against any claims for compensation (including legal fees incurred by Landlord) arising out of any conversations or negotiations had by Tenant with anyone other than the Broker.

24. **Estoppel Certificates.** From time to time, within ten (10) days following written notice, Tenant shall deliver to Landlord a signed and acknowledged written statement certifying: the date of this Lease and that this Lease is in full force and effect and unmodified except as stated; the monthly Base Rent payable during the Lease Term; the date to which the Rent and other payments have been paid; whether Landlord is in default, or if there are any offsets, defenses, or counterclaims claimed or which could possibly be claimed by Tenant, and if a default, offset, defense, or counterclaim is claimed or could be claimed, specifying the specific nature and default; and stating any additional matters requested by Landlord or a mortgagee.

25. **Shopping Center Updates.** If Landlord desires to modernize the facade of the Shopping Center, Tenant shall, upon request of Landlord, install a new exterior sign and improve its storefront, following the design of Landlord's architect. Landlord reserves the right to use portions of the Common Areas for events and construction-related activities and to erect temporary scaffolding in front of the Leased Premises. Tenant waives any claim for rent abatement, loss of business or damages arising out of any reasonable and temporary inconvenience allegedly experienced by Tenant during the course of any alteration, improvement or modernization, or during any repair activities in which Landlord is engaged.

26. **Relocation.** Notwithstanding any other provision in this Lease, Landlord in its sole discretion shall have the option at any time to relocate Tenant from the Premises (the "Present Premises") into other premises in the Center (the "New Premises"). Landlord shall give Tenant at least forty-five (45) days notice ("Relocation Notice") of the approximate date Tenant is to move to the New Premises ("Relocation Date"). Landlord shall recreate the Present Premises in the new location at Landlord's sole cost and expense. The New Premises will have at least the same amount of square foot area as the Present Premises. Landlord shall pay for moving Tenant's inventory, fixtures, equipment and storefront sign to the New Premises. The New Premises will become the Premises (instead of the Present Premises) and the Rent and all the other terms and provisions of this Lease shall be transferred to and continue to apply, without interruption, to the New Premises from and after the date Tenant is required to move pursuant to this Article. Landlord and Tenant shall execute a written amendment to this Lease confirming the relocation. Notwithstanding anything to the contrary contained herein, Tenant shall notify Landlord in writing within five (5) days after receipt of Landlord's Relocation Notice if Tenant does not agree to the relocation on the terms as hereinabove provided, and in such event this Lease shall automatically terminate upon the Relocation Date.

27. **Notices.** All notices intended to impose liability on the other party or exercise a right ("Notice") shall be in writing and sent by certified or registered mail, return receipt requested, or hand delivered by an authorized agent of either party, or delivered by a nationally recognized overnight courier (such as Federal Express or UPS) and, in

order to be effective, a copy of any notice of Landlord's default must be sent by Tenant to the holders of any mortgages, ground leases or security interests as per Article 16(C). Notices shall be sent to the address set forth in Article 1 or to such other address as may be designated by notice and shall be effective the date received or refused, but in no event later than (3) days after the notice was mailed, or if by hand delivery or courier delivery, the day delivered. If courier delivery is refused or not able to be made, the day delivery was first attempted shall be deemed the delivery date.

28. Intentionally Deleted

29. Miscellaneous Provisions.

(A) **Entire Agreement.** This Lease contains the entire agreement between the parties. No oral statements or representations or written matter not contained in this Lease shall have any force or effect. This Lease cannot be modified or terminated orally, but only by a writing signed by Landlord and Tenant, except for a termination expressly permitted by this Lease. If more than one party executes this Lease as "Tenant", the liability of all such signatories shall be joint and several. If any provision or the application thereof to any person or circumstance shall to any extent be declared by a court to be invalid, the remainder of this Lease shall not be affected.

