

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

*In the matter of an Application under Section 243(1) of the Bankruptcy and Insolvency Act,  
R.S.C. 1985, C. B-3, as am.; and Section 101 of the Courts of Justice Act, R.S.O. 1990, C. C.43,  
as am.*

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,  
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY  
SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN  
FINANCIAL SERVICES LIMITED**

Applicants

and

**RIOCAN-HBC LIMITED PARTNERSHIP, RIOCAN-HBC GENERAL PARTNER  
INC., HBC YSS 1 LIMITED PARTNERSHIP, HBC YSS 1 LP INC., HBC YSS 2  
LIMITED PARTNERSHIP, HBC YSS 2 LP INC., RIOCAN-HBC OTTAWA  
LIMITED PARTNERSHIP, RIOCAN-HBC (OTTAWA) HOLDINGS INC., and  
RIOCAN-HBC (OTTAWA) GP, INC.**

Respondents

**RESPONDING MOTION RECORD  
(Returnable December 16, 2025)  
(VOLUME 1 OF 3)**

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BETWEEN

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS  
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PROPERTY SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2  
TRUST and RIOCAN FINANCIAL SERVICES LIMITED**

Applicants

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Respondents

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as at November 13, 2025

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# **TAB 1**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

*In the matter of an Application under Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as am.; and Section 101 of the Courts of Justice Act, R.S.O. 1990, C. C.43, as am.*

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,  
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY  
SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN  
FINANCIAL SERVICES LIMITED**

Applicants

and

**RIOCAN-HBC LIMITED PARTNERSHIP, RIOCAN-HBC GENERAL PARTNER  
INC., HBC YSS 1 LIMITED PARTNERSHIP, HBC YSS 1 LP INC., HBC YSS 2  
LIMITED PARTNERSHIP, HBC YSS 2 LP INC., RIOCAN-HBC OTTAWA  
LIMITED PARTNERSHIP, RIOCAN-HBC (OTTAWA) HOLDINGS INC., and  
RIOCAN-HBC (OTTAWA) GP, INC.**

Respondents

**AFFIDAVIT OF NADIA CORRADO  
Sworn November 13, 2025**

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### **List of Exhibits**

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Exhibit “B”	2023 and 2024 Reports from ICSC regarding Top 25 malls
Exhibit “C”	List of “first-to-market” and luxury brands in Canada
Exhibit “D”	Head Lease dated September 26, 2002 between HBC and Oxford
Exhibit “E”	Amending Agreement dated April 3, 2014 between HBC and Oxford
Exhibit “F”	Notice of Assignment of Lease dated November 25, 2015 from HBC to Oxford
Exhibit “G”	Beneficial Lease Assignment dated November 25, 2015 between HBC and HBC in its capacity as general partner of HBC YSS 1 Limited Partnership
Exhibit “H”	HBC Sublease dated November 25, 2015 between HBC, as subtenant, and HBC in its capacity as general partner of HBC YSS 1 Limited Partnership, as sublandlord
Exhibit “I”	Summary chart of certain terms of the Head Lease prepared by Oxford
Exhibit “J”	Lease agreement dated November 11, 2002 between Fairweather Ltd. and Oxford in respect of certain premises at the Upper Canada Mall
Exhibit “K”	Lease Extension and Amending Agreement dated December 16, 2024 between Fairweather Ltd. and Oxford in respect of certain premises at Upper Canada Mall
Exhibit “L”	Lease Agreement dated February 22, 2006 between Fairweather Ltd. and Oxford in respect of certain premises at Scarborough Town Centre
Exhibit “M”	Lease Extension and Amending Agreement dated December 2, 2024 between Fairweather Ltd. and Oxford in respect of certain premises at Scarborough Town Centre
Exhibit “N”	License Agreement dated July 15, 2025 between Fairweather Ltd. (o/a Designer Depot) and Oxford in respect of certain premises at Kingsway Garden Mall.

Exhibit “O”	Retail concept brochure sent to Oxford by Oberfeld in respect of Designer Depot
Exhibit “P”	Wyrth License Agreement dated May 6, 2025 between Majora Inc. (o/a Wyrth) and Oxford in respect of certain premises at Hillcrest Mall.
Exhibit “Q”	Table summarizing comparison between the Proposed Fairweather Transaction, the Current Lease Agreements and the Current License Agreements
Exhibit “R”	A report generated from Oxford’s records regarding Fairweather’s reported sales in respect of the Current Fairweather Leases
Exhibit “S”	A chart prepared by Oxford summarizing the size and location of Mr. Benitah’s known retail stores
Exhibit “T”	Images of the <i>Les Ailes de la Mode</i> store located at the Place Vertu shopping centre in Montreal, Québec taken on October 15, 2025
Exhibit “U”	Images of the <i>Les Ailes de la Mode</i> store located at the Carre Decarie shopping centre in Côte Saint-Luc, Québec taken on October 15, 2025
Exhibit “V”	Images of the interior and exterior of the Leased Premises pre-filing.

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LIMITED PARTNERSHIP, RIOCAN-HBC (OTTAWA) HOLDINGS INC., and  
RIOCAN-HBC (OTTAWA) GP, INC.**

Respondents

**AFFIDAVIT OF NADIA CORRADO  
Sworn November 13, 2025**

I, Nadia Corrado, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY AS FOLLOWS:

1. I am a Vice-President, Asset Management with OPGI Management Limited Partnership by its general partner OPGI Management GP Inc. (“**Oxford**”), and as such I have knowledge of the matters to which I hereinafter depose, which knowledge is either personal to me, obtained from a review of the documents to which I refer, or, where indicated, based on information and belief, in which case I believe such information to be true. Where I have

indicated that I have obtained facts from other sources, I have identified the sources and I believe those facts to be true.

2. I have over 20 years of experience working in retail in Canada. I obtained my Bachelor of Commerce, Accounting & Finance in 2002 and my CMA (Certified Management Accountants of Ontario) in 2005. I joined Oxford in January 2021. I am responsible for overseeing asset management for Oxford's Canadian retail portfolio which includes setting and supporting the strategic objectives for our retail properties to maximize returns and increase the value of our assets. As part of my role, I work closely with our retail leasing and operations teams, including in setting the leasing merchandizing strategy, reviewing and approving lease transactions and evaluating budgetary and capital requirements for Oxford's retail properties. I am also co-chair of Oxford's Global Asset Management Forum, a group of asset management professionals across the globe that are tasked with establishing best practices for asset management at Oxford.
3. This affidavit is filed on behalf of Oxford in response to the motion brought by FTI Consulting Canada Inc. in its capacity as receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of RioCan-HBC Limited Partnership, RioCan-HBC General Partner Inc., HBC YSS 1 Limited Partnership, and HBC YSS 1 LP Inc., among others, for the approval of a proposed sublease transaction (the "**Proposed Fairweather Transaction**") with Fairweather Ltd. ("**Fairweather**") in respect of the Leased Premises (defined below) formerly occupied by Hudson's Bay Company ULC ("**HBC**") at Yorkdale Shopping Centre ("**Yorkdale**").

4. Oxford opposes the motion brought by the Receiver. The Receiver seeks to impose a structure on Oxford whereby the Head Lease of an insolvent tenant remains in place on some basis that is not disclosed, with the Proposed Fairweather Transaction being established as an entirely new sublease under the existing Head Lease. Oxford does not view the Proposed Fairweather Transaction as a *bona fide* sublease.
5. Fairweather is an unsuitable tenant for the Leased Premises at Yorkdale. Oxford has spent the past 15 years and over \$1 billion to develop Yorkdale into the pre-eminent shopping centre in Canada. Introducing Fairweather, or its untested *Ailes* brand, as an anchor tenant in the largest leased premises at Yorkdale would upend those efforts.
6. Oxford is not satisfied that Fairweather will, or even *could*, operate the type of store required by the Head Lease. Fairweather stores operate in the budget and value-oriented market. Almost all Fairweather locations in Canada are approximately 3% of the size of the Leased Premises (defined below). Its few remaining agreements for occupancy within Oxford's shopping centres are for short-term, temporary arrangements that can be terminated by Oxford and, in the case of the two remaining leases, have remaining terms of approximately 0.3% (two months) and 4% (fourteen months), respectively, of the 50-year term under the Proposed Fairweather Transaction.
7. Establishing the creditworthiness of a proposed subtenant is one of the requirements under the Head Lease for any sublease. Fairweather's current operations in Oxford's shopping centres reflect that it is not a financially healthy retailer, based on metrics used within the retail industry for assessing a retail tenant's health. Its stores look and feel temporary and downmarket. They do not reflect what is required of an anchor tenant at Yorkdale.

8. Oxford has been steadily reducing Fairweather's presence in all its shopping centres and uses Fairweather as a temporary placeholder only, while it identifies appropriate longer-term tenants. I cannot overemphasize how inappropriate and detrimental it would be to have Fairweather occupy the most prominent premises at Yorkdale for even one year, much less the next 50 years as contemplated by the Proposed Fairweather Transaction. This would have the effect of compromising decades of significant investment and planning by Oxford and create a cascading negative effect for Yorkdale's existing tenants.

**A. The Parties**

9. Oxford is a global real estate investor, developer, and manager, and is the real estate investment arm of the Ontario Municipal Employees Retirement System ("**OMERS**"). OMERS is one of Canada's largest defined-benefit pension plans and administers the pensions of over 600,000 plan members who rely on Oxford to prudently manage its real estate assets and investments for the security and stability of their pension returns.
10. Oxford is the property manager of Yorkdale. As property manager, Oxford is responsible for all aspects of the day-to-day operations of Yorkdale. This includes responsibility for locating tenants and negotiating, settling, executing and administering leases of premises at Yorkdale.
11. Fairweather is a Canadian company operating retail stores under various banners. Isaac Benitah is the sole director, and at least 75% shareholder, of Fairweather, as reflected on a corporate search obtained by Oxford on October 23, 2025, a copy of which is attached and marked as **Exhibit "A"**.



12. RioCan Real Estate Investment Trust (“**RioCan**”) is a publicly traded real estate investment trust. RioCan is a landlord in the Canadian real estate market.

**B. Yorkdale’s Unique Position within the Retail Landscape**

13. Yorkdale is a shopping centre located in Toronto, Ontario and is one of Canada’s largest shopping centres, having a gross leasable area (“**GLA**”) of approximately 2 million square feet. Yorkdale attracts approximately 16 million visitors per year.
14. Yorkdale occupies a unique position within Canada’s retail landscape. According to the Innovating Commerce Serving Communities (the “**ICSC**” formerly known as the International Council of Shopping Centres), the leading source for data relating to shopping centres in Canada, Yorkdale consistently outperforms all other Canadian shopping centres in sales productivity (sales per square foot of GLA). Copies of reports from the ICSC regarding the top 25 shopping centres in Canada by sales per square foot for 2023 and 2024 are attached collectively as **Exhibit “B”**.
15. Yorkdale was the first shopping centre in Canada to surpass annual sales of \$1 billion, in 2013, and was also the first shopping centre in Canada to surpass annual sales of \$2 billion, in 2024, and is the only shopping centre in Canada to have done so to date.
16. Yorkdale’s annual sales per square foot would place it in the top five shopping centres in the United States of America, subject to currency conversions, using data provided by Green Street, a provider of trusted commercial real estate and infrastructure intelligence, predictive analytics, and insights.

17. The success of Yorkdale is the product of Oxford's significant investment of approximately \$1 billion over the past 15 years alone, its strategic planning, and brand cultivation aimed at attracting and maintaining a world-class luxury retail mix. Yorkdale has 67 luxury retailers, which represent approximately 29% of its total store count and approximately 32% of its GLA. This represents the highest number and proportion of luxury retailers of any shopping centre in Canada. This statistic is determined by comparing the number of luxury retailers at Yorkdale against those in the other top ten shopping centres that have been identified and ranked by ICSC (see Exhibit "B" above).
18. Over the past 15 years, Oxford has executed a comprehensive, long-term strategy to transform Yorkdale Mall into a leading luxury retail destination. This vision was supported by more than \$1 billion in capital investment, encompassing significant redevelopment within the shopping centre, modernization of infrastructure, and enhancement of the overall customer experience. Through these efforts, Oxford has curated a premium tenant mix, elevated the mall's brand positioning, and reinforced Yorkdale's status as a world-class shopping environment.
19. Unlike many other shopping centres, Oxford does not lease space at Yorkdale to tenants that operate off-price or discount stores. This decision reflects Oxford's deliberate and strategic planning over the past 15 years to position Yorkdale as a centre for luxury and flagship retail operations. Oxford has been intentional about phasing out lower-tier value apparel concepts, in order to be able to attract and maintain first-to-market flagship retail, luxury brands and first-class retail operators. Because Yorkdale caters to a consumer demographic that expects luxury and top-tier retail experiences, luxury brands seeking to

enter the Canadian market view Yorkdale as the premier destination for their first presence in Canada. Data tracked by Oxford confirms that Yorkdale leases premises to more “first-to-market” and luxury brands than any other shopping centre in Canada. Charts showing the introduction of first-to market brands in Canada and the relative proportion of luxury brands at Yorkdale are attached as **Exhibit “C”**.

20. As a result, Yorkdale has become a destination for visitors to Toronto. Based on data from Environics Analytics, a service used by Oxford to measure visitor activity, Yorkdale attracts approximately 4.5 million people each year from postal codes that are more than 65 kilometers away. That represents more than 25% of all visitors to Yorkdale in a given year.

**C. The Head Lease and the Existing Sublease**

21. Pursuant to a lease agreement dated September 26, 2002 (as amended, the “**Head Lease**”), HBC entered into a lease for the Leased Premises (defined below). A copy of the Head Lease is attached as **Exhibit “D”**.
22. The Head Lease provides that any Transfer (which is defined to include any sublease) must comply with the terms of the Head Lease. The Proposed Fairweather Transaction, however, provides that Fairweather would comply with the Head Lease “except as otherwise provided” in the sublease.
23. The Head Lease is a “triple net” lease. Before subsequent amendments that increased the following amounts, it required the Tenant HBC to pay: (i) basic annual rent of \$500,000; (ii) an Occupancy Payment of \$166,000 (increased annually in line with the Consumer Price Index); (iii) all Real Property Taxes (as defined therein); (iv) charges for certain

utilities used at the Leased Premises; and (v) all other applicable taxes, license fees, and similar charges. Pursuant to an Amending Agreement dated April 3, 2014 (the “**Amending Agreement**”), Oxford was entitled to increase the basic annual rent payable under the Head Lease such that, in 2025, HBC was required to pay an aggregate amount of rent in the approximate amount of \$2.8 million per year. A copy of the Amending Agreement is attached as **Exhibit “E”**.

24. Pursuant to a Notice of Assignment of Lease dated November 25, 2015, HBC assigned its interest as tenant under the Head Lease (in its own capacity) to itself in its capacity as general partner of the HBC YSS 1 Limited Partnership (the “**JV LP**”). A copy of that Notice of Assignment of Lease is attached as **Exhibit “F”** hereto.
25. At the same time, HBC (in its own capacity) and HBC in its capacity as general partner of the JV LP entered into a Beneficial Lease Assignment dated November 25, 2015, wherein HBC in its capacity as general partner of the JV LP agreed to assume, perform and discharge all obligations and liabilities under the Head Lease. A copy of the Beneficial Lease Assignment is attached as **Exhibit “G”** hereto.
26. At the same time, pursuant to a Sublease dated November 25, 2015 (the “**Existing HBC Sublease**”), HBC, in its capacity as general partner of the JV LP, subleased the Leased Premises to itself (HBC) in its own capacity. The rent payable under the Existing HBC Sublease for 2025 is \$13.6 million per year, comprising (approximately): (i) basic rent of \$10.8 million; (ii) Head Lease rent of \$0.9 million; and (iii) Head Lease Additional Rent of \$1.9 million. A copy of the Existing HBC Sublease is attached as **Exhibit “H”** hereto.

27. HBC has always been the tenant under the Head Lease and the Existing HBC Sublease, and the sublandlord under the Existing HBC Sublease. That did not change when the JV LP was created in 2015.
28. The premises (the “**Leased Premises**”) described in the Head Lease comprise 300,870 square feet of retail space over three floors and a basement, making it the largest leased premises at Yorkdale and one of the few multi-level retail spaces within Yorkdale. By comparison, the next two largest tenants, Simons and Holt Renfrew, occupy spaces that are approximately one-third the size of the Leased Premises. Beyond those tenants, there are only two other tenants in the entire shopping centre that occupy more than 50,000 square feet of space.
29. Oxford has prepared a summary of certain terms of the Head Lease for ease of reference, a copy of which is attached at **Exhibit “I”** hereto.

**D. Oxford’s Relationship with Fairweather Brands and Isaac Benitah**

*i. Current Oxford Leases with Fairweather*

30. Oxford has short-term leases with Fairweather at two of its malls:
- (a) Fairweather operates a *Fairweather* brand retail store at Upper Canada Mall in Newmarket, Ontario (the “**Upper Canada Fairweather Lease**”) pursuant to a lease agreement originally dated November 11, 2002, that has been subject to amendments and various short-term extensions. The current term expires on January 31, 2026. There are no rights of renewal or extension in favour of Fairweather in respect of this lease. A copy of the original Upper Canada Fairweather Lease is attached as **Exhibit “J”**. A copy of the Lease Extension and

Amending Agreement dated December 16, 2024, being the last amendment to the Upper Canada Fairweather Lease, is attached as **Exhibit “K”**; and

- (b) Fairweather operates a *Fairweather/Stockhomme* branded retail store at Scarborough Town Centre located in Scarborough, Ontario (the “**STC Fairweather Lease**” and when referred to with the Upper Canada Fairweather Lease, the “**Current Fairweather Leases**”) pursuant to a lease agreement dated February 22, 2006, that has been subject to amendments and various short-term extensions. There are no rights of renewal or extension in favour of Fairweather in respect of this lease, and it expires on January 31, 2027. A copy of the original STC Fairweather Lease is attached as **Exhibit “L”**. A copy of the Lease Extension and Amending Agreement dated December 2, 2024, being the last amendment to the STC Fairweather Lease, is attached as **Exhibit “M”**.

31. The Current Fairweather Leases, and the premises involved, are materially different from the Proposed Fairweather Transaction and the Leased Premises at Yorkdale. For example, they:

- (a) involve significantly smaller premises (5,010 and 7,801 square feet only, compared to 300,870 square feet at the Leased Premises);
- (b) do not involve or contemplate anchor tenant premises or terms, which is a feature of the Head Lease at Yorkdale;
- (c) are of short duration and subject to specific commercial terms including Oxford’s right of termination at any time, on short notice, to ensure that Oxford can control the premises and find the right opportunities to lease the space to longer-term

tenants that are more aligned with Oxford's strategic vision for each of these shopping centres; and

- (d) do not provide for, or even contemplate the operation of a department store, much less a single integrated traditional retail department store, as required by the Head Lease at Yorkdale.

*ii. Current Oxford Licenses to Fairweather*

- 32. In addition to the short-term Current Fairweather Leases, Oxford entered into a revocable short-term License Agreement with Fairweather dated July 15, 2025 (the “**Designer Depot License Agreement**”) pursuant to which Fairweather will operate a *Designer Depot* brand at Oxford's Kingsway Garden Mall in Edmonton, Alberta (“**Kingsway Mall**”). This is simply a license agreement – not a lease. The licensed premises are approximately 80,000 square feet, being approximately half of the retail space previously occupied by HBC at Kingsway Mall. This short-term licence is a temporary arrangement that is intended to cover a portion of the costs previously paid by HBC while Oxford determines the best longer-term use of the space and locates a suitable longer-term new tenant. A copy of the Designer Depot License Agreement is attached as **Exhibit “N”**.
- 33. On June 20, 2025, prior to entering into the License Agreement, Fairweather's broker, Oberfeld Snowcap, sent Oxford a retail concept brochure for the *Designer Depot* brand store. A copy of the retail concept brochure sent to Oxford by Jessie Putre at Oberfeld Snowcap in respect of Oberfeld's client, Designer Depot, is attached as **Exhibit “O”**.
- 34. Oxford has also entered into a short-term revocable license agreement with Majora Inc. operating as *Wyrth* pursuant to a License Agreement dated May 6, 2025 (the “**Wyrth**

**License Agreement**” and when referred to with the Designer Depot License Agreement, the “**Current License Agreements**”). The Wyrth brand is identified at paragraph 64 of the Affidavit of Dennis Blasutti sworn October 12, 2025 (the “**Blasutti Affidavit**”), as one of Fairweather’s brands. The Wyrth License Agreement is for a period of only one year for approximately 4,717 square feet of retail space at Hillcrest Mall in Richmond Hill, Ontario (“**Hillcrest Mall**”). As with the Designer Depot License Agreement, the intended use under the Wyrth License Agreement does not provide for, or even contemplate the operation of a department store, and it contains a termination right in favour of Oxford. A copy of the Wyrth License Agreement is attached as **Exhibit “P”**.

35. The Current License Agreements and related premises are materially different than what is contemplated under the Proposed Fairweather Transaction and the Leased Premises at Yorkdale. For example:
- (a) the licensed premises at Kingsway Mall comprise 81,202 square feet on a short-term basis, and the licensed premises at Hillcrest Mall comprise approximately 4,717 square feet;
  - (b) the Current License Agreements are each short-term licenses (not a lease) with terms of twelve months (12) and approximately fifteen (15) months; and
  - (c) contrary to the assertion made at paragraph 68 of the Blasutti Affidavit, Designer Depot is not characterized as a department store under the terms of the Designer Depot License Agreement and the words “department store” do not appear anywhere in the Licence Agreement.



36. Kingsway Mall and Hillcrest Mall are also materially different from Yorkdale in both scale and market positioning. Each of Kingsway Mall and Hillcrest Mall is a shopping centre that primarily serves a local market, with everyday retail offerings that align with the needs of the surrounding community. In contrast, Yorkdale represents the pinnacle of Oxford's retail portfolio and is Canada's premier destination for luxury and flagship brands.

*iii. Summary of Current Fairweather Leases and Licenses*

37. The Receiver's Fifth Report and the Blasutti Affidavit make certain assumptions and statements about the Current Lease Agreements and Current License Agreements in Oxford shopping centres, and their relevance to the Proposed Fairweather Transaction, that are fundamentally wrong. Some of the material differences between the Current Lease Agreements and Current License Agreements, on the one hand, and the Proposed Fairweather Transaction at Yorkdale, on the other hand, are summarized in the table attached as **Exhibit "Q"**.

*iv. Oxford Has Been Steadily Reducing Fairweather Presence*

38. Oxford has been steadily reducing the presence of all Fairweather brands within Yorkdale for the past 15 years, and within the remainder of Oxford's shopping centre portfolio over the past five years. For example:
- (a) On September 13, 2023, Oxford exercised a landlord termination right regarding a license agreement with Majora Inc. for a Wyrth store at Square One;
  - (b) on September 11, 2024, Oxford exercised a landlord termination right regarding a lease with Fairweather for a store at Square One;

- (c) Oxford refused to extend a lease with 8935203 Canada Inc. (“**893**”) (operating under the brand name *International Clothiers*) at Square One when it expired in 2024; and
  - (d) Oxford refused to extend a lease with 893 (operating under the brand name *International Clothiers*) at Scarborough Town Centre earlier this year.
39. Desirable retail tenants typically pay “triple net” rent, meaning that the tenant pays a fixed amount of basic rent plus the cost of applicable property taxes, building insurance and maintenance. Oxford’s agreements with Fairweather and other banners affiliated with Mr. Benitah do not involve the payment of “triple net” rent. Rather, rent is primarily a percentage of the store’s sales, which represents a very low risk proposition for a tenant, a lack of any long-term commitment to the leased premises and a more transitory approach to the lease arrangement.
40. Oxford requested certain financial information relating to Fairweather from the Receiver to assess Fairweather’s creditworthiness in relation to the Proposed Fairweather Transaction but did not receive any information in response to its repeated written requests. Fairweather reports its sales to Oxford in connection with the Current Fairweather Leases. Based on those reports:
- (a) sales under the STC Fairweather Lease were \$2,286,286 in 2023 and \$2,081,323 in 2024; and
  - (b) sales under the Upper Canada Fairweather Lease were \$522,317 in 2023 and \$462,318 in 2024.

41. A report generated from Oxford's records regarding Fairweather's sales reported to Oxford in respect of the Current Fairweather Leases is attached as **Exhibit "R"**.
42. That report also sets out Fairweather's "GROC" or "gross rent occupancy cost" in respect of the Current Fairweather Leases. That figure is equal to applicable sales divided by rent (including any amount payable in respect of taxes, utilities, etc.). It does not include other costs, such as a tenant's expenses related to suppliers or employees.
43. A tenant's GROC is representative of the financial health of the tenant. High GROC indicates poor financial health, as it reveals that the tenant's costs arising under the lease are a high percentage of its revenue. Low GROC indicates a financially healthy tenant, as it reveals that the tenant's costs in respect of the lease are a low percentage of its revenue. In my experience, a financially healthy apparel retailer at the Scarborough Town Centre or Square One shopping centres paying more typical "triple net" rent would have GROC in the range of 10-15% (that is, its lease-related costs are only 10-15% of its sales revenue). Based on Fairweather's sales reported to Oxford, as reflected in Exhibit "R", between January 2023 and September 2025:
- (a) in respect of the STC Fairweather Lease, Fairweather's GROC ranged from 25-43% and was 33% on average; and
  - (b) in respect of the Upper Canada Lease, Fairweather's GROC ranged from 25-72% and was 50% on average.
44. If those leases were on a more typical "triple net" basis, Fairweather's GROC would be even higher.

45. Further, Oxford’s experience with Fairweather and other brands controlled by Mr. Benitah that operate, or previously operated in Oxford’s shopping centres, is that Mr. Benitah invests very little capital into his stores with respect to branding, signage, racking, lighting, fixtures and finishes, resulting in stores that look and feel temporary and downmarket.
46. For the foregoing reasons, since the last Fairweather lease was entered into in 2006, Oxford has only entered into short-term agreements with Fairweather and other brands controlled by Mr. Benitah, typically containing clear landlord termination rights, simply to keep the applicable premises occupied and operating while Oxford searches for a more suitable, longer-term retailer that it can transition into the space.

v. *Fairweather Brands More Generally*

47. The characteristics of the retail premises leased or licensed from Oxford by Fairweather are consistent with my understanding of Mr. Benitah’s broader retail portfolio. Mr. Benitah’s retail operations function on a significantly smaller scale than what is contemplated by the Proposed Fairweather Transaction, and in an entirely different manner than what is required by the Head Lease at Yorkdale.
48. Pursuant to Written Interrogatories of the Receiver dated October 21, 2025 (the “**Written Interrogatories**”), Oxford asked the Receiver:
- With respect to paragraph 42 of the Report, please identify the source of the Receiver’s view that Fairweather is an “established operator of over 100 retail stores across the country” and provide (i) the location and approximate size (by square feet) of each of its 100 retail stores; [...]
49. In the Receiver’s October 27, 2025, responses to the Written Interrogatories (the “**Response**”), the Receiver advised that the source of its view that Fairweather is an

“established operator of over 100 retail stores across the country” was based on unidentified information obtained from Fairweather’s website, which was “confirmed by Fairweather’s counsel in discussions with and communications to the Receiver, and also by RioCan”. The Receiver did not provide the location and approximate size (by square feet) of those stores, as requested by Oxford.

50. I understand that the Written Interrogatories and the Response will be included in Oxford’s Responding Motion Record.
51. In the absence of information requested from the Receiver regarding the location and approximate size (by square feet) of Fairweather’s stores, Oxford’s leasing team reviewed all of the locations operated by entities within Mr. Benitah’s retail portfolio identifiable on the internet and, by cross-referencing with the applicable shopping centre’s floor plan, prepared a chart summarizing the estimated size of the locations operated by entities within Mr. Benitah’s retail portfolio. Nearly all stores are small-format locations under 10,000 square feet, with only three stores exceeding 40,000 square feet, including the *Designer Depot* premises recently licensed by Oxford pursuant to the Designer Depot License Agreement. The chart prepared by Oxford summarizing the size and location of Mr. Benitah’s known retail stores is attached as **Exhibit “S”**.
52. Fairweather, and Mr. Benitah’s other retail banners, are firmly positioned in the budget and value-oriented segment of the retail market. They do not reflect the scale, aesthetic, or market positioning expected of an anchor tenant at Yorkdale. Brands such as *Fairweather*, *Stockhomme*, *Designer Depot*, *International Clothiers*, and *Les Ailes de la Mode* cater primarily to price-sensitive shoppers and operate within the discount and mid-market

categories. These brands rely on low-price sales strategies with frequent discounting, which stand in stark contrast to the premium, single integrated traditional retail department store model required under the Head Lease, which refers specifically to the type of store operated in 2002 under the Sears, Bay, Bloomingdale's, Macey's and Nordstrom's banners.

53. *Les Ailes de la Mode* has only three stores located in Quebec, none of which occupy leased space over 10,000 square feet (see Exhibit "S"). As confirmed by the Receiver in its responses to Oxford's written interrogatories, *Les Ailes de la Mode* does not currently operate any department stores. Despite Oxford's repeated requests, no business plans, operational details, or other evidence has been provided to Oxford that demonstrate an ability to operate a viable *Les Ailes de la Mode* department store concept, much less a single integrated traditional department store as required by the Head Lease at Yorkdale. This lack of information is particularly concerning to Oxford given the substantial size and prominence of the Leased Premises.
54. I am advised by Caroline Mahoney, a Senior Director, Retail Leasing, at Oxford, that on October 15, 2025, at approximately 10:30 am, she attended at the *Les Ailes de la Mode* store located at the Place Vertu shopping centre in Montreal, Québec and took various photos of the store. She shared the photos with me shortly thereafter, and the images she took are attached hereto at **Exhibit "T"**.
55. I am further advised by Ms. Mahoney that on October 15, 2025, at approximately 12:30 pm, she visited at the *Les Ailes de la Mode* store located in the Carre Decarie shopping centre in Côte Saint-Luc, Québec and took photos of the store. She shared the photos with me shortly thereafter, and the images she took are attached hereto at **Exhibit "U"**.

56. These images show retail stores that are wholly inconsistent with the image for Yorkdale that Oxford has carefully curated over a number of years and the type of operation that is required by the Head Lease. For contrast, attached at **Exhibit “V”** are images exemplifying the appearance of the interior and exterior of the Leased Premises as they appeared when occupied by HBC.<sup>1</sup>

**E. Oxford Not Satisfied as to Fairweather’s Creditworthiness**

57. Oxford has not received information as to Fairweather’s creditworthiness that would allow it to satisfy the creditworthiness requirement for any sublease pursuant to the terms of the Head Lease. The suggestion in the Fifth Report that Fairweather is “well known to Oxford” and that Oxford has not required financial disclosure in other dealings involving Fairweather, ignores the nature and substance of Oxford’s other dealings involving Fairweather described above.

58. Oxford did not require evidence of Fairweather’s creditworthiness in respect of the short-term, small, non-anchor retail spaces currently occupied by Fairweather pursuant to the Current Fairweather Leases and Current Fairweather Licenses. Those lease or license arrangements are temporary, with termination and similar rights in favour of Oxford. Oxford requires less financial due diligence from a prospective tenant or licensee in these circumstances than it does from a prospective long-term anchor tenant with the rights and obligations accorded to it under a sublease in respect of the Head Lease.

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<sup>1</sup> Image sources: *Alex Rebanks Architects*.

59. The Leased Premises subject to the Proposed Fairweather Transaction comprise 300,870 square feet of anchor tenant space within Oxford's premier mall among its entire retail portfolio. Yorkdale is the top-ranked shopping centre in Canada. The Proposed Fairweather Transaction provides for a term including renewals of up to 50 years. Obligations under the Head Lease include rent as well as maintenance and capital repairs, which are ongoing and represent significant financial obligations given the size of the Leased Premises.

**F. Fairweather is Not a Suitable Replacement Tenant or a Sufficiently Experienced and Competent Operator**

60. Oxford does not view Fairweather as a suitable replacement tenant for HBC or believe that it possesses the experience and competence in operating a single integrated traditional retail department store as required by Article 6.00 of the Head Lease, and as required by Article 21.00 for any sublease.

61. The Proposed Fairweather Transaction at the Leased Premises would be the first attempt at re-launching retail operations in Ontario under the *Les Ailes de la Mode* banner. No business plan, concept material or financial plan demonstrating that the new Ailes concept has any characteristics of a single integrated traditional retail department store (as required under the Head Lease) has been provided to Oxford, despite requests. Oxford does not view an entirely untested *Ailes* brand, whose only history (under the *Les Ailes de la Mode* brand) under Mr. Benitah's leadership is in operating discount and mid-market stores with an emphasis on value-oriented fashion and home goods, as being a suitable replacement tenant for HBC in the 300,870 square foot Leased Premises in Oxford's "crown jewel" shopping centre.



62. Prior insolvency proceedings less than 10 years ago involving *Les Ailes de la Mode* while under Fairweather's ownership cause additional concern for Oxford, in terms of the lack of any evidence as to a business, retail and merchandising plan for "re-launching" the untested *Ailes* brand in Ontario and its financial wherewithal. The Proposed Fairweather Transaction does not even cover the payment of rent under the Head Lease, which itself represents below-market rates under the anchor tenant lease.
63. Oxford has been provided with no evidence or assurance, including having regard to its knowledge and history with Mr. Benitah and Fairweather, that Mr. Benitah and Fairweather have the experience and capability necessary to operate a single integrated traditional retail department store of the type required under the Head Lease. Operating such a store, particularly within a luxury shopping centre retail environment, requires substantial capital investment, advanced supply chain and merchandising systems, marketing and customer service infrastructure, and experienced management capable of curating multiple product categories under a unified brand experience. These operational and financial demands are fundamentally different from those associated with operating a number of smaller, value-oriented or discount apparel stores such as those under the Fairweather banner.
64. The Response provided by the Receiver to question five of the Written Interrogatories refers to Fairweather's existing knowledge, ability, and financial and operational resources to operate as a retailer. However, the capacity to operate as a retailer generally is not equivalent to the ability to operate a store of the type required by the Head Lease, and any sublease under the Head Lease. Fairweather's experience as a clothing retailer across

various locations does not demonstrate the financial or operational resources necessary to satisfy this requirement under the Head Lease.

65. The Response provided by the Receiver to question seventeen of the Written Interrogatories refers to Fairweather leveraging its existing supply network to open its *Ailes* brand store. Based on my experience in the retail industry and familiarity with Fairweather's operations, Fairweather's existing merchandising and supply network are designed for low to mid-tier apparel and do not align with the quality, breadth or brand mix expected of a single integrated traditional retail department store.
66. The Response provided by the Receiver to questions fifteen, twenty-seven, and twenty-eight refers to not disclosing financial information or documents on the basis that Fairweather is a private company. Oxford regularly enters lease arrangements with private companies. Where confidentiality is a heightened concern, Oxford sometimes makes alternative arrangements to facilitate its due diligence, including in-person meetings between financial representatives of both parties. That offer was specifically made by Oxford in a letter sent to the Receiver on September 3, 2025. No response to that invitation was received, and no financial information has been provided to Oxford.

**G. Prejudice to Oxford if Proposed Fairweather Transaction is Approved**

67. The Receiver did not seek Oxford's consent to the Proposed Fairweather Transaction before bringing its motion for court approval. The Receiver did not meet with Oxford or have any discussions with Oxford, other than correspondence between counsel.

*i. Fairweather Does Not Operate as Required by the Use Clause in the Head Lease*

68. It is my experience that use clauses are among the most important provisions in retail leases at shopping centres, and even more so in the case of anchor tenant leases. Every use clause is the result of careful negotiation between the landlord and tenant. Tenants bargain for the specific rights they need, and landlords rely on these agreed-upon restrictions to design the complementary merchandising mix of the shopping centre. Without the certainty provided by these use clauses, it would be impossible for Oxford to curate the luxury environment at Yorkdale that attracts more than 16 million customers annually and generates more than \$2 billion in annual sales.
69. Use clauses are also vital protections against commercial disruption and legal risk and protect the integrity of Yorkdale and its tenants. A tenant operating outside its permitted use can disrupt the intended balance of the shopping centre, cannibalize business from other tenants, and create conflicts that lead to the loss of other tenants. This can translate to declining foot traffic, reduced rent, reputational damage, and financial loss.
70. The use clause in the Head Lease (Article 6.00) requires the tenant to operate a single integrated traditional retail department store. This requirement is important because, as Yorkdale's largest anchor tenant—occupying space approximately three times larger than Yorkdale's next largest tenant—and with prominent signage rights and visibility from major arterial roads (Highway 401 and Dufferin Street), the operation at the Leased Premises will significantly affect the public's perception of what to expect at Yorkdale.
71. Having an anchor tenant that operates a cohesive retail destination with full, properly staffed departments and services that cater to a customer's needs improves customer traffic

to Yorkdale as a whole, including to nearby smaller tenants, who benefit from having, and are willing to pay for, premises in close proximity to a single integrated traditional retail department store. The benefits of such an anchor tenant in driving customers to the shopping centre, for the benefit of the landlord and the other tenants in the shopping centre, cannot be overstated. That is a key component of the bargain, in exchange for which the anchor tenant enjoys the benefit of below-market rent under a long-term lease (in this case, the Head Lease).

72. Evidence demonstrating Fairweather's ability to comply with the use clause has not been provided to Oxford, and Oxford's own experience with Fairweather and its related entities is that it cannot comply with the use clause in the Head Lease. There is a significant risk of prejudice to Oxford if the Proposed Fairweather Transaction is approved, because the inability of Fairweather to comply with the use clause can lead to the departure of existing tenants, loss of future tenants, tenant requests for rent reductions, and reputational harm.

*ii. Exacerbated Damages where an Anchor Tenant Defaults*

73. Use clauses in anchor tenant leases, like the Head Lease at Yorkdale, are of particular importance and carry heightened significance compared to those in non-anchor leases. An anchor tenant is a tenant (often a department store, but not always) that leases a large area in a shopping centre, commits to a long-term lease, and is expected to attract a significant cross-section of the shopping public to enter the mall for the benefit of all other tenants of that mall.
74. Anchor tenants play a critical role in shaping the identity, positioning, and overall tenant mix of a shopping centre. Their operations have a direct impact on foot traffic, co-tenancy

obligations, and the performance of surrounding retailers. If an anchor tenant materially changes its business model or otherwise downgrades its operations, the negative impacts can be widespread. This can impair the sales and profitability of surrounding tenants and trigger remedies under co-tenancy clauses or rent reductions in other leases, causing broader financial instability across the shopping centre.