(B) **Recording.** Neither this Lease nor any memorandum, assignment or memorandum of assignment thereof shall be recorded in any public records without Landlord's prior written consent and joinder.

(C) **Authorized Execution.** If Tenant is not an individual, the person signing this document on behalf of Tenant represents (by such signature) that he or she has been duly authorized by Tenant to execute this document and that such signature creates a binding obligation of Tenant. This Lease shall become effective as a lease or agreement only upon mutual execution and delivery and if not fully executed and delivered cannot give rise to any rights or remedies.

(D) **Interest.** "Default Interest Rate" as used in this Lease shall mean Eighteen (18%) Percent per annum or the maximum interest rate permitted by law, whichever is lower.

(E) **Construction of Language.** All provisions of this Lease shall be construed without reference to any rule or canon requiring or permitting the construction of provisions of documents for or against the interest of the party responsible for the drafting of the same, it being the intention and agreement of the parties that this Lease be conclusively deemed to be the joint product of both parties and their counsel. The captions, section numbers, and article numbers 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. The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, and the permitted subtenants, assigns and successors thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than that of Landlord and Tenant.

(F) **Act of God.** Where either party hereto is required to do any act but is untimely in completing the act, the time attributable directly to delays caused by an Act of God, hurricane, tornado, rain, or other weather, war, civil commotion, fire or other casualty, labor difficulties, or shortages of labor, materials or equipment, government regulations or other causes beyond such party's reasonable control shall not be counted in determining the time during which such act is to be completed. In any case where work is to be paid for out of insurance proceeds or condemnation awards, due allowance shall be made for delays in the collection of such proceeds and awards. This Article shall not be applicable at all to excuse or permit delay of the time for Tenant to pay Rent or obtain and maintain Insurance.

(G) **Radon Gas.** In accordance with the requirements of Florida Statutes Section 404.056(8), the following notice is hereby given: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from your county public health unit."

(H) **Governmental Regulations.** Tenant shall not do, and shall not permit persons within Tenant's control to do, any act or thing in or upon the Leased Premises which will invalidate or be in conflict with the certificate of occupancy for the Leased Premises or violate any other zoning ordinances, and rules and regulations of governmental or quasi-governmental authorities having jurisdiction over the Premises (the "Requirements"). Tenant shall, at Tenant's sole cost and expense, comply with all laws, ordinances, orders and regulations of federal, state, county and municipal authorities (including, but not limited to, applicable terms of the county building code for the county in which the Leased Premises is located and the Americans With Disabilities Act of 1990 (the "ADA") with respect to the Leased Premises or the use or occupancy thereof. Landlord makes no representation as to the suitability of the Leased Premises for the Permitted Use.

(I) **Hazardous Materials.** Tenant covenants and agrees that Tenant shall, at Tenant's sole cost and expense, comply at all times with all Requirements governing the use, generation, storage, treatment and/or disposal of any "Hazardous Materials" (which term shall mean any biologically or chemically active or other toxic or hazardous wastes, pollutants or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and as hazardous wastes under the Resource Conservation and Recovery Act, 42 U.S.C. § 6010, et seq., any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601, et seq., any "toxic pollutant" under the Clean Water Act, 33 U.S.C. § 466 et seq., as amended, any hazardous air pollutant under the Clean Air Act, 42 U.S.C. § 7401 et seq., hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq., and any hazardous or toxic substances or pollutant regulated under any other Requirements). Tenant shall agree to execute, from time to time, at Landlord's request, affidavits, representations and the like concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials in, on, under or about the Leased Premises or the land on which the Leased Premises is located. Tenant shall indemnify and hold Landlord and Landlord's agents harmless from and against any loss, cost, damage, liability or expense (including attorneys' fees and disbursements) arising by reason of any clean up, removal, remediation, detoxification action or any other activity required or recommended of Landlord, Landlord's lender or any of Landlord's agents by any governmental authority by reason of the presence in or about the Leased Premises of any Hazardous Materials, as a result of or in connection with the act or omission of Tenant or persons within Tenant's control or the breach of this Lease by Tenant or persons within Tenant's control. The foregoing covenants and indemnity shall survive the expiration or any termination of this Lease.