75. It is Oxford's firmly held view that receiving an anchor space back and having it remain vacant with no rent being paid, or that Oxford can license with focused, short-term retail offerings based on its knowledge and experience with the tenant and merchandising mix at its own shopping centre, is far better overall for the shopping centre and its tenants than having an unsuitable anchor tenant that disturbs the ecosystem of the entire shopping centre.
76. The presence of an anchor tenant whose operations materially downgrade the quality of the retail offerings at Yorkdale would have an immediate and negative impact on Yorkdale. Yorkdale's market strength depends on its reputation as a consistent and cohesive luxury retail destination. The introduction of retailers inconsistent with this strategy would risk diluting Yorkdale's brand, diminishing its attractiveness to luxury tenants, and reducing customer traffic across the shopping centre.
77. The Leased Premises at Yorkdale are distinct from the other locations previously operated by HBC. They are flagship premises occupying the largest space in Canada's best shopping centre. Introducing an unproven tenant, backed by a low-performance retailer such as Fairweather, into Yorkdale's largest anchor tenant space would create a significant risk of other tenants demanding rent-related concessions, vacating their premises or refusing to

extend their lease, or taking other steps that have the effect of reducing Yorkdale's operating income. Further, introducing such a tenant creates a significant risk that the reputation and value of Yorkdale, developed over decades with an investment of over \$1 billion during the past 15 years alone, is diminished.

78. An unsuitable anchor tenant like Fairweather can lead to Yorkdale's operating income falling or its capitalization rate increasing. A capitalization rate is a metric commonly used to value real estate, for example, see Exhibit "A" to the Blasutti Affidavit including at page 91. If Yorkdale's income fell by even a low single-digit percentage, and its capitalization rate increased by even a fraction of 1%, Yorkdale's value would be impaired by hundreds of millions of dollars.

**H. Oxford's Response to Certain Statements in the Blasutti Affidavit**

79. I do not respond to every statement made in the Blasutti Affidavit and the Receiver's Fifth Report. By not doing so I should not be taken as agreeing with any statements made.
80. Contrary to paragraph 12 of the Receiver's Notice of Motion, the Leasehold Lender Agreement signed by Oxford and Royal Bank of Canada in January 2024 was not for the purpose described. The agreement was executed by Oxford at the request of its long-term tenant HBC "in connection with bona fide borrowing" at that time, as specifically provided for in Article 21 of the Head Lease, and subject to the terms of the Head Lease. The Leasehold Lender Agreement is inapplicable to the Proposed Fairweather Transaction and appears to have been filed by each of the Receiver and RioCan in connection with some as-yet-undisclosed plan in relation to the Head Lease.

81. In response to the statement at paragraph 57 of the Blasutti Affidavit regarding Oxford's redevelopment rights at Yorkdale, tenant consent provisions in the Head Lease relating to potential future redevelopment of the lands surrounding Yorkdale have no bearing on Oxford's position on the Proposed Fairweather Transaction. The master plan application filed by Oxford with the City of Toronto in 2017 referred to in paragraph 57 of the Blasutti Affidavit does not support any suggestion of opportunistic intent on the part of Oxford.
82. Oxford has master plans at many of their shopping centre and surrounding properties, which are routine, long-term planning documents prepared by private landowners, including landlords, and are typically developed in response to, or at the same time, that municipalities update their official plans or secondary plans. For private landowners, a master plan functions as the equivalent of an official plan for a municipality. They represent a 20 to 30-year land-use vision, not an active project.
83. Redevelopment plans at most properties, including Yorkdale, are made decades in the future and change over time. There are no approvals in place to advance any development at Yorkdale. Plans that Oxford submitted to the City of Toronto in 2017 (and subsequent submissions) would require a significant amount of off-site infrastructure upgrades to be undertaken by the City of Toronto, including, but not limited to, upgrades to approximately 1.5 kilometres of off-site sanitary sewers. I understand from Oxford's development team that those upgrades would be expected to cost over \$100 million, have never been included in the City of Toronto's capital budgets to date and there is no expectation that they would be included in the near term. Even then, the design, approvals and construction of such

upgrades (preconditions to any development contemplated by master plan submissions to the City of Toronto) would take at least 10 years.

84. The only redevelopment that Oxford is exploring within the next 3-5 years involves one block in the master plan near the Yorkdale subway station where it may be possible to connect to existing sanitary services. This area is not subject to any redevelopment restrictions or similar rights in favour of the tenant under the Head Lease.
85. Oxford's prudent and entirely ordinary course steps as a landowner do not support unfounded allegations of opportunistic motives.

SWORN remotely via videoconference by Nadia Corrado, stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 13<sup>th</sup> day of November, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


**ANDREW NESBITT**  
**(LSO# 905140)**

*Nadia Corrado*

**NADIA CORRADO**



This is **Exhibit “A”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**





Government  
of Canada

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du Canada

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 Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

 This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Return to search results](#)

 [Start a new search](#)

## Overview

**Corporate name:**  
FAIRWEATHER LTD.

**Status:**  
Active

**Corporation number:**  
1008202-3

**Business number (BN):**  
867803215RC0001

**Governing legislation:**  
*Canada Business Corporations Act - 2017-01-27*

[Find existing extra-provincial registrations of this corporation on Canada's Business registries](#)




► [Order copies of corporate documents and certificates](#)

## Registered office address

111 Orfus Road  
Toronto ON M6A 1M4

Canada

[Update registered office address](#) 

## Directors

**Minimum:** 1**Maximum:** 10[Update directors](#) **ISAAC BENITAH**


111 ORFUS ROAD

TORONTO ON M6A 1M4

Canada

## Individuals with significant control

Last updated(YYYY-MM-DD): 2025-02-07

[Update Individuals with significant control](#) 

### Current individuals with significant control: 1

#### Isaac Benitah

111 Orfus Road

Toronto ON M6A 1M4

Canada

**Type of interest or control:**

Owns, controls or directs 25% or more of shares

**This individual holds the shares:**

Indirectly

**This individual is an individual with significant control over the corporation:**

Individually

**This individual holds:**

More than 75% of the shares

Start date (YYYY-MM-DD):

2017-01-27

## Annual filings ⓘ

Anniversary date (MM-DD): ⓘ

01-27

Date of last annual meeting:

2023-03-31

Annual filing period (MM-DD):

01-27 to 03-28

Type of corporation:

Non-distributing corporation with 50 or fewer shareholders

Status of annual filings:

[File an annual return](#) 🔒

- 2025 - Filed
- 2024 - Filed
- 2023 - Filed

## Corporate history

### Corporate name history

FAIRWEATHER LTD.	2017-01-27 to Present	
------------------	--------------------------	--

### Certificates and filings

Certificate of Continuance	2017-01-27	Previous jurisdiction: Ontario
-------------------------------	------------	--------------------------------

[Report an issue](#)

**Date Modified:**

2025-09-19

This is **Exhibit “B”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



## 2024 Top 25 Canadian Malls by Sales Per Square Foot

	Property	Province	2024 Sales PSF All Store CRU Sales	2024 Total Mall GLA
1	Yorkdale Shopping Centre	Ontario	\$2,301	1,994,780
2	CF Toronto Eaton Centre	Ontario	\$1,500	1,826,888
3	CF Pacific Centre	British Columbia	\$1,454	472,696
4	CF Richmond Centre	British Columbia	\$1,359	621,022
5	CF Chinook Centre	Alberta	\$1,336	1,211,771
6	Square One Shopping Centre	Ontario	\$1,286	2,233,404
7	Southgate Centre	Alberta	\$1,211	850,258
8	CF Sherway Gardens	Ontario	\$1,160	1,364,175
9	Le Centre Eaton de Montréal	Québec	\$1,141	492,184
10	CF Carrefour Laval	Quebec	\$1,140	1,249,336
11	Metropolis at Metrotown	British Columbia	\$1,138	1,572,236
12	CF Polo Park	Manitoba	\$1,120	1,207,372
13	CF Masonville	Ontario	\$1,094	649,221
14	CF Market Mall	Alberta	\$1,090	958,975
15	CF Fairview Mall	Ontario	\$1,063	833,139
16	CF Rideau Centre	Ontario	\$1,038	900,109
17	Halifax Shopping Centre	Nova Scotia	\$1,034	573,515
18	CF Markville Mall	Ontario	\$1,003	981,665
19	Coquitlam Centre	British Columbia	\$1,001	949,973
20	Vaughan Mills	Ontario	\$997	1,276,602
21	Guildford Town Centre	British Columbia	\$979	1,196,565
22	Scarborough Town Centre	Ontario	\$966	1,577,552
23	Place Ste-Foy	Québec	\$948	615,402
24	CF Fairview Pointe Claire	Quebec	\$945	950,284
25	Conestoga Mall	Ontario	\$918	666,091

Source: ICSC

GLA = Gross Leasable Area; CRU = Commercial Retail Unit; PSF = Per Square Foot; Sales Per Square Foot are in Canadian Dollars

Notes: All sales per square foot figures include auto dealerships.

Disclaimer: While every effort is made to ensure the accuracy and reliability of the information contained in this report, ICSC does not guarantee and is not responsible for the accuracy, completeness or reliability of the information contained in this report. Use of such information is voluntary, and reliance on it should only be undertaken after an independent review of its accuracy, completeness, efficiency, and timeliness. This list is based on data provided by participating companies and does not represent all shopping centres, regional malls and super-regional malls in Canada. The participants include: BentallGreenOak, Cadillac Fairview, Ivanhoé Cambridge/JLL, Morguard Corporation, Oxford Properties Group, Primaris, Cushman & Wakefield, Colliers, Salthill Capital, Westcliff, Nicola Institutional Realty Advisors, QuadReal Property Group. © 2025 by ICSC, 1251 Avenue of the Americas, New York, NY 10020.



## 2023 Top 25 Malls by Sales Per Square Foot (psf)

	Property	Province	2023 Sales psf. All Store CRU Sales	2023 Total Mall GLA
1	Yorkdale Shopping Centre	Ontario	\$2,402	1,994,780
2	CF Toronto Eaton Centre	Ontario	\$1,457	2,054,954
3	CF Pacific Centre	British Columbia	\$1,324	720,000
4	CF Richmond Centre	British Columbia	\$1,323	638,989
5	CF Chinook Centre	Alberta	\$1,308	1,271,942
6	Square One Shopping Centre	Ontario	\$1,258	2,233,404
7	CF Sherway Gardens	Ontario	\$1,233	1,197,417
8	Southgate Centre	Alberta	\$1,159	847,745
9	Metropolis at Metrotown	British Columbia	\$1,142	1,569,986
10	CF Carrefour Laval	Québec	\$1,113	1,217,427
11	CF Masonville	Ontario	\$1,096	627,267
12	CF Rideau Centre	Ontario	\$1,062	1,212,721
13	CF Market Mall	Alberta	\$1,055	907,207
14	Halifax Shopping Centre	Nova Scotia	\$1,030	578,192
15	CF Polo Park	Manitoba	\$1,030	889,270
16	Le Centre Eaton de Montréal	Québec	\$1,014	486,191
17	CF Fairview Mall	Ontario	\$997	717,941
18	Coquitlam Centre	British Columbia	\$991	949,973
19	CF Markville Mall	Ontario	\$991	979,344
20	Guildford Town Centre	British Columbia	\$979	1,196,592
21	Vaughan Mills	Ontario	\$966	1,276,518
22	Place Ste-Foy	Québec	\$958	614,938
23	Scarborough Town Centre	Ontario	\$926	1,577,552
24	Conestoga Mall	Ontario	\$913	587,088
25	CF Fairview Pointe Claire	Québec	\$902	1,045,178

Source: ICSC

GLA = Gross Leasable Area; CRU = Commercial Retail Unit; Sales Per Square Foot are in Canadian Dollars

Notes: All sales per square foot figures include auto dealerships.

Disclaimer: While every effort is made to ensure the accuracy and reliability of the information contained in this report, ICSC does not guarantee and is not responsible for the accuracy, completeness or reliability of the information contained in this report. Use of such information is voluntary, and reliance on it should only be undertaken after an independent review of its accuracy, completeness, efficiency, and timeliness. This list is based on data provided by participating companies and does not represent all shopping centres, regional malls and super-regional malls in Canada. The participants include: BentallGreenOak(BGO), Cadillac Fairview, Oxford Properties Group, Primaris, Morguard, Ivanhoe Cambridge, Cushman & Wakefield, Westcliff Management Ltd., QuadReal Property Group, Colliers. © 2024 by ICSC, 1251 Avenue of the Americas, New York, NY 10020.



This is **Exhibit “C”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

<b>Mall Name</b>	<b>No. of Retailers</b>	<b>No. of Lux Retailers</b>	<b>% of Lux</b>
Yorkdale Shopping Centre	232	67	29%
CF Pacific Centre	106	16	15%
CF Sherway Gardens	195	19	10%
CF Chinook Centre	254	18	7%
CF Richmond Centre	157	11	7%
Southgate Centre	151	9	6%
CF Toronto Eaton Centre	222	13	6%
Le Centre Eaton de Montreal	116	6	5%
Square One Shopping Centre	278	13	5%
CF Carrefour Laval	238	11	5%

\*Retailers were classified as Luxury or Non-Luxury based on brand type, excluding kiosks and cell phone providers. The same classification logic was applied across competitive shopping malls to ensure consistency. As there is no industry-wide definition of luxury retailers, some margin of error may exist in classification due to variations in brand positioning and market perception.





This is **Exhibit “D”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

***LEASE AGREEMENT***

***amongst***

***YORKDALE SHOPPING CENTRE HOLDINGS INC.***

***and***

***HUDSON'S BAY COMPANY***

***And***

***OMERS REALTY CORPORATION  
OMERS REALTY HOLDINGS (YORKDALE) INC. and  
1331430 ONTARIO INC.***

***for***

***YORKDALE SHOPPING CENTRE***



## **HUDSON'S BAY DEPARTMENT STORE LEASE**

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## **Article 26**

### **Covenants of Owners**

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### **Site Plan Colours**

No Build Area	-outlined in GREEN (Clause 20.01)
Second Department Store	-outlined in BLUE
Shopping Centre Lands	-outlined in ORANGE
HBC Lands	-outlined in BROWN
Approved Pads	-shaded in YELLOW

### **Schedule Colours**

Tenant Department Store	-outlined in RED
Tenant Ground Floor Level Expansion Area	-outlined in BLUE
Tenant Second Level Expansion Area	-outlined in GREEN
Truck Standing Area	-shaded in BROWN

## **LEASE**

**THIS LEASE** is made as of the 26th day of September, 2002.

**AMONGST:**

**YORKDALE SHOPPING CENTRE HOLDINGS INC.**  
(hereinafter called the "Landlord")

OF THE FIRST PART

**- AND -**

**HUDSON'S BAY COMPANY**  
(hereinafter called the "Tenant")

OF THE SECOND PART

**-AND-**

**OMERS REALTY CORPORATION**  
**OMERS REALTY HOLDINGS (YORKDALE) INC. and**  
**1331430 ONTARIO INC.**  
(hereinafter called the "Owners")

OF THE THIRD PART

**WHEREAS:**

- (A) The Owners are the registered and beneficial owners in fee simple of the Shopping Centre Lands;
- (B) The Landlord is tenant of the Shopping Centre pursuant to the Head Leases;  
and
- (C) This Lease and the respective covenants and agreements of the parties hereto are entered into by the parties in consideration of the rents, covenants and agreements herein contained.

### **ARTICLE 1**

#### **DEFINITIONS, SCHEDULES AND LANDLORD'S WARRANTIES, REPRESENTATIONS AND COVENANTS**

**1.00 Definitions.** In this Lease the terms defined in this clause 1.00 are used with the meanings so defined, as follows:

**“Additional Charges”** means all payments payable by the Tenant under this Lease;

**“Affiliated Corporation”** means a holding corporation, subsidiary corporation or affiliate of Tenant, as each of those terms is defined in the *Canada Business Corporations Act*;

**“assignment”** means any transaction whereby any rights of Tenant under this Lease are transferred to anyone (whether immediately, conditionally or contingently) and includes an assignment or specific or floating charge whereby the interest of tenant is mortgaged or pledged as security for any indebtedness or other obligation and includes an assignment by operation of law but excludes any subletting, licencing or concessioning expressly permitted under clause 21.00;

**“Authority”** means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other governmental organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over Landlord, Tenant, the Tenant Department Store, the Leased Premises or the Shopping Centre including the businesses carried on therein;

**“Bay HVAC Facilities”** means all facilities and equipment used for or in connection with the provision and supply of heating, ventilating and air conditioning to and for the Tenant Department Store as from time to time existing;

**“Bay Mechanical Equipment”** means all facilities and equipment for or related to all plumbing, electrical, water, gas, sewage, escalators, elevators, sprinklers, life safety, fire detection and suppression equipment, telephone, communications and electronic equipment and Utilities systems and equipment for the Tenant Department Store from time to time existing;

**“Bay Operating Costs”** means the total direct and indirect cost and expense incurred or to be incurred by Tenant to discharge its obligation under this Lease and with respect to the operation, condition, use, maintenance, improvement, cleaning, insuring, rebuilding, replacement and repair of the Tenant Department Store including the Bay HVAC Facilities, the Bay Mechanical Equipment, and all related installations and all Utilities and services to the extent serving the Tenant Department Store (each of which shall be separately metered to the extent permitted by the applicable Authority) and the Leasehold Improvements and the Tenant Property for the Tenant Department Store;

**“change in control”** means, in the case of any corporation or partnership, the transfer, by sale, assignment, operation of law, transmission on death, mortgage, trust, issuance from treasury, cancellation or redemption, or otherwise, of any shares, voting rights or interest, which will result in a change of the identity of the person exercising, or who might exercise, effective control of such corporation or partnership whether directly or indirectly, unless such change occurs as the result of trading in shares listed upon a recognized stock exchange but excludes a change in control resulting from bona fide estate planning transfers between the holders of control immediately prior to such transfers and members of their immediate families;

**“Common Facilities”** means all areas, improvements and facilities in the Shopping Centre, both interior and exterior as existing from time to time, which are appropriate and intended for common use by or benefit of the tenants and other occupants of the Shopping Centre (including the Landlord and the Tenant) and their employees, invitees, licensees and customers, including without limitation the Parking Facilities, common utilities and services, Mall and common utility distribution systems but excludes all of the following: Rentable Premises and portions thereof; all merchandising, display and service areas in the Mall and any other portions of Parking Facilities and the Mall while being used for retail selling and other private purposes; and all corridors, loading docks and truck receiving and delivery facilities and the Truck Standing Area, and electrical and mechanical vaults and rooms and facilities therein, which in each case are appropriate and intended predominantly for use only by one tenant or a limited group of tenants and its and their employees (except that the Utility distribution systems shall not be excluded if serving more than one tenant or occupant);

**“Common Facilities Operating Costs”** means all costs, charges and expenses incurred by the Landlord for and properly attributable to the supervision, operation, repair, replacement and maintenance of Common Facilities and the Shopping Centre;

**“Contaminant”** means any solid, liquid, or gaseous substance, any hazardous substance, any toxic substances, any odour, heat, sound, vibration, radiation or combination or any of them that may, if Discharged, have an adverse effect on the environment or on people, property or the normal conduct of business;

**“CPI”** means the Consumer Price Index (All Items - excluding food, for Ontario) or if there is no Consumer Price Index for Ontario, for the City of Toronto or any substitute index agreed upon by the parties, each acting reasonably, published by Statistics Canada or any other comparable Authority; if another index is substituted, the Landlord shall make all conversions necessary to ensure that the replacement index is comparable;

**“Discharge”** means any spill, release, escape, emission, discharge, leak or movement of a Contaminant into the environment, the indoor or outdoor air, into or onto the ground, into the surface water or ground water, into the sewers or any watercourse, or into, onto or from the Tenant Department Store, the HBC Lands or the Shopping Centre;

**“Encumbrances”** means the Permitted Encumbrances under the Purchase Agreement together with by-laws, regulations and statutes, prior registered easements, servitudes, agreements, covenants, restrictions, rights, leases, liens, privileges, mortgages, charges and encumbrances which do not materially adversely affect the Tenant’s rights under this Lease including without limitation, its ability to operate the Tenant Department Store;

**“Greater Toronto Area”** means the City of Toronto and the Regional Municipalities of Halton, Peel, York and Durham;

**“Gross Leasable Area”** as applied to any Rentable Premises (including the Tenant Department Store) means the aggregate floor area thereof on each level expressed in square feet, calculated by measuring from the exterior face of all exterior walls, the centre line of all interior walls separating any leasable premises from adjoining leasable premises, and the exterior face of all other demising walls; but excluding all exterior vestibules (being vestibules outside the standard storefront line or exterior building line, as the case may be), mezzanines, mechanical penthouses, electrical and mechanical vaults and rooms and facilities and vertical transportation facilities (such as elevators, escalators, stairs and stairwells). No deductions shall be made for vestibules inside the standard storefront line or exterior building line, as the case may be, or for columns or similar projections within Rentable Premises;

**“Head Lease I”** means the lease dated the 29<sup>th</sup> day of March, 1993, originally entered into between Bramalea Inc. as landlord and the Landlord as tenant, under which the Landlord is the tenant of the Shopping Centre Lands for a term expiring on the 28<sup>th</sup> day of March, 2042;

**“Head Lease II”** means the lease dated the 26<sup>th</sup> day of September, 2002, entered into between, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc. as landlord and the Landlord as tenant, under which the Landlord is the tenant of the HBC Lands for a term expiring on the 28<sup>th</sup> day of March, 2042;

**“Head Leases”** means collectively, Head Lease I and Head Lease II, and “Head Lease” means either one of them.

**“HBC Lands”** means the lands which are the site of a portion of the Shopping Centre and are shown outlined in BROWN on the Site Plan (as such lands are more particularly described in Part 2 of Schedule A hereto);

**“Landlord”** means Yorkdale Shopping Centre Holdings Inc. and its successors and assigns;

**“Lease”** means this lease as from time to time amended;

**"Leased Premises"** means (a) those portions of the HBC Lands and the Shopping Centre Lands which are, on the date of this Lease, in direct physical contact from below with the Tenant Department Store, including any portion of such lands as are in direct physical contact from below with the structural pad, the subfloor, foundations, structural elements and supports forming part of the Tenant Department Store; (b) the air space actually occupied on the date of this Lease, by the Tenant Department Store and, (c) the area and air space occupied respectively by the Tenant's Ground Floor Level Expansion and Tenant's Second Level Expansion effective, respectively, from the date of substantial completion of each such expansion; but excluding and reserving to the Landlord, any air space above such lands in (a) above which is not actually occupied by any portion of the Tenant Department Store on the date of this Lease;

**"Leasehold Improvements"** means all fixtures, improvements, installations, alterations and additions from time to time made, constructed, erected or installed in, on or to the Tenant Department Store with the exception of Tenant Property, and shall also include all or any portion of the Bay HVAC Facilities, the Bay Mechanical Equipment and any other sewage, sprinkler, mechanical and electrical equipment and facilities and equipment for or in connection with the supply of Utilities wherever located, exclusively serving the Tenant Department Store;

**"Letter Agreement"** means the September 30, 1999 letter agreement between the Landlord and the Tenant concerning the Tenant Department Store and an expansion of the Shopping Centre;

**"Mall"** means the enclosed pedestrian concourses, courts and arcades, which are and from time to time may be constructed as part of the Shopping Centre, and being part of the Common Facilities, as from time to time altered, diminished, reconstructed or expanded in accordance with the provisions of this Lease;

**"Mortgage"** includes a mortgage, pledge, charge, hypothec, privilege, financing encumbrance or any other financing arrangement, and "Mortgagee" includes the holder of such mortgage.

**"No Build Area"** means that area shown outlined in GREEN on the Site Plan;

**"Occupancy Payment"** means the sum of \$166,000.00 per annum for the first lease year. In each lease year after the first lease year the amount of the payment shall be increased over the prior year's payment amount by the same proportion as the increase in the CPI during such prior year, but in no event shall the payment amount be decreased;

**"Opening Date"** means the 26<sup>th</sup> day of September, 2002;

**"Operating Agreement"** means the agreement dated June 14, 1963 and registered on June 26, 1963 as Instrument No. NY410177 (B106441) between Triton Centres Limited, Simpsons Limited and The T. Eaton Company Limited as amended and supplemented to the date hereof;

**"Owners"** means individually OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc. and their respective successors and assigns as owners of the HBC Lands and the Shopping Centre Lands;

**"Parking Facilities"** means that portion of the Common Facilities which is from time to time intended and available for the parking of motor vehicles, as from time to time altered, diminished, reconstructed or expanded in accordance with the provisions of this Lease, and includes all improvements on the Shopping Centre associated with parking from time to time such as all curbs, lighting facilities, pavement, signs, entrances, exits, roads, ramps and other means of access to parking;

**"Prior Agreements"** means any and all prior undertakings, agreements, rights and obligations of the Landlord and the Tenant and their respective predecessors affecting or relating to the Tenant Department Store and the Shopping Centre and entered into or

assumed prior to the date of this Lease including without limitation the Operating Agreement;

**"Prior Conditions"** means any defect, deficiency, state of disrepair, condition, substance, matter or thing including any Contaminant affecting the Tenant Department Store, the Leasehold Improvements, the Tenant Property, and the HBC Lands and existing or occurring on or prior to the Opening Date;

**"Purchase Agreement"** means the agreement of purchase and sale respecting the HBC Lands between the Tenant as vendor and the Owners as purchaser dated August 27, 2002;

**"Real Property Taxes"** means any and all real property, municipal, school or local improvement taxes (which includes rates, assessments, levies, charges and impositions), general or special, from time to time levied or imposed with respect to real property (including land, buildings, fixtures, and accessories and improvements to them) by municipal or other Authorities having jurisdiction, including without limitation such taxes levied or imposed for schools, public betterments, or any other tax, assessment or charge imposed upon or in respect of any real property from time to time by any Authority, but the following shall be excluded to the extent any such tax is not imposed in lieu of any tax, assessment or charge upon or in respect of real property or upon Landlord in respect thereof: namely, all interest, fines or penalties for non-payment, and all taxes which are of the nature of taxes on income, capital, or otherwise personal to the taxpayer, and not of the nature of taxes on real property. If, due to changes in the method of assessment, levying or collection of any tax, levy, rate or charge imposed upon immovable property, any new tax, levy, rate or charge is levied or imposed in lieu of or in addition to those contemplated by the above definition, the Landlord and the Tenant agree to negotiate in good faith an amendment or new provision to this Lease as is necessary to deal with such tax, levy, rate or charge in an equitable manner so as to obviate any injustice or inequity which shall have arisen, and should the Landlord and the Tenant fail to agree on such amendment or new provision the same shall be settled by arbitration as provided in this Lease;

**"rent"** means all amounts payable by the Tenant to the Landlord under this Lease;

**"Rentable Premises"** means all premises in the Shopping Centre designed, intended or available for use, and all premises used, by businesses which provide goods or services to the public either at wholesale or retail or otherwise used or intended for use to carry on a business, including, without limiting the foregoing, in addition to retail stores (including department stores, food supermarkets, kiosks, theatres and fitness and recreational facilities), chartered banks, trust companies, dry cleaners, barber shops and restaurants and snack bars and commercial offices;

**"Retail Hours"** means the business days and hours from time to time designated for the Shopping Centre by Landlord acting reasonably and in accordance with the provisions of this Lease;

**"Sears"** means Sears Canada Inc. and its successors and permitted assigns;

**"Second Department Store"** means the department store building which has been constructed on the HBC Lands and is shown outlined in BLUE on the Site Plan, as such building may from time to time be altered, diminished, reconstructed or expanded and which is presently being leased to Sears;

**"Shopping Centre"** means the Shopping Centre Lands and the HBC Lands and all the buildings and improvements from time to time erected thereon other than the Tenant Department Store, but including all Common Facilities and all other Rentable Premises thereon, as all of the foregoing may from time to time be altered, diminished, enlarged, reconstructed or expanded and the appurtenances thereto from time to time existing, together constituting the shopping centre known as "Yorkdale Shopping Centre" but excluding all improvements to Rentable Premises made or installed therein by or on behalf of any occupant of such premises, and further excludes all personal property owned by or for which any occupant of Rentable Premises is liable;



**"Shopping Centre Lands"** means the lands which are the site of a portion of the Shopping Centre and are shown outlined in ORANGE on the Site Plan (as such lands are more particularly described in Part 1 of Schedule A);

**"Site Plan"** means the site and location plan of the Shopping Centre and the improvements presently constructed thereon, and which is annexed as Schedule B to this Lease;

**"sublease"** includes any sublease and sub-sublease;

**"Tenant"** means Hudson's Bay Company and its successors and permitted assigns as tenant under this Lease;

**"tenant"** means any occupant of Rentable Premises pursuant to a lease or any other agreement with the Landlord other than the Tenant;

**"Tenant Department Store"** means the department store building which is owned by the Tenant including the structural pad, the subfloor, foundations, structural elements and supports, exterior walls, doors and windows, and, the roof and roof membrane located directly above all portions of such department store building which are shown outlined in RED on the Third Floor floor plan attached as part of Schedule C and the roof over the Tenant's Second Level Expansion Area and the roof over the Tenant's Ground Floor Level Expansion, when constructed, and all related improvements constructed upon and within the Leased Premises and including the Leasehold Improvements and which is presently operated as a Bay department store, comprising approximately 301,000 square feet of Gross Leasable Area on the basement and three above grade levels, as such building is shown approximately outlined in RED on the plans attached as Schedule C hereto, and as such building may from time to time be altered, diminished, reconstructed or expanded in compliance with the provisions of this Lease (and which building shall include for greater certainty the mechanical penthouse and any fixed improvements located from time to time on the roof above the third level thereof which are for the exclusive use of the Tenant) but excludes the Truck Standing Area;

**"Tenant Ground Floor Level Expansion Area"** means the area shown outlined in BLUE on the ground floor level floor plan attached as part of Schedule C hereto;

**"Tenant Second Level Expansion Area"** means the area shown outlined in GREEN on the second level floor plan attached as part of Schedule C hereto;

**"Tenant's Ground Floor Level Expansion"** means the expansion to the ground floor level of the Tenant Department Store which is carried out by the Tenant pursuant to Article 19;

**"Tenant's Second Level Expansion"** means the expansion to the second level of the Tenant Department Store which is carried out by the Tenant pursuant to Article 19;

**"Tenant Property"** means the trade fixtures, chattels, merchandise and personal property within the Tenant Department Store;

**"Term"** means the entire term of this Lease including the original term as described under clause 3.00, every extension of the term as described under clause 3.01 resulting from the exercise of any of the Tenant's options thereunder, and any period of overholding to which clause 3.02 applies;

**"Transfer"** means any assignment, sublease, licensing, concessioning, franchising, change in control, or parting with possession, or other transaction or occurrence (including an amalgamation, other than an amalgamation as part of a bona fide corporate reorganization, carried out while the Tenant is solvent, receivership or seizure by execution or other legal process) which has or might have the effect of changing the identity of Tenant or the persons controlling Tenant or changing the identity of the person having lawful use, occupancy or possession of the whole or any part of the Tenant Department Store, whether such change is or might be immediate, deferred, conditional, exclusive, non-exclusive, permanent or temporary;

**"Truck Standing Area"** means the truck standing, loading, unloading and garbage holding area which is part of the Common Facilities but for the exclusive use of the Tenant, shown shaded in BROWN on the basement level floor plan attached as part of Schedule C hereto;

**"Unavoidable Delay"** means any prevention, delay, stoppage or interruption in the performance of any obligation of the parties hereunder due to strike, lockout, labour dispute, act of God, or the occurrence of fire or other casualty, or any other condition or cause which is beyond the reasonable control of the party obligated to perform despite all reasonable efforts of such party to perform (but shall not include any inability to perform because of any lack of funds or any financial condition), not caused by the default or act of or omission by such party;

**"Utilities"** means water, gas, fuel, electricity, telephone, communication, waste disposal and other utilities or services or any combination thereof.

**1.01 Schedules.** The Schedules to this Lease form part hereof and are as follows:

- Schedule A - Legal Description of Shopping Centre in Parts 1 and 2
- Schedule B - Site Plan
- Schedule C - Tenant Department Store Floor Plans
- Schedule D - Rules and Regulations

**1.02 Landlord's Warranties and Representations.** The Landlord warrants and represents to the Tenant that at the date of this Lease and the date of execution and delivery of the Lease:

- (1) Any Mortgages, charges and other similar encumbrances now or hereafter registered against and affecting the Shopping Centre other than the Encumbrances are, or, in regard to future ones, shall be, subordinate to this Lease and require, or, for future ones, will require, the holder, while in possession, to observe and perform the obligations of the Landlord, in each case in accordance with the terms of this Lease;
- (2) The Owners collectively are the registered and beneficial owners of the Shopping Centre and their title thereto is good and marketable and subject to no encumbrances other than the Encumbrances;
- (3) There are no restrictions imposed and binding upon Landlord by law or by private agreement and no exclusives in favour of other tenants, which materially adversely interfere with Landlord's ability to grant the rights granted by the Landlord to the Tenant under this Lease; and
- (4) The Landlord is the holder of a good and marketable leasehold interest in the Shopping Centre pursuant to the Head Leases, and has full and complete authority to enter into this Lease and to provide to the Tenant the rights being granted to the Tenant hereunder.

The Tenant acknowledges that so far as the Tenant is aware, as at the date of this Lease there is no outstanding matter relating to the Landlord's foregoing warranties and representations which constitutes a failure of compliance with this section 1.02.

**1.03 Covenant for Quiet Enjoyment.**

- (1) The Landlord hereby covenants with the Tenant that the Tenant paying the rent hereby reserved and performing the covenants herein on the Tenant's part contained, shall and may peaceably possess and enjoy the Leased Premises for the Term, in accordance with and subject to the provisions of this Lease, without any interruption or disturbance from the Landlord, or any other person or persons lawfully claiming by, from or under the Landlord.
- (2) This Lease and all of the rights of the Tenant hereunder shall have priority over any and all Mortgages, trust deeds or other instruments of financing, refinancing or collateral financing from time to time in existence with respect to the Shopping Centre. The Tenant shall, at the Landlord's request, enter into such reasonable form or forms of agreement as the Landlord may require for the purpose of subordinating the Tenant's rights hereunder to

any and all such Mortgages, trust deeds or other instruments of financing, refinancing or collateral financing and, if requested, attorning to the holder(s) thereof on the terms and conditions of this Lease, for the remainder of the Term, provided that the Landlord shall first obtain from each holder of any Mortgages, trust deeds or other instruments of financing, refinancing or collateral financing from time to time in existence with respect to the Shopping Centre a non-disturbance agreement in favour of the Tenant, in form and content acceptable to all parties each acting reasonably, providing the Tenant with security of tenure and the right to remain in possession of the Leased Premises under the terms and conditions of this Lease until such time as the Lease shall expire, be surrendered or be terminated for default.

**1.04 Condition of Leased Premises.** The Tenant hereby acknowledges that it is taking possession of the Leased Premises in an "as is" condition and subject to the Prior Conditions which the Tenant accepts.

**1.05 Net Lease.** It is intended that this Lease be an absolutely net and carefree lease for the Landlord and that rent be received by Landlord free of any cost or obligation concerning the Leased Premises and the Tenant Department Store unless expressly otherwise specified in this Lease. Except as otherwise specifically provided in this Lease, the Leased Premises and the Tenant Department Store are at the sole risk of the Tenant throughout the Term and the Tenant shall be responsible for and shall pay the Bay Operating Costs and all other cost and expense arising with respect to the operation, condition, maintenance, repair, restoration, use and occupation of the Leased Premises and the Tenant Department Store.

**1.06 Head Leases.** The Landlord covenants to perform its obligations under the Head Leases in such manner as to avoid any material interference with the Tenant's enjoyment of its rights under this Lease.

## **ARTICLE 2**

### ***DEMISE AND GRANT OF RIGHTS***

**2.00 Demise of Leased Premises.** The Landlord leases the Leased Premises to the Tenant and the Tenant leases and accepts the Leased Premises from the Landlord for the Term, upon and subject to the covenants and provisions expressed in this Lease, together with the benefit of all rights and privileges granted to the Tenant by this Lease.

**2.01 Rights Regarding Tenant Department Store.** The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Lease, a right of access over those parts of the Shopping Centre Lands and the HBC Lands immediately adjacent to and under all portions of the Tenant Department Store to the extent necessary to carry out required repairs and maintenance, at all reasonable times and in such a manner as will cause minimum interference with the business operation of the Shopping Centre. The parties acknowledging that except in emergency situations, where any such entry would materially disrupt the operation of the Shopping Centre such entry shall be carried out during off peak business hours and seasons and, to the extent commercially reasonable to do so, at times when the Shopping Centre is closed for business.

**2.02 Rights to Common Facilities.** The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Lease, including the rules and regulations imposed by the Landlord, in accordance with this Lease respecting such use, for non-exclusive use by the Tenant and its employees and those having lawful business with it including its customers and invitees and all others authorized by the Landlord, in common with the Landlord and other occupants of the Shopping Centre and their respective employees and those having lawful business with them including their customers, the right and license during the Term and, with respect to such rights related to the Mall, during the Retail Hours only, and not terminable by the Landlord during the Term, to use the Common Facilities for the purposes for which such Common Facilities are intended and provided; and in particular, without limiting the generality of the foregoing, such right and license of use shall include:

(1) The right to use the Parking Facilities (including the means of pedestrian and vehicular access and the entrances and exits to and from the Shopping Centre included therein) for the purpose of pedestrian and vehicular access to, from and within the Shopping Centre and the parking of vehicles in parking spaces provided therein;

(2) The right to pedestrian passage and re-passage through every portion of the Mall (excluding those portions thereof which are occupied by kiosks or merchandising, display and service areas not expressly prohibited under this Lease while so occupied) for the purpose of access to or from every portion of the Shopping Centre including the Tenant Department Store;

(3) The right to the use of Utilities and such other services as have been or may be provided by the Landlord, in accordance with the provisions of this Lease;

(4) The right to use the corridors, entrances to and exits from buildings, public washrooms and all other facilities provided for common use and enjoyment as part of the Common Facilities; and

(5) The exclusive right to use the Truck Standing Area which is adjacent to and is used in conjunction with the receiving facilities of the Tenant Department Store, for the purpose of the temporary standing of motor vehicles and trailers only while loading and unloading and placement of garbage compactors and bins, and the right of access to and from such Truck Standing Area.