(J) **Governing Law.** This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

(K) **Accord and Satisfaction.** Payment by Tenant or receipt by Landlord of a lesser amount than the rents herein stipulated may be, at Landlord's sole option, deemed to be on account of the earliest due stipulated rents, or deemed to be on account of rent 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 payment as rents 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 rents or pursue any other remedy in this Lease or in law or in equity against Tenant.

(L) **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 Leased Premises or any other premises situated in the Shopping Center. Execution of this Lease by Tenant shall be irrevocable. 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.

(M) Trial by Jury Waiver. Landlord and Tenant mutually agree that they hereby waive TRIAL BY JURY in any action, proceeding or counterclaim brought by either against the other as to any matters arising out of or in any way connected with this Lease, or their relationship as Landlord and Tenant, or Tenant's use or occupancy.

(N) OFAC. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant

(O) Prior Lease Cancellation: The execution by both parties of this Lease shall have the effect of superseding and canceling the Lease dated March 14, 2000 (the "Original Lease") as of the Commencement Date, between Landlord's predecessor, CRF Springs Plaza Limited Partnership ("Original Landlord") and ("Tenant") for the premises located at 8951 Bonita Beach Road, Ste. 565, Bonita Springs. Any amounts due under such Original Lease shall remain Tenant's responsibility in accordance with the terms thereof. Tenant acknowledges and agrees that it has no claims, defenses, counter claims or setoffs against Landlord arising from such Original Lease.

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IN WITNESS HEREOF, Landlord and Tenant have executed this Lease, or have caused the same to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

TENANT:

Lee County, a political subdivision and Charter County of the
State of Florida

By: Lee County Board of County Commissioners

Print Name:

By:

Name: Robert P. Janes

Title: Chairman

Print Name: Deputy Clerk

Approved As To Form: _____
Lee County Attorney's Office

LANDLORD:

Bonita Beach 41 LLC, a Florida limited liability company,
RRR Springs Plaza LLC, a Florida limited liability company,
and KJR Springs Plaza LLC, a Florida limited liability
company, as co-tenants

By: Bonita Beach 41 LLC, a Florida limited liability company,
authorized representative

By: Bonita Beach Equities, a Florida limited liability company, its
manager

By: Bonita Beach Manager, Inc., a Florida corporation,
its manager

By: Ivy Greener
Ivy Greener, Authorized Representative

Denise Thomas
Print Name: **Denise Thomas**

[Signature]
Print Name:

ACKNOWLEDGMENT OF TENANT

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the person who executed the foregoing Lease and acknowledged before me that he was duly authorized and did execute same on behalf of _____.

Given under my hand and notarial seal this _____ day of _____, 20____.

(Notary Seal)

Notary Public
Commission No: _____
Expiration Date: _____

ACKNOWLEDGMENT OF LANDLORD

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the person who executed the foregoing Lease and acknowledged before me that he was duly authorized and did execute same on behalf of _____.

Given under my hand and notarial seal this _____ day of _____, 20____.

(Notary Seal)

Notary Public
Commission No: _____
Expiration Date: _____

EXHIBIT **B** TO LEASE AGREEMENT BETWEEN BONITA BEACH 41 LLC, RRR SPRINGS PLAZA LLC
AND KJR SPRINGS PLAZA LLC, AS CO-TENANTS, AS LANDLORD, AND
LEE COUNTY, AS TENANT

LANDLORD'S WORK

TENANT HEREBY ACCEPTS THE LEASED PREMISES (INCLUDING BUT NOT LIMITED TO THE STOREFRONT AND FLOOR, DEMISING WALLS, CEILING, TOILET, ELECTRIC, WATER/SEWER, LIGHTING AND HVAC) "AS IS" WITH NO MODIFICATIONS OR ALTERATIONS REQUIRED OT BE MADE BY LANDLORD. ALL WORK NOT DESCRIBED HEREIN AS LANDLORD'S WORK SHALL BE TENANT'S RESPONSIBILITY AND SHALL BE DONE BY TENANT AS PART OF TENANT'S WORK AT NO COST TO LANDLORD.