**2.03 Control of Common Facilities.** Subject to the provisions of this Lease, all Common Facilities shall at all times be under the exclusive control and management of the Landlord. Subject to the provisions of Articles 7, 14 and 20, the Landlord shall be entitled to alter, construct, diminish, maintain, operate and supervise the Common Facilities, to change the area, location and arrangement thereof and may expand and alter the Shopping Centre and do and perform such other acts therein and with respect thereto as the Landlord, acting in its own interest as owner, shall determine to be advisable and may from time to time erect kiosks or other merchandising facilities in any part of the Shopping Centre in such location or locations as may be designated therefore by the Landlord. Subject to the provisions of Articles 7, 14 and 20, the Landlord shall also be entitled to use or permit the use of any part of the Common Facilities for special features and promotional, merchandising and other activities.

### **ARTICLE 3**

#### ***TERM, EXTENSIONS AND RIGHT OF TERMINATION***

**3.00 Original Term.** The original term shall be for five (5) years commencing on the Opening Date and ending on the 25<sup>th</sup> day of September, 2007.

**3.01 Extensions.** The Tenant shall have the option to extend the original term of this Lease for twenty-seven (27) consecutive periods of five (5) years each. Unless this Lease shall have been sooner terminated pursuant to clause 3.03, 3.05, 6.01, 12.00, or 24.00 or otherwise, each of the aforesaid options shall be deemed to have been exercised by the Tenant, without the need for any written notice of exercise or other notice or action by the Tenant, unless the Tenant gives notice to the Landlord that it does not desire to exercise such option to extend, which notice of non-exercise by the Tenant shall be given not later than twelve (12) months prior to the end of the original term in the case of the first of such options, or not later than twelve (12) months prior to the end of the then current extension period in the case of any of the twenty-six subsequent options to extend (and in which event only, such option shall be deemed not to have been exercised, the Term shall expire at the expiration of the original term or the then current extension period, as the case may be, and there shall be no further or other right of the Tenant to extend the Term).

All of the covenants, conditions and provisions of this Lease, including the stipulation as to rent and other payments and contributions by the Tenant hereunder, shall apply during

each extension period specified in this clause 3.01, except that there shall be no options to extend beyond the twenty-seventh extension period, and any provision which expressly has application only during the original term shall not apply during any extension period.

If any event occurs entitling the tenant of the Second Department Store to terminate its lease prior to its expiry by effluxion of time, the Landlord agrees, by notice to the Tenant, to advise whether or not such tenant intends to terminate. In addition, the Landlord agrees, by notice to the Tenant, to advise whether or not such tenant intends to renew or extend the term of its lease for the Second Department Store for the then impending renewal or extension period as soon as it has been so advised by such tenant.

**3.02 Landlord's Right to Extend.** Notwithstanding any action on the part of the Tenant pursuant to the provisions of clause 3.01, the Landlord shall have the option of extending the original term for up to four (4) consecutive periods of five (5) years each, provided that the Landlord gives the Tenant notice of such extension not later than twelve (12) months prior to the end of the original term in the case of the first of such options and not later than twelve (12) months prior of the end of the then current extension period in the case of the second, third and fourth extension periods. In respect of the extension period for which the Landlord has given notice in accordance herewith, the Tenant shall be deemed to have irrevocably waived its right to give a notice of non-extension pursuant to clause 3.01 in respect of that extension period.

**3.03 Overholding.** If the Tenant shall remain in possession after the original term or any extension period, save pursuant to a written agreement between the Landlord and the Tenant, the Tenant shall be deemed to be a tenant from month to month at a monthly basic rental equal to one point five (1.5) times the annual basic rent payable in the last year of the Term immediately preceding such overholding and otherwise upon all the terms and provisions of this Lease, modified as is appropriate to such a monthly occupancy. Either party shall have the right to terminate the month to month tenancy on one month's prior notice to the other.

**3.04 Early Termination By Landlord.** At any time after the 50<sup>th</sup> year of the Term, the Landlord may terminate this Lease on 12 months prior written notice if seventy-five percent (75%) or more of the Shopping Centre Lands is no longer used for retail purposes.

## **ARTICLE 4**

### **RENT**

**4.00 Amount of Rent for Leased Premises.** During the Term the Tenant covenants to pay annual basic rent of Five Hundred Thousand dollars (\$500,000).

**4.01 Additional Charges:** During each year of the Term the Tenant shall pay to the Landlord or to others if any sums are required or permitted by the terms of this Lease to be paid to anyone other than the Landlord, in lawful money of Canada, and except as otherwise specifically provided for in this Lease or in a final Court Order, without deduction, abatement, or set-off further annual rent for the Leased Premises equal to the aggregate of the following amounts:

- (a) the Occupancy Payment.
- (b) all rates and charges for water, gas, sewage, garbage and refuse removal, telephone and other communications facilities and electric power services and Utilities supplied to or consumed by the Tenant and any others in the Tenant Department Store.
- (c) All Real Property Taxes levied, rated, charged or assessed against the Tenant Department Store and the Leased Premises and Leasehold Improvements and Tenant Property therein:
- (d) all taxes and license fees and similar charges on the Tenant Property and Leasehold Improvements.

For the purposes of enforcement of the covenant of the Tenant to pay the foregoing amounts, each such amount shall be regarded as rent due under this Lease.

**4.02 Payment of Rent.** Rent in the amount contemplated by clause 4.00 shall be paid in lawful money of Canada to the Landlord at such place in Canada as the Landlord may from time to time direct in writing. Rent shall be payable (a) by equal monthly instalments in advance on the first day of each calendar month, except that rent payable for any broken portion of a calendar month (at the commencement or expiration of the Term) shall be appropriately adjusted for, being calculated at a rate per day equal to 1/365th of the applicable annual rent for the broken portion of the calendar month involved, and (b) without any previous notice or demand of the Landlord, and without any abatement, set-off or deduction whatsoever except as specifically otherwise provided for in this Lease or in a final Court Order.

**4.03 Additional Rent.** In addition to the rent referred to in clauses 4.00 and 4.01 all sums of money required to be paid by the Tenant to the Landlord under this Lease, whether or not such sums of money are expressed or referred to as being rent, shall be deemed to be additional rent and payable and recoverable as rent.

**4.04 Tenant to Pay.** The Tenant covenants to pay rent. The Tenant shall also be solely responsible for and shall promptly pay as and when due and payable all amounts included in the Bay Operating Costs.

**4.05 Other Taxes.** Tenant shall pay in accordance with the applicable legislation, any goods and services, sales, business, transfer, multi-stage, use, consumption, value added or other similar taxes imposed by the Government of Canada, or by any provincial or local government, upon the Tenant on or in respect of the rent and other amounts payable by the Tenant under this Lease.

## **ARTICLE 5**

### **GENERAL COVENANTS**

**5.00 Covenants of Tenant.** The Tenant covenants with the Landlord:

- (1) to pay when due the rent stipulated in Article 4 and the contributions in respect of the Common Facilities Operating Costs stipulated in Article 10 in the amount and manner therein provided, and all other sums from time to time due to the Landlord under this Lease;
- (2) to observe and perform all the covenants and obligations of the Tenant under this Lease; and
- (3) to pay the Bay Operating Costs.

**5.01 Covenants of Landlord.** The Landlord covenants with the Tenant to observe and perform all the covenants and obligations of the Landlord under this Lease.

## **ARTICLE 6**

### **OCCUPANCY OF TENANT DEPARTMENT STORE**

**6.00 Use of Tenant Department Store.** The Tenant shall continuously operate in all or substantially all of the Tenant Department Store throughout the Term as a single integrated traditional retail department store, subject to Unavoidable Delay and provided that the Landlord is operating the balance of the Shopping Centre as a first class regional shopping centre. The parties acknowledge that the type of store presently operated by the Tenant under its Bay banner and the type of store presently operated under the Sears, Bloomingdale's, Macey's or Nordstrom's banners are single integrated traditional retail department stores. The parties further acknowledge the fluid and dynamic nature of a

department store operation and agree that the departments and types of merchandise and services typically featured in such an operation are subject to changes over time to better accommodate the operator's perception of its target market.

Any other type of store, department store, junior department store, speciality store or speciality department store not of the specific type or kind required to be operated under the preceding paragraph shall be a prohibited use and shall not be permitted to operate in the Tenant Department Store.

While the Tenant is required to operate the Tenant Department Store, it shall be operated or have the appearance of being operated as a single integrated business, controlled by a single overall operator having regard to the Tenant's rights under Clause 21.00, with a major access to and from the Mall at each level (other than the basement level and third level, and only on the second level once there is an abutting Mall, with the connection of the second level of the Tenant Department Store to a Mall expansion to be governed by the terms of paragraph 20.00(3) of this Lease).

**6.01 Landlord's Right to Terminate.** Should the Tenant Department Store cease to be operated for a period of six months (excluding any period during which the inability to operate results from Unavoidable Delay and excluding any period during the first 37 years of the Term in which the remainder of the Shopping Centre is not being operated as a first class regional shopping centre), the Landlord may give the Tenant notice that unless the Tenant reopens the Tenant Department Store for business within six (6) months after receipt of such notice this Lease will terminate upon the expiry of such six month period. Should the Tenant within 30 days of receiving such notice not advise the Landlord in writing that it intends to reopen for business, or should the Tenant not reopen for business within six (6) months of receiving the Landlord's notice, this Lease shall terminate at the end of the six (6) month period.

**6.02 Hours of Business.** From and after the Opening Date and during the Term the Tenant, if obliged under clause 6.00 to be open for business, shall be open to the public for business in the Tenant Department Store during at least the Retail Hours provided that such Retail Hours are in compliance with the provisions of clause 7.02 and provided further that if and so long as the Second Department Store is operating in the Shopping Centre, Landlord shall use reasonable efforts to the extent it is able to do so, to cause the operator of the Second Department Store to similarly comply, and that nothing herein shall require the Tenant Department Store or portions thereof to be open during hours other than those which have been generally established by the Tenant for the operation of its similar stores in the Greater Toronto Area, or to be open for business during public holidays or when prevented by law or other legal restriction or by Unavoidable Delay; in addition, nothing herein shall prevent the Tenant Department Store from being open for business during those hours permitted by law and the Tenant may be so open during such hours although if beyond the Retail Hours, Common Facilities may not be provided by the Landlord unless arrangements satisfactory to the Landlord are made with the Tenant and other tenants who are also open during such extended hours with respect to reimbursement of the Landlord for the cost of providing Common Facilities during such extended hours. The Landlord shall consult periodically with the Tenant with regard to Retail Hours and give reasonable consideration to the suggestions and recommendations of the Tenant pertaining thereto, and shall give reasonable notice to the Tenant of any change from time to time in the Landlord's regulations pertaining to Retail Hours.

**6.03 Nuisance.** The Tenant shall not use or permit any part of the Tenant Department Store to be used in such a manner as to cause a nuisance or cause or permit any annoying noises, vibrations or odours (having regard to the purposes for which the various portions of the Tenant Department Store are permitted to be used). The Tenant shall not permit any debris or refuse to accumulate in or about the Tenant Department Store and the Truck Standing Area but shall cause the same to be stored in suitable receptacles and regularly removed. The Tenant will not permit to be brought or stored in or about the Tenant Department Store and the Truck Standing Area any dangerous or inflammable thing or Contaminant to which the Landlord or the insurers of the Tenant or of the Landlord have reasonable cause for objection, having due regard to the purposes for which such parts of the Tenant Department Store and Truck Standing Area are permitted to be used, and if the

Tenant shall breach this provision the Landlord shall have the right (without limiting any other remedy it may have) to recover the amount of any additional premium cost and any other cost, expense or damage incurred by the Landlord as a result of such breach.

**6.04 Receiving and Shipping.** The Tenant shall not load or unload any merchandise, supplies or other materials or any debris or refuse except in the Truck Standing Area, but this shall not apply to manual deliveries or shipments of small parcels to and from the Tenant Department Store where it is not practical or desirable to handle them through such receiving area so long as there is no obstruction of Common Facilities or any entrances or of the Mall.

**6.05 Merchandising Activities in Common Facilities.** The Tenant shall not carry on any merchandising activities or display any merchandise in the Common Facilities, other than as part of and in accordance with a promotion involving the whole or a substantial part of the Shopping Centre and approved by the Landlord, acting reasonably, in connection with the Landlord's promotion and marketing program for the Shopping Centre.

**6.06 Heating and Air-Conditioning.** The Tenant shall at its own expense heat and air-condition the Tenant Department Store (other than portions thereof which are not designed to be heated or air-conditioned) whenever reasonably required from time to time and in such manner that there will be no direct or indirect appropriation of heating or cooling from the Mall, but subject to Unavoidable Delay, and provided that the Landlord heats and cools the Mall as required in order to ensure that there is no direct or indirect appropriation of heating or cooling from the Tenant Department Store. The Tenant shall also, at its expense, operate, maintain, repair and replace the Bay HVAC Facilities when necessary.

## **ARTICLE 7**

### **OPERATION OF SHOPPING CENTRE**

#### **7.00 Operation of Second Department Store. Intentionally Deleted.**

**7.01 Operation of Shopping Centre.** So long as the Tenant is not in breach of its specific obligations under clause 6.00 to operate the Tenant Department Store in the manner required therein, the Landlord shall, during the first thirty-seven (37) years of the Term, subject to Unavoidable Delay, operate the Shopping Centre (excluding the Tenant Department Store) as a first class regional shopping centre, in accordance with the then standards of operation and maintenance which have been adopted by other first-class regional shopping centres of similar size and age in the Greater Toronto Area, and without limiting the generality of the foregoing the Landlord shall:

- (1) maintain or cause to be maintained at the Shopping Centre a management office and a competent full-time manager (or part-time if consented to by the Tenant, such consent not to be unreasonably withheld) and a sufficient staff of management, operating and maintenance personnel to perform the proper management, promotion, maintenance and operation of the Shopping Centre and the Tenant acknowledges that the present management is satisfactory;
- (2) keep or cause to be kept the Shopping Centre including the Mall, Parking Facilities and all other Common Facilities (including without limitation all landscaped areas), and all buildings and improvements thereon other than the Tenant Department Store, clean, tidy and well maintained, and in this connection maintain in force and take all reasonable action to enforce provisions of all leases to tenants of the Shopping Centre requiring such tenants to keep their respective premises clean, tidy and well maintained;
- (3) take all such action as may reasonably be required to prevent any use of or conduct of any business or activity in any premises in the Shopping Centre which contravenes any provision of this Lease (including Article 14) or which is a nuisance or annoyance or is not in keeping with the standards of a first class regional shopping centres, and to prevent any other activity in the Shopping Centre which is not in keeping with the character of the Shopping Centre, or the display of any signs or advertising in respect of any such prohibited use, business or activity;



(4) prohibit any promotions or any display or sale of merchandise within 125 feet of the main level entrance and the Tenant Second Level Expansion Area interior mall entrance to the Tenant Department Store, other than as part of any general temporary shopping centre promotion which has been provided for the general benefit of the Shopping Centre and approved by the Tenant in writing (which approval will not be unreasonably withheld or unduly delayed); and

(5) implement and enforce a Landlord's exterior sign policy applicable to all tenants of the Shopping Centre as contemplated by clause 23.01, and prohibit and prevent all signs in the Common Facilities other than signs which are consistent with the Landlord's sign policy.

**7.02 Hours of Business.** During the first 37 years of the Term the Landlord shall use its continuing and diligent efforts to cause the whole or substantially the whole of the Shopping Centre to be open for business on those days which are consistent with the requirements of a first-class regional shopping centre and during at least those hours during which other similar shopping centres in the Greater Toronto Area are open for business. The Landlord shall use its continuing and diligent efforts to cause as many tenants of the Shopping Centre as possible, including the tenant of the Second Department Store if operating in the Shopping Centre, and at least substantially all of the other merchandising tenants on the Mall, to remain open for business during such established hours of business, subject to Unavoidable Delay.

**7.03 Mall.** During the first 37 years of the Term, the Landlord shall maintain and operate or cause to be maintained and operated the Mall and have it and the entrances and other means of access thereto open during all hours when the Shopping Centre is open for business pursuant to clause 7.02 or (if requested by the Tenant and subject to the provisions of Section 6.02) the Tenant Department Store is open for business, and shall cause the Mall to be properly lighted and heated and air-conditioned during such hours as may be required so as to maintain therein reasonable standards of comfort, subject only to Unavoidable Delay.

**7.04 Parking Facilities.** For so long as the Landlord is obligated to operate or cause to be operated a shopping centre on the Shopping Centre or any part thereof pursuant to clause 7.01 the Landlord shall cause the following requirements with respect to the Parking Facilities to be complied with:

- (a) The Parking Facilities shall be kept:
  - (i) maintained and operated and open, including the means of access thereto, at all times when the Shopping Centre or, subject to the provisions of Section 6.02, the Tenant Department Store is open for business;
  - (ii) adequately lighted whenever required to facilitate their use during hours of darkness;
  - (iii) with parking spaces and aisles properly striped and otherwise marked and with the appropriate traffic and direction signs;
  - (iv) with adequate supervision of the flow of traffic therein whenever reasonably required and otherwise policed and supervised in accordance with the standards of the best shopping centres;
  - (v) free of refuse and debris and with all appropriate measures taken to keep them reasonably free of snow and ice during winter months; and
- (b) If at any time during the Term use of the Parking Facilities by public transit commuters or by any other third parties (collectively the "Unwanted Motorists") who are not tenants or occupants of the Shopping Centre or the respective customers, employees, agents and invitees of the same shall materially affect the use of Shopping Centre parking by those entitled to use

the parking, (if and to the extent the Landlord has or should reasonably have control of the matter) use all commercially reasonable efforts to prevent such use by the Unwanted Motorists, but subject to the existing agreement dated June 5, 1983 with the Toronto Transit Commission.

- (c) Except for fees charged as at the date hereof for the parking of motor vehicles in the existing parking structure commonly referred to as the Commuter Parking Deck, no fees will be charged for the parking of motor vehicles in the Parking Facilities without the written approval of the Tenant, which approval will not be unreasonably withheld. The Tenant shall be deemed to be unreasonable in withholding its approval if the charging of such fees becomes a common practice in first-class regional shopping centres of a similar size and nature located in the Greater Toronto Area.
- (d) The Landlord shall at all times maintain or cause to be maintained sufficient parking spaces to maintain not fewer than 4.5 parking spaces for each 1,000 square feet of Gross Leasable Area of Rentable Premises in the Shopping Centre (other than storage premises and office premises and all other premises and space which is excluded or calculated on a different basis by the municipality in its determination of the requisite municipal parking ratio for the Shopping Centre provided that parking ratios required by the municipality for such excluded or differently calculated space shall be adhered to by the Landlord).

**7.05 Landlord's Rules and Regulations.** The Landlord may from time to time establish and from time to time amend and supplement reasonable rules and regulations pertaining to the operation of the Shopping Centre, which shall not be inconsistent with the terms of this Lease but are consistent with the requirements of a first-class regional shopping centre in the Greater Toronto Area. The initial rules and regulations are attached hereto in Schedule D, and any amendments and supplements thereto which are implemented in accordance with the provisions hereof shall first be notified to Tenant before becoming enforceable against the Tenant. Without limiting the generality of the foregoing, such rules and regulations may relate to and govern the operation, maintenance, safety, care, cleanliness and use of the Shopping Centre, Rentable Premises, receiving facilities and the Common Facilities, and access to the Shopping Centre, the Rentable Premises and receiving facilities and the Common Facilities both during and outside of the Retail Hours. To the extent consistent with this Lease, the Tenant shall comply with such rules and regulations and shall use reasonable efforts to cause its officers, agents, servants, employees, contractors, customers, invitees, and licensees to comply with such rules and regulations. The Landlord shall use reasonable efforts to uniformly enforce such rules and regulations against all tenants, occupants and users of the Shopping Centre.

**7.06 Employee Parking.** The Landlord shall designate, with the approval of the Tenant (such approval not to be unreasonably withheld or unduly delayed), a remote area or areas within the Parking Facilities or off site for use by employees of the Tenant and the other tenants. The Tenant shall inform its employees of such areas and shall instruct its employees to park only in areas specifically designated for such purpose from time to time by the Landlord. The Landlord shall use its reasonable efforts to cause all other tenants of the Shopping Centre and their employees, and the Tenant shall use its reasonable efforts to cause its employees, to park only in such designated areas, including the incorporation of a provision to this effect in all new leases to tenants. Where both the Landlord (and Tenant as to its employees) agree, such areas may be located outside of the Shopping Centre Lands during peak periods of retail shopping, such as during the period from November 15 to December 31 in each year (provided that the Landlord shall not be required to provide such off-site parking).

## **ARTICLE 8**

### **UTILITIES AND SERVICES**

#### **8.00 Utilities and Services. During the Term:**

- (1) the Landlord shall continue to provide all existing electrical service, telephone and other communication facilities, water, gas, and storm and sanitary sewers for the Tenant Department Store if and when from time to time reasonably required by the Tenant for the conduct of the Tenant's business in the Tenant Department Store and each and every part thereof;
- (2) the Landlord shall at all times cause such repairs to be performed to those portions of the services and Utilities systems serving the Tenant Department Store which are not contained within the boundaries of the Leased Premises or Tenant Department Store and do all other acts and things as may be necessary to ensure the continuous availability and adequate capacity of such utilities and services, subject only to Unavoidable Delay;
- (3) the Landlord shall grant such easements to or make such other arrangements with the Utilities and services as shall facilitate the provision of such Utilities and services to the Tenant;
- (4) if the Tenant shall at any time require a utility or service which is in addition to those provided for and contemplated above, the Tenant shall provide it or arrange for it to be provided at its own expense, and the Landlord will not unreasonably withhold its permission for an easement, servitude or other arrangement appropriate to enable such utility or service to be brought to the Leased Premises or Tenant Department Store;
- (5) the Tenant shall be responsible for the payment of all charges due for Utilities or services or to other suppliers for any electricity, water or other services or Utilities supplied to, consumed or used by the Tenant;
- (6) the Tenant shall have the right at its sole risk and expense to install (including installation prior to the commencement of the Term), maintain, repair, operate and replace on the third level roof of the Tenant Department Store such mechanical, electrical, plumbing, telecommunication, heating, ventilation and air conditioning equipment and facilities and such other systems as are required by the Tenant in the operation of the Tenant Department Store. No new structures or equipment shall be installed on the roof after the Opening Date without the Landlord's approval as to the items to be installed and the manner of installation, such approval not to be unreasonably withheld or delayed. The Tenant shall be liable for and shall indemnify the Landlord from and against all costs, expenses, damages and claims arising from such installation and use and shall remove all such items and repair damage caused at expiry or termination of the Lease if required by the Landlord. The Tenant shall at all times be responsible, at its sole cost and expense, for operating, maintaining, repairing, insuring and replacing any such equipment and facilities and connections, and shall promptly repair, at its sole cost, any damage to the building and/or the balance of the Shopping Centre that is caused by or arises out of the installation, operation, maintenance, repair or replacement of any such equipment and facilities and connections. Prior to installation the Tenant shall obtain the Landlord's approval for the location and method of installation of the equipment and facilities and connections (such approval not to be unreasonably withheld or delayed). Upon the expiry or earlier termination of this Lease, the Tenant shall, at its sole cost and expense, remove any telecommunications equipment and facilities that the Tenant may have installed upon the roof and any connections to the Tenant Department Store and shall promptly repair any damage to the Shopping Centre that is caused by or arises out of such removal.

**8.01 Exception.** The obligations of the Landlord under Articles 7, 8 and 12 shall be subject to the following exceptions.

- (a) reasonable wear and tear which does not affect the proper use and enjoyment of the Shopping Centre as a first class regional shopping centre;

- (b) the obligations of the Tenant pursuant to this Lease; and
- (c) damage or injury caused by or resulting from any act, default or negligence of the Tenant, its officers, servants, employees, agents, and those for whom the Tenant is in law responsible.

The obligations of the Tenant under Articles 6, 8 and 12 shall be subject to an exception for damage or injury caused by or resulting from any act, default or negligence of the Landlord, its officers, servants, employees, agents, and those for whom the Landlord is in law responsible.

## **ARTICLE 9**

### **TAXES**

**9.00 Tenant's Taxes.** The Tenant shall pay or cause to be paid:

(1) all Real Property Taxes imposed during the Term in respect of the Tenant Department Store and the Leased Premises including in each case the Leasehold Improvements, Tenant Property, all the buildings and improvements constructed on or in the Leased Premises and Tenant Department Store and all the fixtures and equipment constructed and used by the Tenant for the benefit and use of the Tenant or its subtenants, licensees or concessionaires thereon. If there are separate assessment(s) of and separate tax bills for the Leased Premises and Tenant Department Store or any part thereof in the manner contemplated by this Lease, such Real Property Taxes for which there are such separate assessments and separate tax bills will be paid when due directly to the taxing Authority or Authorities having jurisdiction; otherwise such shall be paid to the Landlord in sufficient time to enable the Landlord to make payment to the taxing Authority prior to the due date; and in this connection the parties agree that the Tenant shall pay to the Landlord the Tenant's share of any instalment of Real Property Taxes within the later of:

- (a) fifteen (15) days after receipt of the Landlord's invoice on account of the Tenant's share of any such instalment; and
- (b) fifteen (15) days prior to the date such instalment is payable by the Landlord to the taxing Authorities; and

If Real Property Taxes are imposed upon or allocated by the taxing Authority to the land component of the Leased Premises and there is air space above any portion of such land component which is not actually used or occupied as part of the Tenant Department Store but is actually used and occupied by other buildings or improvements of the Landlord, then the Real Property Taxes for that portion of the land component shall be shared and allocated between Landlord and Tenant on a fair and equitable basis having regard to the respective actual uses of such portion of the land component and air space above it.

(2) to the taxing Authority or Authorities having jurisdiction, all business taxes imposed during the Term by municipal or other Authorities having jurisdiction in respect of the business and activities carried on by the Tenant and its licensees, subtenants and concessionaires in the Tenant Department Store, including in each case all improvements constructed therein and thereon and the Leasehold Improvements, Tenant Property and all fixtures and equipment constructed and used by the Tenant or its licensees, subtenants or concessionaires therein or thereon.

All Real Property Taxes and business taxes which the Tenant is obligated to pay or cause to be paid hereunder, including each and every instalment thereof, shall be paid when due to the Landlord or the appropriate taxing Authority as the case may be subject only to the right of the Tenant to defer or permit to be deferred payment thereof in certain circumstances as provided by clause 9.03, and subject also to any delay necessitated by the requirement that the amount of Real Property Taxes payable by the Tenant must be ascertained pursuant to clause 9.02 where the appropriate separate assessments and tax bills are not available. The Tenant shall also pay or cause to be paid all penalties and interest

imposed with respect to arrears of such payments to the extent such are levied by the taxing Authority if such are not paid by the Tenant by the payment due date and shall provide the Landlord with a copy of all assessments and tax bills affecting the Tenant Department Store and the Leased Premises forthwith upon receipt by it and if reasonably possible at least ten (10) days prior to the expiry of any period for appeal or contesting thereof. Whenever reasonably requested by either the Landlord or the Tenant, receipts or other appropriate evidence as to the due payment of such Real Property Taxes and business taxes shall be exhibited to either the Landlord or the Tenant as the case may be. In the event that the Tenant shall fail to pay or cause to be paid any Real Property Taxes or business taxes payable under this clause 9.00 when due, the Landlord, after notice to the Tenant and if the Tenant shall fail to pay or cause to be paid the same within fifteen (15) days after receipt of such notice, may pay the same and the amount so paid by the Landlord shall be forthwith repaid by the Tenant to the Landlord as rent due under this Lease.

The Tenant shall not be entitled to retain, but shall pay to the Landlord, the amount of any reduction of Real Property Taxes on the Tenant Department Store to the extent such reduction (a) relates to that portion of the Term which ends on December 31 next following the 10<sup>th</sup> anniversary of the Opening Date; (b) results in an increase in Real Property Taxes to other tenants in the Shopping Centre or the Landlord as a consequence of any reassessment; and (c) is due to the completion of the sale by the Tenant to the Owners of the HBC Lands, provided that in any calendar year (or applicable portion thereof) the aggregate of the Tenant's Real Property Taxes payable to the taxing authority and the amount payable as aforesaid to the Landlord shall not exceed what the Tenant's payment would have been in respect of the Tenant Departments Store had the sale of the HBC Lands to the Owners not been completed.

**9.01 Landlord's Taxes.** The Landlord shall pay or cause to be paid:

- (1) all Real Property Taxes in respect of the Shopping Centre (except those payable by the Tenant directly to taxing Authorities pursuant to paragraph (1) of clause 9.00); and
- (2) all business taxes imposed by municipal or other governmental Authorities having jurisdiction in respect of all business and activities carried on by the Landlord in or upon the Shopping Centre, save those payable in respect of the Tenant Department Store by the Tenant pursuant to paragraph (2) of clause 9.00.

All Real Property Taxes and business taxes which the Landlord is obligated to pay or cause to be paid hereunder, including each and every instalment thereof, shall be paid when due to the appropriate taxing Authorities, subject only to the right of the Landlord to defer or permit to be deferred payment thereof in certain circumstances as provided in clause 9.03. The Landlord shall also pay or cause to be paid all penalties and interest imposed with respect to arrears of such payments. Whenever the Tenant shall reasonably request the Landlord shall exhibit to the Tenant receipts or other appropriate evidence as to the due payment of such Real Property Taxes or business taxes payable by the Landlord under this clause 9.01. In the event that the Landlord shall fail to pay or cause to be paid any Real Property Taxes or business taxes payable under this clause 9.01 when due the Tenant, after notice to the Landlord and if the Landlord shall fail to pay or cause to be paid the same within fifteen (15) days after receipt of such notice, may pay the same and the amount so paid by the Tenant shall forthwith be repaid by the Landlord to the Tenant.

**9.02 Determination of Assessments.** For the purpose of establishing the amount of Real Property Taxes payable by the Tenant pursuant to clause 9.00, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such Real Property Taxes are based, being the assessment of the Shopping Centre Lands, the HBC Lands and, if available, various components thereof, including the Rentable Premises, the Leased Premises and the Tenant Department Store and, if subject to assessment and if available, the Common Facilities, including in each case the improvements, fixtures and equipment thereon, provided and for greater certainty no assessment for the Shopping Centre shall be apportioned or attributable to the Common Facilities so long as the assessment methodology applicable to the Shopping Centre is based upon the income approach to value.

If any such separate assessment for the Leased Premises and Tenant Department Store is not made by the municipal or other governmental Authorities, or professional assessors hired by those Authorities, responsible for the determination of assessments upon which Real Property Taxes are based (the "Assessing Authority"), the Landlord and the Tenant shall use their commercially reasonable efforts to have a separate assessment made in respect of the Leased Premises and Tenant Department Store or failing that, to obtain sufficient information to determine, applying appropriate assessment principles, a separate assessment value.

In the event and to the extent that such separate assessment for the Leased Premises and Tenant Department Store cannot be obtained from the Assessing Authority, the Landlord and the Tenant shall allocate the total assessment of the Shopping Centre in a manner which is equitable and consistent with the basis of assessment then in use by the Assessing Authority so as to arrive at a separate assessment for the Leased Premises and Tenant Department Store hereinbefore mentioned which is required for the application of the provisions of this Lease. In so doing the parties shall have regard, as far as possible, to the method of assessment and applicable elements utilized by the Assessing Authority in arriving at the assessment of the entire Shopping Centre. The Landlord will provide (or endeavour to cause the Assessing Authority to provide) the Tenant with all detail and data applied by the Assessing Authority to determine the assessment for the Leased Premises and Tenant Department Store as the Tenant may from time to time request. The Landlord shall provide any such information to the Tenant promptly upon the Landlord's receipt of the same. If the Landlord and the Tenant cannot agree to the required allocation of the assessment for the Leased Premises and Tenant Department Store, the allocation shall be determined by arbitration pursuant to the provisions of this Lease, but having regard to the basis of determination set out in this clause 9.02. The allocation which is either agreed to or determined by arbitration shall, until such time as there is a change in assessments, or methods of assessment or allocation of such assessments, be binding upon the parties and the separate assessment so arrived at shall be applied to determine the respective obligations of the parties with respect to Real Property Taxes, under this Article 9. If any Real Property Taxes or instalments thereof become due before such determination has been made, the Landlord may make a reasonable estimate of the allocation which shall not bind the parties but shall nevertheless be adopted for the basis of the interim payment of Real Property Taxes respectively payable by them, and when the allocation of assessments has been finally determined and the Real Property Taxes respectively payable by them finally computed, the parties shall promptly make the appropriate readjustment and additional payment by the Tenant or repayment to the Tenant, as the case may be.

The Landlord shall provide the Tenant with a copy of all assessments and tax bills for or affecting the Leased Premises or the Tenant Department Store which Landlord receives or is entitled to receive forthwith upon receipt by it or by others on its behalf and if reasonably possible at least ten (10) days prior to the expiry of any period for appeal or other contesting thereof. On request from the Tenant the Landlord shall promptly provide to the taxing authorities and Assessing Authorities such written authorizations as are necessary to enable the Tenant to obtain from the taxing authorities and Assessing Authority such information as the Tenant requires for the purposes of determining the Real Property Taxes and assessment which are applicable or attributable to the Leased Premises or the Tenant Department Store.

**9.03 Tax Appeals.** The Landlord may appeal any official assessment or the amount of any Real Property Taxes (including other taxes capable of constituting a lien) relating to the Shopping Centre, the Leased Premises and the Tenant Department Store including the improvements (including fixtures and equipment) thereon, and the Tenant may appeal any official assessment or any Real Property Taxes relating to the Leased Premises or the Tenant Department Store including the improvements therein or thereon. In connection with any such appeal, the party appealing may defer or permit to be deferred payment of any Real Property Taxes, as the case may be, which it is obligated to pay or cause to be paid under the provisions of this Article 9 to the extent permitted by law and provided that no part of the Shopping Centre is thereby rendered subject to sale or forfeiture, that such deferment does not cause a breach of the Landlord's obligations under any Mortgage of the Shopping Centre, that the appeal is diligently prosecuted to completion and, in the case of a deferral by the Tenant, that such security as the Landlord may reasonably require or any Mortgagee of the Shopping Centre may require is given for the payment of any Real Property Taxes

payable by the Tenant including penalties or interest resulting from deferred payment. Neither the Landlord nor the Tenant shall institute any appeal without notice to the other and, where their interests do not conflict and in particular where the appeal is being made in order to achieve a re-assessment which is consistent with the basis contemplated by this Lease, each shall extend its co-operation and assistance to the other in respect of such appeal.

**9.04 Vacancies.** If any Rentable Premises in the Shopping Centre are vacant, any lower tax rate or other reduction in such Real Property Tax due to such vacancy shall be deemed not to exist and such Real Property Tax for the Shopping Centre shall be adjusted to be the amount that would be applicable if the Shopping Centre was fully occupied and the benefit of any lower tax rate or other reduction in such Real Property Tax due to such vacancy shall accrue solely to the Rentable Premises which are vacant.

## **ARTICLE 10**

### **COMMON FACILITIES OPERATING COSTS**

**10.00 Contribution to Common Facilities Operating Costs.** During the Term, the Tenant shall pay to the Landlord as its contribution toward the Common Facilities Operating Costs incurred by the Landlord during that year the Occupancy Payment. Such amount shall be payable as rent in equal monthly instalments in advance on the first day of each and every calendar month during the Term, with any payments for partial months or partial years to be prorated on a per diem basis.

## **ARTICLE 11**

### **INSURANCE AND INDEMNITY**

#### **11.00 Tenant's Insurance.**

(1) The Tenant shall at all times during the Term keep in force or cause to be kept in force, at no expense to the Landlord, in respect of the Leased Premises and the Tenant Department Store, the use and occupancy thereof by it and its subtenants and concessionaires and licensees and the conduct of business thereon the following insurance:

- (i) comprehensive general liability insurance for bodily injury or death and damage to property of others including, but not limited to, blanket contractual liability, owners' and contractors' protective liability, non-owned automobile and employers' liability insurance coverage with respect to all business conducted in, at, upon or from the Leased Premises, the Truck Standing Area and the Tenant Department Store, the use and occupancy thereof and the use of the Common Facilities, by the Tenant and by any other person on behalf of the Tenant and by those for whom the Tenant is in law responsible. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent and reasonable owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributing with, and not in excess of, any other insurance obtained by the Landlord, and shall include severability of interests and cross liability clauses;
- (ii) 'all risks' property insurance (including, but not limited to, flood and earthquake) in respect of the Tenant Department Store and the Leasehold Improvements situated therein and thereon, for the full replacement cost thereof, with no co-insurance penalties and with reasonable deductibles. Notwithstanding the aforesaid, the Tenant shall not be obligated to take out or keep in force insurance in respect of loss or damage to the Tenant's trade fixtures, furniture, inventory, stock in trade including merchandise or other contents of the Tenant Department Store, and if the Tenant so insures the loss payable with respect to the Tenant Property

only shall (notwithstanding the provisions of subclause 11.00 (2) (iv) (a) hereof) be only to the Tenant without any trust provisions;

- (iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Tenant Department Store or any part thereof and operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant, on a 'repair and replacement' basis; and
- (iv) business interruption insurance in such amount as will reimburse the Tenant for direct or indirect loss of gross earnings attributable to the perils insured against in paragraphs (ii) and (iii) of subclause 11.00 (1) or attributable to prevention of access to the Tenant Department Store, the Truck Standing Area or the Shopping Centre as a result of such perils.

2) The insurance described above shall:

- (i) with the exception of the insurance referred to in paragraph (iv) of subclause 11.00(1) of this Lease, include the Landlord as an additional insured;
- (ii) be placed with an insurer or insurers of recognized net worth and reputation federally licensed to carry on the business of insurance in all provinces in Canada;
- (iii) be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by owners in similar circumstances;
- (iv) with regard to insurances outlined in paragraphs (ii) and (iii) of subclause 11.00(1) of this Lease, provide:
  - (a) that the proceeds thereof shall be payable to the Landlord, such of the Landlord's Mortgagees for the Shopping Centre, if any, as have been requested in writing by the Landlord (and which request shall include the Mortgagee's address) and the Tenant as their respective interests may appear. Notwithstanding the aforesaid, the Landlord hereby agrees with the Tenant that all proceeds of such insurance payable in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property, and the Tenant shall not be required to include any such Mortgagee as a loss payee unless such Mortgagee has agreed in writing with the Landlord (which agreement the Landlord covenants with the Tenant to enforce on behalf of the Tenant) or is bound by the provisions of its Mortgage (which particular provisions the Landlord covenants with the Tenant not to amend) that all such proceeds shall be made available for such repair or rebuilding regardless of the existence of any Mortgage default (provided further that, where the proceeds which are payable thereunder do not exceed two hundred thousand dollars (\$200,000), (which amount shall be adjusted on each anniversary of the Opening Date based on the percentage change which has occurred in the CPI during the previous year), the foregoing provisions as to loss payable shall not apply and such proceeds shall be payable solely to the Tenant or as it shall otherwise direct);
  - (b) that the insurers specifically waive subrogation rights against the Landlord and any loss payee, including their respective employees, officers, agents and directors, with respect to loss, damage or destruction to the insured property, and the Tenant



hereby releases the Landlord and any loss payee, including their respective employees, officers, agents and directors, from liability in regard to such loss, damage or destruction as well as with respect to any self-insured loss;

- (c) that the policies shall not be invalidated against the Landlord as an additional insured by reason of any breach or violation by the Tenant of any warranties, representations, declarations or conditions in such policies or in any applications for such policies;
- (v) contain a provision by the insurers to notify in writing the Landlord and such of the Landlord's Mortgagees for the Shopping Centre, if any, of whom the Landlord has given the Tenant written notice (including the Mortgagee's address), not less than thirty (30) days before cancellation or reducing coverage; and
- (vi) be regarded as self-insured by Tenant respecting all deductible amounts

(3) The Tenant shall from time to time, whenever reasonably requested, furnish to the Landlord certificates of insurance to evidence the insurance to be kept in force by the Tenant hereunder.