EXHIBIT C TO LEASE AGREEMENT BETWEEN BONITA BEACH 41 LLC, RRR SPRINGS PLAZA LLC
AND KJR SPRINGS PLAZA LLC, AS CO-TENANTS, AS LANDLORD, AND
LEE COUNTY, AS TENANT

SIGN CRITERIA

Signs shall be furnished and installed by Tenant in accordance with the following:

1. Detailed drawings, for all new signs to be built and installed by Tenant and alterations to existing building signs must be submitted to Landlord for approval prior to installation. The drawings shall indicate the location, size, layout, design, wording and color of the proposed sign as it would look on the storefront, including all lettering and graphics. The Tenant shall submit samples of sign materials if required by Landlord. Landlord may withhold its approval of the proposed sign(s) in Landlord's discretion. Tenant will obtain all applicable permits, and construct and install the sign at Tenant's expense, including the removal of any existing sign. Tenant will provide Landlord with the name of the sign installer and a copy of a certificate of insurance covering the installer's work on the property in amounts satisfactory to Landlord.
2. Tenant is responsible for assuring that all sign installation and manufacture complies with local building codes and is further responsible for the work performed by its sign contractor, including the sealing in a watertight manner of any building or façade penetrations. Care should be taken to prevent damage or stress cracks to the façade during sign installation. Tenant's sign contractor shall be responsible for making the electrical connection for the sign and coordinating connection with Tenant's licensed electrical contractor.
3. Landlord reserves the right to make exceptions to these requirements for "anchor" or "Major" tenants. Franchise or corporate signs not conforming to these criteria must be submitted to Landlord and will be reviewed for approval on a case-by-case basis.
4. Tenant agrees to maintain signage at all times in good condition and repair including but not limited to peeling paint, faded letters/lenses, burned out bulbs and/or ballasts. Upon vacating the Leased Premises, Tenant shall remove the sign and restore the fascia to its original condition at its own expense and to the satisfaction and approval of Landlord.
5. Unauthorized signs will be removed by Landlord without notice. Landlord reserves the right to change Landlord's sign criteria so long as the new sign criteria is uniformly enforced by Landlord.
6. To the extent canopy signage exists, such signs are subject to the same conditions outlined above, including the requirement of Landlord's prior written approval. Canopy signs are to be designed similar and harmonious to existing canopy signage.

EXHIBIT **D** TO LEASE AGREEMENT BETWEEN BONITA BEACH 41 LLC, RRR SPRINGS PLAZA LLC
AND KJR SPRINGS PLAZA LLC, AS CO-TENANTS, AS LANDLORD, AND
LEE COUNTY, AS TENANT