(4) If the Tenant shall fail to insure as required under this Lease, the Landlord after at least fifteen (15) days notice to the Tenant may (but shall not be obligated to) effect such insurance in the name of and at the expense of the Tenant, and the Tenant shall promptly repay to the Landlord all costs incurred by the Landlord in so doing.

#### **11.01 Landlord's Insurance**

(1) The Landlord shall take out, or cause to be taken out, and at all times during the Term keep or cause to be kept in force, without expense to the Tenant (but subject to the payments and contributions in respect of such expense which the Tenant is obligated to make under clause 10.00), in respect of the Shopping Centre and the Landlord's operation thereof the following insurance:

- (i) comprehensive general liability insurance for bodily injury or death and damage to property of others including, but not limited to, blanket contractual liability, non-owned automobile and employers liability insurance coverage, with respect to the Landlord's operation of the Shopping Centre including the Common Facilities. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent and reasonable owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributory with, and not in excess of, any other insurance obtained by the Tenant, and shall include severability of interest and cross liability clauses;
- (ii) 'all risks' property insurance (including, without limitation, flood and earthquake) in respect of all buildings on the Shopping Centre Lands (but excluding the Tenant Department Store and the Leasehold Improvements and the Second Department Store), together with all building equipment and fixed improvements of or associated with such buildings (excluding tenant's trade fixtures, leasehold improvements or other personal property owned or for which any tenants are legally liable) and upon all other fixed improvements on the Shopping Centre as any Mortgagee of the Shopping Centre may from time to time require, for the full replacement cost thereof, with no co-insurance penalties and with reasonable deductibles; and
- (iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Shopping Centre (other

than the Tenant Department Store and the Leasehold Improvements and the Second Department Store) or any part thereof and operated by the Landlord or by others (other than the Tenant) on behalf of the Landlord, on a repair and replacement basis.

(2) The insurance described above shall:

- (i) with regard to the insurance referred to in paragraph (i) of subclause 11.01(1) of this Lease, include the Tenant as an additional insured;
- (ii) be placed with an insurer or insurers of recognized net worth and reputation federally licensed to carry on the business of insurance in all provinces in Canada;
- (iii) be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by owners in similar circumstances;
- (iv) with regard to insurances outlined in paragraphs (ii) and (iii) of subclause 11.01(1) of this Lease:
  - (a) provide that the proceeds thereof shall be payable to the Landlord and the Landlord's Mortgagee, if any, as their respective interests may appear. Notwithstanding the aforesaid, the Landlord covenants with the Tenant that all proceeds of such insurance payable in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property, and if any of such proceeds are to be payable to such mortgagee the Landlord covenants with the Tenant to require such Mortgagee to agree in writing, or to be bound by the terms of its Mortgage, to make all such proceeds available for such repair or rebuilding regardless of the existence of any Mortgage default; and
  - (b) provide that the insurers specifically waive subrogation rights against the Tenant, its employees, officers, agents and directors with respect to loss, damage or destruction to the insured property, and the Landlord hereby releases the Tenant, its employees, officers and directors from liability in regard to such loss, damage or destruction as well as with respect to any self-insured loss;
- (v) contain a provision by the insurers to notify the Tenant in writing not less than thirty (30) days before cancellation or reducing coverage.
- (vi) be regarded as self-insured by Landlord with respect to all deductible amounts.

(3) The Landlord shall from time to time, whenever reasonably requested, furnish to the Tenant certificates of insurance to evidence the insurance to be kept in force by the Landlord.

(4) If the Landlord shall fail to insure as required under this Lease, the Tenant after at least fifteen (15) days notice to the Landlord may (but shall not be obligated to) effect such insurance in the name of and at the expense of the Landlord, and the Landlord shall promptly repay to the Tenant all costs incurred by the Tenant in so doing.

**11.02 Indemnity.** Each of the Landlord and the Tenant (the "indemnifying party") will, except to the extent that the indemnifying party has been specifically released pursuant to the provisions of subclause 11.00(2)(iv)(b) or subclause 11.01(2)(iv)(b) or elsewhere in this Lease, protect, defend, indemnify and save harmless the other including the other's directors, officers, employees, agents and contractors (collectively the "indemnified party") of and from all fines, suits, claims, demands and actions of any kind or nature which the

indemnified party shall or may become liable for or suffer by reason of any breach, violation or non-performance by the indemnifying party of any covenant, term or provision of this Lease or by reason of any damage, injury or death occasioned to or suffered by any person or persons (including the Landlord or the Tenant, as the case may be), or any property, resulting from any wrongful act, neglect or default on the part of the indemnifying party or any of its agents, employees, officers or contractors. Furthermore and without limiting the foregoing, (i) the Tenant shall indemnify and save harmless the Landlord in respect of any Contaminant brought to the Shopping Centre by the Tenant or those for whom the Tenant is responsible at law, except to the extent that the Tenant is released under Subclause 11.01 (2) (iv) (b) and, (ii) Landlord shall indemnify and save harmless the Tenant in respect of any Contaminant brought to the Shopping Centre by the Landlord or those for whom the Landlord is responsible at law, except to the extent that the Landlord is released under Subclause 11.00(2)(iv)(b).

## **ARTICLE 12**

### **REPAIRS AND REBUILDING**

**12.00 Repairs and Rebuilding by Tenant** The Tenant Department Store and the Truck Standing Area are at the sole risk of Tenant throughout the Term and Tenant shall at all times during the Term maintain and keep in a good and substantial state of repair the Tenant Department Store and the slab of the Truck Standing Area consistent with the standards of a careful and prudent owner, and accordingly the Tenant will from time to time whenever necessary diligently carry out all repairs thereto, including those made necessary by age and damage or destruction by casualty or any other reason and any necessary replacements and rebuilding, but excluding reasonable wear and tear which does not materially impair the use thereof for the purposes required by Article 6 in a first class regional Shopping Centre setting, provided however that in the course of any repair or rebuilding the Tenant may alter or expand the Tenant Department Store to the extent specifically permitted by, and subject to compliance with, the provisions of Article 19 of this Lease pertaining thereto;

All Leasehold Improvements made by or on behalf of the Tenant and all exterior signs on the Tenant Department Store and all exterior lighting illuminating the Tenant Department Store, all Utilities and services exclusively servicing the Tenant Department Store, the Bay HVAC Facilities and the Bay Mechanical Equipment shall be operated, repaired, replaced and maintained by and at the expense of the Tenant in a state of repair consistent with the covenants of the Tenant in this clause 12.00.

If at any time following the fourth extension period the Tenant Department Store shall be damaged or destroyed in whole, or damaged or destroyed in part to an extent such that according to the reasonable estimate of the Tenant (which estimate may be disputed by the Landlord) the cost of repairing or rebuilding it shall exceed forty percent (40%) of the replacement cost (excluding the replacement cost of footings, foundations and pavements, underground utilities, excavation costs, architectural and other fees associated with such excluded costs) of the entire Tenant Department Store, the Tenant may, by notice to the Landlord given within sixty (60) days after the happening of such destruction or damage, elect to terminate this Lease notwithstanding the prior exercise by the Tenant of its right to any extension period or periods. If it elects to so terminate, this Lease shall terminate as of the date of the giving of such notice, the Tenant shall be relieved of its obligation to repair or rebuild the Tenant Department Store, the Tenant shall assign to the Landlord all its interest in all property insurance policies required to be maintained by the Tenant hereunder in regard to the Tenant Department Store and Leasehold Improvements (other than insurance on the Tenant's trade fixtures, equipment or inventory) or any policies of the Landlord in which the Tenant is named, and in any proceeds which may be payable under any such policies in respect of such damage or destruction to the Tenant Department Store and Leasehold Improvements (other than proceeds in regard to the Tenant's trade fixtures, equipment or inventory), the Tenant shall within forty-five (45) days after such date of termination vacate the Leased Premises and rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to the date of such vacating.

The Tenant's obligation to repair, replace or rebuild hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services, including the Bay HVAC Facilities and the Bay Mechanical Equipment, exclusively serving the Tenant Department Store (reasonable wear and tear as aforesaid again excepted), and to make all repairs required hereunder in a good and workmanlike manner, with reasonable expedition and in accordance with all laws and regulations or governmental authorities having jurisdiction applicable thereto, but subject to Unavoidable Delay. In the event that the Tenant after reasonable notice shall fail to proceed with reasonable expedition to comply with its obligations under this clause 12.00, the Landlord, in addition to any other remedies it may have, shall have the right to take all such action as shall be reasonably required and in a reasonable manner to remedy such failure on the part of the Tenant and any costs incurred by the Landlord in so doing shall be immediately repaid by the Tenant to the Landlord as further rent due hereunder.

**12.01 Repairs and Rebuilding by Landlord and Others.** The Landlord shall in respect of the building and improvements on the Shopping Centre, at all times during the first 37 years of the Term and thereafter while operating the Shopping Centre, maintain and keep or cause to be maintained and kept in a good and substantial state of repair all such buildings and improvements including without limitation the Common Facilities and all Utilities and services thereon necessary for the operation of the Shopping Centre (but excluding the Tenant Department Store and the slab of the Truck Standing Area) consistent with the standards of a careful and prudent owner, and accordingly the Landlord will from time to time whenever necessary diligently carry out or cause to be carried out all repairs thereto including those made necessary by age and damage or destruction by casualty or any other reason and any necessary replacements and rebuilding and subject also in all cases to reasonable wear and tear which does not materially impair the use thereof for the purpose intended; provided however that in the course of any repair or rebuilding the Landlord may alter or expand the buildings and improvements on the Shopping Centre other than the Tenant Department Store and the Truck Standing Area to the extent not expressly prohibited by, and subject to compliance with, the provisions of this Lease pertaining thereto. The Landlord's obligations to repair, replace or rebuild hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services including the heating, ventilating and air-conditioning equipment, electrical wiring and fixtures and plumbing of the buildings and improvements on or under the Shopping Centre (other than those on, in or under, and to the extent serving, the Tenant Department Store), and to keep the Mall well decorated and all paving in Parking Facilities in good repair and condition and properly striped, and to make all repairs required hereunder in a good and workmanlike manner, with reasonable expedition and in accordance with all laws and regulations of governmental Authorities having jurisdiction applicable thereto but, subject to Unavoidable Delay and subject also in all cases to reasonable wear and tear which does not materially impair the use thereof for the purpose intended. In the event that the Landlord after reasonable notice shall fail to proceed with reasonable expedition to comply with its obligations under this clause 12.01, and such failure shall materially adversely affect either the Tenant Department Store or the Common Facilities or cause material adverse interference with access to Tenant Department Store, the Tenant, in addition to any other remedies it may have, shall have the right to take all such action as shall be reasonably required and in a reasonable manner to remedy such failure on the part of the Landlord and any costs incurred by the Tenant in so doing shall be immediately repaid by the Landlord to the Tenant.

The Landlord hereby covenants with the Tenant that the Landlord will, at its expense, replace all light standards on the parking areas of the HBC Lands by June 30, 2004.

If, the Shopping Centre (whether or not including the Tenant Department Store) shall be damaged or destroyed to an extent such that according to the reasonable estimate of the Architect the cost of repairing or rebuilding shall exceed 50% of the replacement cost (excluding the replacement cost of footings, foundations and pavements, underground utilities, excavation costs, architectural and other fees associated with such excluded costs) of all buildings and improvements in the Shopping Centre in the aggregate, and if the Landlord gives notice of such damage or destruction in writing to the Tenant within 60 days after the happening of such damage or destruction advising that the Shopping Centre cannot

be repaired or rebuilt except for an amount in excess of such cost, then, unless there is not then less than 10 years remaining on the Term or if less, unless the Tenant agrees, within 60 days after such notice is given, to extend the Term for a further period of at least 10 years, the Landlord may elect to terminate this Lease in which event this Lease shall terminate upon the expiration of such 60 day period and rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to such date of destruction and the Landlord shall be relieved of its obligation to repair or rebuild such buildings and improvements in the Shopping Centre and the Tenant shall within 60 days after such date of termination vacate the Tenant Department Store and assign to the Landlord all of the Tenant's interest in the proceeds of any policy of insurance covering the Tenant Department Store except for such portion of the proceeds which is for the Tenant Property which the Tenant is not prohibited from removing from the Tenant Department Store under this Lease.

### **ARTICLE 13**

#### **COMPLIANCE WITH STATUTES AND BY-LAWS**

**13.00 Tenant's Compliance with By-Laws.** The Tenant shall comply with all legal requirements (including statutes, laws, by-laws, regulations, ordinances and orders of every governmental Authority having jurisdiction including those binding on either or both of a tenant or owner of premises) from time to time affecting the condition, equipment, maintenance, use or occupation of the Tenant Department Store and the use and occupation of the Truck Standing Area and the condition of the slab thereunder and as to the Tenant's improvements thereon and use and occupation thereof. The Tenant shall have the right to contest the validity of any such legal requirement and to defer compliance therewith to the extent permitted by law pending any proceedings taken to contest the same, provided that such proceedings are prosecuted with due diligence and that such deferment of compliance does not subject any part of the Shopping Centre to forfeiture or sale or prevent the continued use and occupation of every part thereof. If the Tenant shall fail to comply with the provisions of this clause, the Landlord shall have the right, after notice to the Tenant and unless the Tenant shall have within thirty (30) days thereafter commenced and proceeded diligently to remedy such failure, to take any necessary action to cause such failure to be remedied, and all costs incurred by the Landlord in so doing shall be promptly repaid by the Tenant to the Landlord as further rent due under the Lease.

**13.01 Landlord's Compliance with By-Laws.** The Landlord shall comply with or cause to be complied with all legal requirements (including statutes, laws, by-laws, ordinances, regulations and orders of every governmental authority having jurisdiction including those binding on either or both of a tenant or owner of premises) affecting the condition, equipment, maintenance, use or occupation of the Shopping Centre other than the Tenant Department Store and other than those relating to the use or occupation of the Truck Standing Area or the condition of the slab thereunder. The Landlord shall have the right to contest the validity of any such legal requirement and to defer compliance therewith to the extent permitted by law pending any proceedings to contest the same, provided that such proceedings are prosecuted with due diligence and that such deferment of compliance does not subject any part of the Shopping Centre to forfeiture or sale or prevent the continued use and occupation of every part thereof. If the Landlord shall fail to comply with the provisions of this clause and such failure shall materially adversely affect the Tenant, the Tenant shall have the right, after notice to the Landlord and unless the Landlord shall have within thirty (30) days thereafter commenced and proceeded diligently to remedy such failure, to take any necessary action to cause such failure to be remedied, and all costs incurred by the Tenant in so doing shall be promptly repaid by the Landlord to the Tenant.

### **ARTICLE 14**

#### **TENANT'S USE CONTROLS**

**14.00 Tenant's Use Controls.** The Tenant shall have reasonable approval over any new in-line occupants of any premises situated within 125 feet of the main level interior Mall entrance to the Tenant Department Store, and arbitrary approval over any new kiosks, carts or any temporary operations and their occupants within 125 feet of that entrance. The

Tenant will not have any other approval rights over location, type or size of any merchandise uses in the Shopping Centre other than as specifically provided for otherwise in clause 14.01 of this Lease, but Landlord shall comply with its obligations in Articles 7 and 20.

**14.01 Prohibited Uses.** Subject to any provisions of law limiting the validity or enforceability of covenants in leases restricting or regulating use, the Landlord will not permit any of the following businesses to be carried on in any part of the Shopping Centre:

- (1) any business involving the sale of second-hand goods (except the sale of antiques, or the incidental sale of traded-in merchandise by a tenant whose principal business is the sale of new merchandise but where it is customary in the usual conduct of such business to accept trade-ins in connection with the sale of new merchandise and such traded-in merchandise was actually traded-in at the premises of such tenant in the Shopping Centre in connection with the purchase of new merchandise from such premises), war surplus articles, insurance salvage stock or merchandise (including fire sale stock) damaged by fire or purported to be damaged by a fire unless damaged by fire in the Shopping Centre;
- (2) any auction (except an antique or fine art auction conducted in the normal course of business in premises in the Shopping Centre leased in compliance with clause 14.00 to a dealer in antiques or fine art), or any pawnshop;
- (3) any business which by reason of noises, odours or vibrations emanating or likely (having regard to the nature of the business) to emanate therefrom interferes or is likely to interfere unreasonably with the use and enjoyment of Common Facilities or other premises in the Shopping Centre;
- (4) any business within Rentable Premises which is primarily a mail order business, which for greater certainty shall exclude any business involving email, internet or other electronic sales or any technological evolution of same; and
- (5) any business which is carried on in a fraudulent or unethical manner or any operation of a nature presently considered to be a "flea market".

**14.02 Limitations on Tenant's Controls.** If the Tenant shall cease to operate the Tenant Department Store (except a cessation of use which is merely temporary during the repair or rebuilding of any loss, damage or destruction or during the construction of alterations or additions, or a cessation necessitated by Unavoidable Delay), the provisions of clause 14.00 and 14.01 shall cease to have effect or shall cease to constitute obligations of the Landlord enforceable by the Tenant until the Tenant reopens for business.

**14.03 Exclusives.** The Landlord covenants with the Tenant that it will not, during the Term, grant any exclusive rights of use to any tenant unless the Tenant Department Store is exempted from that exclusive.

**14.04 Competition.** Except as expressly provided to the contrary in this Lease, nothing in this Lease shall restrict or limit or be deemed to restrict or limit the conduct by the Landlord, or any other person than the Tenant, in any manner, of one or more retail or service businesses in the Shopping Centre whether or not in competition with the business of the Tenant.

## **ARTICLE 15**

### **MERCHANTS' ASSOCIATION**

**15.00 Merchants' Association.** The Tenant shall be entitled to become a member of any merchants' association for the Shopping Centre, but shall have no obligation to pay any dues or make any contribution or other payment whatsoever to such association.