SHOPPING CENTER RULES AND REGULATIONS

1. All deliveries or shipments of any kind to and from the Leased Premises including loading of goods, shall be made by way of the rear of the Leased Premises or at any other secondary location designated by Landlord, to the extent one exists, and only at such time designated for such purpose by Landlord.
2. Tenant shall not use the public or Common Areas in the Shopping Center for business purposes or special events unless prior approval in writing has been granted by Landlord.
3. Plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein.
4. Tenant shall use, at Tenant's cost, a pest extermination contractor at such intervals as Landlord may require, but no less often than once annually.
5. Tenant shall not place or permit: (a) displays, decorations or shopping carts on the sidewalk in front of the Leased Premises or upon any of the Common Areas of the Shopping Center; (b) anything to be displayed, stacked, hung from the ceiling, racked, stored, etc., on the sidewalks outside the shops unless Tenant obtains Landlord's prior written approval and acquires adequate insurance coverage and accepts all liability for the sidewalk outside the shops; or (c) any bicycles, motorized or non-motorized vehicles to park on the sidewalks and only in designated places in the Common Areas.
6. Soliciting for any reason in Common Areas requires Landlord's prior written approval.
7. Distribution of sales flyers, pamphlets, or any type of advertising literature in the Common Areas, on parked cars, etc., by Tenant or anyone acting on behalf of Tenant or with Tenant's knowledge is only permitted with prior written approval of Landlord.
8. Tenant agrees to participate in trash pick-up as directed by Landlord.
9. Unless directly related to business, as stated in the body of the Lease, no animals will be allowed in Common Areas.
10. Damage caused to the roof of the Shopping Center by repair/service personnel contracted by Tenant will be the responsibility of Tenant. All objects left on the roof by Tenant contracted repair/service personnel causing damage to the roof will be the sole responsibility of Tenant.
11. Tenant shall not, without prior written consent of the Landlord, affix or install any type of sunscreen, tinting, solar screen or similar product to any window or door glass of the Leased Premises.
12. Landlord reserves the right to suspend, supplement, or change these Rules and Regulations so long as they are uniformly enforced by Landlord.

EXHIBIT E TO LEASE AGREEMENT BETWEEN BONITA BEACH 41 LLC, RRR SPRINGS PLAZA LLC
AND KJR SPRINGS PLAZA LLC, AS CO-TENANTS, AS LANDLORD, AND
LEE COUNTY, AS TENANT

TENANT'S WORK

Tenant's Work. Tenant shall undertake, at Tenant's own cost and expense, all of the finishing, furnishing, fixturing and equipping of the Leased Premises as a first class retail store which is not specifically enumerated as part of Exhibit B, Landlord's Work, hereto, and Tenant shall do so in accordance with the requirements set forth below ("Tenant's Work"). It is the purpose of this requirement that the Leased Premises be fixtured, designed and laid out so as not to be a detriment to the other tenants in the Shopping Center and that Tenant's Work shall not be detrimental or disruptive to the Shopping Center or other tenants therein.

(a) Tenant shall, at its own cost and expense, obtain any and all approvals of the appropriate governmental agency required in connection with the construction of the improvements to the Leased Premises, including but not limited to all requisite building permits. Prior to the commencement of the construction of Tenant's improvements to the Leased Premises (the "Tenant Improvements"), Tenant shall furnish the aforesaid approvals to Landlord.

(b) Tenant may select contractors and subcontractors to effectuate the construction of the Leased Premises subject to Landlord's reasonable approval. Tenant shall be responsible for all architectural and engineering fees, contractor and subcontractor costs and costs of materials.

(c) Tenant shall furnish to Landlord, in writing, the name of each contractor selected to perform work on the Leased Premises, along with a copy of a valid license issued by the County in which the Leased Premises authorizing each such contractor to engage in the type of work for which the contractor has been selected. Prior to commencing any construction of the Leased Premises, the Tenant shall furnish to Landlord all certificates of insurance from such contractors or subcontractors for public liability and other forms and amounts of insurance required in the discretion of the Landlord, naming Landlord as additional insured.

(d) Tenant shall not install any plumbing, mechanical work, electrical wiring or fixtures, or modify, alter or install any apparatus which could affect the Building's systems without the prior written approval of Landlord in each instance.

(e) Upon completion of the improvements, Tenant shall furnish to Landlord all forms of approval provided by appropriate local governmental authorities to certify that the Leased Premises is suitable for occupancy.

(f) No equipment that creates noise, fumes or smoke shall be used during normal business hours and Tenant shall not engage in nor permit its contractor(s) to engage in any work which interferes with the use and enjoyment of the Shopping Center or other premises thereof by other tenants or customers.