## **ARTICLE 16**

**INTENTIONALLY DELETED**

## **ARTICLE 17**

**INTENTIONALLY DELETED**

## **ARTICLE 18**

### **LIENS**

**18.00 Liens.** Each of the Landlord and the Tenant shall so conduct any construction or other work done by it so as to minimize the possibility of any claim for lien being registered against any part of the Shopping Centre and if any such claim for lien shall be registered shall forthwith take all necessary steps to have the same vacated by the court having jurisdiction or discharged, but nevertheless provided such lien is first vacated or discharged from title, may contest any claim for lien, and may defer payment of any contested claim for lien if and so long as the same is being diligently contested, and provided that non-payment thereof does not render any part of the Shopping Centre liable to forfeiture or sale. In the conduct of any construction or other work each of the Landlord and the Tenant shall comply with all the provisions of applicable statutes available to it for the protection of the Shopping Centre from claims for lien. In the event that either the Landlord or the Tenant shall make default in the payment of moneys justly due in connection with any such construction or other work and a claim for lien shall be filed or registered and not promptly vacated or discharged, the other party may, on not less than five (5) days prior notice to the defaulting party, obtain a court order vacating the registration of the claim for lien and in conjunction therewith may make payment into court or post security to the extent required to obtain such order, and all expenses incurred by it shall be promptly repaid to it by the party in default.

## **ARTICLE 19**

### **EXPANSION AND ALTERATION OF TENANT DEPARTMENT STORE**

**19.00 Expansion and Alteration of Tenant Department Store.** The Tenant shall have the right at any time and from time to time to alter, reconstruct or expand the Tenant Department Store (including any of the improvements therein), but subject to the following provisions:

- (1) The Tenant Department Store shall be architecturally compatible with the Shopping Centre and shall be functionally integrated with the Mall as provided for in this Lease;
- (2) Any expansion shall be limited to a ground floor expansion (the "Tenant's Ground Floor Level Expansion") within the Tenant's Ground Floor Level Expansion Area and a second level expansion (the "Tenant's Second Level Expansion") within the Tenant Second Level Expansion Area;
- (3) The plans and specifications for any such expansion and for any structural work of a material nature or any exterior alteration of a material nature shall be submitted to the Landlord for its approval, but such approval shall not be unreasonably withheld provided the requirements of this clause are otherwise complied with and provided such comply with appropriate zoning and building regulations;
- (4) Any such expansion shall be performed substantially in accordance with the plans and specifications which have been approved by the Landlord. In the performance of any alteration, reconstruction or expansion the Tenant will perform all work involved with reasonable expedition (but subject to Unavoidable Delay), in a good and workmanlike manner and at least in accordance with the general standards which were applicable to the

initial construction of the Tenant Department Store, and will comply with all applicable municipal by-laws and other legal requirements pertaining to such work;

(5) No annual basic rent, Common Facilities Operating Costs or merchants' association fees shall be payable by the Tenant in regard to any such expansion;

(6) The Tenant's Ground Floor Level Expansion must be constructed by December 31, 2006, failing which the Tenant will lose its right to carry out the Tenant's Ground Floor Level Expansion.

(7) The Tenant's Second Level Expansion may be constructed concurrently with or at any time following an expansion by the Landlord which consists of the construction of a second level Mall which abuts the Tenant Department Store. The Landlord will provide any necessary parking spaces for the Tenant's Ground Floor Level Expansion and the Tenant's Second Level Expansion when constructed and opened.

(8) With respect to any alterations to the interior of the Tenant Department Store:

- (a) no alterations shall change the single integrated traditional retail department store appearance and character of the Tenant Department Store nor cause the Tenant Department Store to be or appear to be a multiple lessee business, and,
- (b) such work shall be carried out in a good and workmanlike manner and shall not unreasonably interfere with the activities of the Landlord or any other tenant of the Shopping Centre or their respective officers, agents, employees, customers, invitees and licensees.

## **ARTICLE 20**

### ***EXPANSION AND ALTERATION OF SHOPPING CENTRE***

#### **20.00 Expansion and Alteration of Shopping Centre.**

(1) Subject as hereinafter provided, the Landlord reserves the right at any time and from time to time to make alterations or additions to and subtractions from the Shopping Centre other than the Leased Premises, the Tenant Department Store or, except as specifically permitted under this Lease, the No Build Area, and to build adjoining the Tenant Department Store. Subject as aforesaid, the Landlord also reserves the right to alter, expand, reconstruct, demolish or construct other buildings or improvements in the Shopping Centre other than the Tenant Department Store from time to time and to make alterations thereof or additions thereto and subtractions therefrom and to build additional stores on any such building or buildings and to build adjoining the same. The Tenant acknowledges that the depiction of the Shopping Centre on the Site Plan does not constitute a representation, covenant or warranty of any kind by the Landlord and the Landlord reserves the right subject as herein specifically otherwise provided, to change the size and dimensions of the buildings, the number and locations of buildings, parking areas and malls and to change the store dimensions, identities, types of stores and tenancies.

(2) When necessary by reason of accident or other cause, or in order to make any repairs or alterations or improvements in or relating to the Shopping Centre, the Landlord may cause such reasonable and temporary obstruction of the Common Facilities as may be necessary and may, for such time as is reasonably necessary, interrupt or suspend the supply of heating, electricity, water and other services where necessary and until such repairs, alterations or improvements have been completed, provided that the Landlord shall use commercially reasonable efforts to minimize disruption to the Shopping Centre having regard to the circumstances then existing. There will be no abatement in rent because of any such obstruction, interruption or suspension, provided that such repairs, alterations or improvements are made as expeditiously as possible having regard to the circumstances then existing and provided that commercially reasonable efforts are made to cause any such



temporary obstruction, interruption or suspension to take place during other than normal business hours of the Tenant Department Store and of the Shopping Centre.

(3) If the Landlord constructs a second level Mall which abuts the Tenant Department Store, the Landlord will pay for all work required in order to connect the second level of the Tenant Department Store to the second level of the Mall, including without limitation, the construction of a structural mall floor above the existing Mall (of sufficient strength to permit connection thereto of the Tenant's Second Level Expansion), all work associated with connecting this new Mall floor to the main aisle of the Tenant Department Store, the creation of an opening into the Tenant Department Store at the second level and the installation of new mall doors and door pockets, the relocation of departments within the Tenant Department Store in order to permit the new entrance, required alterations to the floor and ceilings, any mechanical and electrical changes necessary, signage, and bulkhead treatment. The Tenant shall provide the Landlord with reasonable access to the Tenant Department Store to the extent reasonably required in order for the Landlord to carry out the foregoing work in connection with such expansion, provided that the Landlord shall use all reasonable efforts to minimize interference with the Tenant's business and the Landlord shall forthwith make good all damage to the Tenant Department Store resulting from the completion of such work in connection with such expansion. The Landlord shall be liable to reimburse the Tenant in an amount not in excess of \$250,000 (plus applicable GST and PST) in respect of the costs incurred by the Tenant for changes and alterations carried out by the Tenant within the Tenant Department Store resulting from the creation of the new entrance connection at the second level.

All new signage and signage changes or signage relocation resulting from or required by this expansion shall be for the account of the Landlord.

Should the Tenant elect to construct the Tenant's Second Level Expansion concurrently with the Landlord's expansion the parties agree to co-operate in co-ordinating their respective work for their mutual benefit.

(4) The Landlord shall not alter the present ground floor east-west and north-south Malls which connect to the ground floor level of the Tenant Department Store if the alteration would materially and detrimentally affect access to or visibility of the Tenant Department Store at the ground floor level and the Tenant shall have the right to install and maintain in the present ground floor level east-west and north-south Malls and in any similar Malls on any second level Mall expansion in close proximity to the Tenant Department Store, Tenant's standard interior signage, in a location and of a size to be agreed by the Tenant and the Landlord each acting reasonably;

(5) The Landlord covenants (which covenant shall run with the Shopping Centre) that, notwithstanding any other provisions of this Lease, no building or structure of any nature other than additional Parking Facilities consisting of parking spaces at or below grade level and landscaped areas and walkways as well as parking and directional curbs and related devices, light standards and signs, shall at any time be constructed within the No Build Area (other than the permitted Tenant's Ground Floor Level Expansion of the Tenant Department Store and other than the two buildings shown in the area shaded in YELLOW on the Site Plan, which buildings shall not exceed 8000 square feet each and may not be used as a fitness facility) without the consent of the Tenant (which consent may be arbitrarily withheld, except that in regard to parking decks the Tenant shall not unreasonably withhold or unduly delay its consent);

(6) The Landlord shall not construct a second level Mall which connects to the Second Department Store unless such Mall is constructed so as to abut the Tenant Department Store. The configuration of such Mall in the general vicinity of the Tenant Department Store shall be subject to the Tenant's approval, which approval shall not be unreasonably withheld or delayed.

## **ARTICLE 21**

### **ASSIGNMENTS, TRANSFERS AND ENCUMBRANCES OF INTEREST BY LANDLORD AND TENANT**

**21.00 Restrictions on Assignment, Subletting and Encumbrances by Tenant.** Tenant covenants that no Transfer affecting Tenant, this Lease, the Tenant Department Store or the business of Tenant at the Tenant Department Store shall be permitted or effective unless and until Landlord's written consent to the Transfer is delivered to Tenant with such consent not to be unreasonably withheld so long as the transferee is creditworthy and a suitable replacement tenant and one who is sufficiently experienced and competent in operating a business of the type required to be operated in the Tenant Department Store. Notwithstanding the aforesaid, the Tenant may assign or sublet the whole of the Leased Premises without consent, but with notice, to an Affiliated Corporation (with consent to be obtained or this Lease reassigned or sublease terminated if the affiliation ceases) and the Tenant may assign without consent, but with notice, to the assignee of a majority of the Tenant's traditional retail department stores in Ontario, each being a "Permitted Transfer". Any assignment shall be subject to compliance with the provisions of this Lease, including, without limitation, the provisions of Article 6.

Notwithstanding the aforesaid:

- (1) The ownership of the Tenant Department Store and the leasehold interest in this Lease shall co-exist entirely in the same entity and any Transfer of either interest which has the effect of causing a breach of this provision shall be void and of no effect; and
- (2) The Tenant shall be entitled to grant franchises, subleases, concessions or licences of any part of the Tenant Department Store, but only so long as the franchises, subleases, concessions or licences in the aggregate do not exceed 25% of the Tenant Department Store and only if the business of the Tenant Department Store continues to be, and appears to be, carried on as a single integrated department store of the specific type and kind required to be operated, except that such franchisees, subtenants, concessionaires and licensees may be identified by product, service or trade name.

**21.01 Liability Upon Assignment.** No Transfer or other disposition by Tenant of this Lease or of any interest under this Lease shall release Tenant from the performance of any of its covenants under this Lease and Tenant shall continue to be bound by and liable under this Lease unless the Landlord by written agreement specifically releases the Tenant from its obligations under this Lease. Tenant's liability under this Lease will continue notwithstanding the bankruptcy, insolvency, dissolution, restructuring or liquidation of any transferee of this Lease or the termination of this Lease for default or the termination, disclaimer, surrender or repudiation of this Lease or the abandonment of the Tenant Department Store pursuant to any statute, rule of law or court order. Furthermore, if this Lease is terminated for default or abandonment or is terminated, disclaimed, surrendered or repudiated pursuant to any statute, rule of law, or court order then, in addition to and without limiting Tenant's liability under this Lease, Tenant upon notice from Landlord given within 90 days after any such termination, disclaimer, surrender or repudiation, shall enter into a new lease with Landlord for a term commencing on the effective date of such termination, disclaimer, surrender or repudiation and expiring on the date of this Lease would have expired but for such termination, disclaimer, surrender or repudiation and otherwise upon the same terms and conditions as are contained in this Lease with respect to the period after such termination, disclaimer, surrender or repudiation.

**21.02 Consent May be Withheld.** Notwithstanding anything contained in any legislation, law or statute as the same may be amended from time to time if the Landlord's consent is required, the Landlord shall be deemed not to be unreasonable in withholding its consent to a Transfer and may arbitrarily withhold such consent if a proposed Transferee has not agreed with the Landlord in writing and on a form acceptable to Landlord, Tenant and such Transferee, each acting reasonably, to assume and perform each of the covenants,

obligations and agreements of the Tenant in this Lease, and if the requirements of clause 21.00 have not been satisfied.

**21.03 Changes in Control.** If at any time on or after the execution of this Lease the Tenant is a corporation and any portion of all of the shares or voting rights of shareholders of the Tenant or of an Affiliated Corporation are transferred by sale, assignment, bequest, inheritance, trust settlement, operation of law or other disposition or are issued by subscription or allotment or are cancelled or redeemed, so as to result in any change in the holding of effective voting or other control of the Tenant or of an Affiliated Corporation from that which existed on the date of execution of this Lease or the date on which the Tenant became a corporation, if later, such change of control shall be considered a Transfer which is subject to clause 21.00. This provision shall be suspended and have no application at all times during the term when the Hudson's Bay Company is the tenant in possession under this Lease or when the tenant in possession under the Lease is a corporation whose shares are listed and traded on a recognized stock exchange in North America, so long as, in each case, at the time of any such change in control, other than those occurring as a result of trading on such stock exchange, no default or condition of the kind enumerated in Clauses 24.01(a), (c) or (d) is outstanding, and, so long as the change of control is not intended to avoid the necessity of obtaining Landlord's consent to an assignment a sublease.

**21.04 Store Name.** The Tenant Department Store shall be operated under the principal name used by the Tenant from time to time in a majority of its similar operations in Canada unless the Landlord agrees to the use of a different name.

**21.05 Mortgages by Tenant.** The Tenant may sublease or charge its interest under this Lease to a Mortgagee or creditor as security in connection with a bona fide borrowing by the Tenant, provided such Mortgagee or creditor covenants with the Landlord, as a condition precedent to its exercising its right to obtain possession or title to the Tenant's leasehold interest, to be bound by all the Tenant's covenants hereunder until an assignment of this Lease or a sublease, as the case may be, by such Mortgagee or creditor; and the Landlord agrees to permit the Mortgagee or creditor to exercise its right to obtain possession and to obtain title to the Tenant's leasehold interest in case of default, but need not permit any Transfer or other exercise of right by such Mortgagee by which the Tenant's leasehold interest may be further assigned or subleases, permissions, concessions or licenses entered into without the provisions of this Article being complied with.

**21.06 Transfers and Encumbrances by Landlord and Owners.** The Landlord or each Owner may assign, transfer, mortgage or otherwise dispose of their respective interests in the Shopping Centre without restriction, provided always that any such disposition shall be subject to this Lease and the priority thereof and consistent with the rights of the Tenant and the covenants of the Landlord under this Lease.

Every assignment, transfer, Mortgage or encumbrance by the Landlord or the Owners of an interest in the Shopping Centre for the purposes of giving security for an indebtedness (other than an assignment of leases of specific premises therein) shall be subordinate to this Lease and all the rights of the Tenant hereunder, it being understood that this Lease shall have priority. If required by a Mortgagee of the Landlord or the Owner, the Tenant shall agree to attorn to the Mortgagee on the terms and conditions of this Lease;

In the case of every assignment, transfer or other disposition of an interest in the Leased Premises (other than to a Mortgagee or encumbrancer or creditor as security, but including an assignment of this Lease) the assignee or transferee shall agree with the Tenant (in form acceptable to the Tenant, acting reasonably) to perform all of the covenants, agreements and obligations of the Landlord under this Lease.

No assignment, transfer, Mortgage or encumbrance by the Landlord affecting the Leased Premises and the Tenant Department Store shall have the effect of releasing the obligations of the Landlord hereunder unless a bona fide purchaser, assignee or transferee of the whole of the Landlord's interest in the Shopping Centre assumes and has become bound by the Landlord's obligations, covenants and agreements hereunder by covenant in favour of the Tenant as aforesaid; provided that in no event will the Landlord be released in respect of

then existing defaults or in respect of any monies which may be owing to the Tenant by the Landlord for any period prior to the effective date of the assignment.

**21.07 Performance of Mortgage Obligations by Tenant.** The Tenant shall make all payments when due and otherwise perform all its obligations under any Mortgage or encumbrance at any time permitted to be made by it pursuant to clause 21.05 upon this Lease and its leasehold interest hereunder.

**21.08 Performance of Mortgage Obligations by Landlord and Owners.**

The Landlord and Owners shall make all payments when due and otherwise perform all their respective obligations under any Mortgage or encumbrance at any time made by them upon the Shopping Centre Lands and the HBC Lands and its interest therein, and shall duly perform, to the extent reasonable under the circumstances, all their respective obligations under all leases to tenants of portions of the Shopping Centre.

**21.09 Rights of Landlord's Mortgagees.** If at any time during the currency of a Mortgage, notice of which Mortgage and the address of the Mortgagee has been given to the Tenant, any default occurs in the performance of any of the covenants, obligations, or agreements of the Landlord which would give rise to a right in the Tenant to terminate this Lease, then the Tenant, before becoming entitled as against the Mortgagee to exercise any right to terminate this Lease, must give to the Mortgagee notice in writing of such default for a fresh period equal to that applicable to the Landlord in respect of the default. The Mortgagee will have such fresh period after the giving of such notice within which to remedy such default as agent of the Landlord, (or by such other means as will avoid such Mortgagee becoming Mortgagee in possession of the Tenant Department Store by reason of effecting such remedy if the Mortgagee so desires) and if such default is remedied within such fresh period of time the Tenant will not by reason thereof terminate this Lease. The rights and privileges granted to the Mortgagee by virtue of this section will not in any way be deemed to alter, affect or prejudice any of the rights and remedies available to the Tenant against the Landlord. Any notice to be given to the Mortgagee will be deemed to have been properly given if personally delivered or mailed by registered mail to its most recent address of which the Tenant has notice.

## **ARTICLE 22**

### **DETERMINATION OF CERTAIN MATTERS**

**22.00 Determination of Gross Leasable Area.** The Gross Leasable Area of the Tenant Department Store and any other premises in the Shopping Centre in respect to which it is material under the provisions of this Lease to determine the same, shall, unless accepted and agreed by both the Landlord and the Tenant in writing, be determined at the insistence of either party by a surveyor appointed by the Landlord and the Tenant acting jointly for the purpose, or if they cannot agree upon such appointment, appointed upon the application of either party by a Judge of the Supreme Court of Ontario. Any Gross Leasable Area so agreed or determined shall be binding upon the parties but subject to redetermination in the manner herein provided if there shall be any expansion, alteration, reconstruction or other change affecting the same.

**22.01 Determination by Arbitration.** Wherever in this Lease it is provided that any matter in dispute between the Landlord and the Tenant, if not settled or agreed between them, is to be determined by arbitration, then the dispute shall be determined by arbitration, as follows:

(1) Either party may give notice to the other of its desire to arbitrate such dispute, and shall in such notice give notice of the appointment of an arbitrator chosen by the party giving such notice. The party receiving such notice shall within fifteen (15) days after the receipt thereof give a notice to the party giving the first notice of the appointment of an arbitrator chosen by the party giving the second notice. The two arbitrators so chosen shall jointly appoint a third arbitrator;

(2) If a party required to appoint an arbitrator shall fail to do so within such period of fifteen (15) days, or if each party has appointed an arbitrator and such arbitrators fail to

agree upon a third arbitrator within fifteen (15) days after both have been appointed, then any party not in default of appointing an arbitrator may apply to a Judge of the Supreme Court of Ontario for the appointment of an arbitrator on behalf of the party in default, or the appointment of the third arbitrator, as the case may require; and

(3) The three arbitrators so appointed shall determine the dispute having regard to the provisions of this Lease and to any other agreements which the parties may have made respecting the arbitration or the matter in dispute and the decision of any two of them shall bind the parties. Subject to the provisions of this clause, the arbitration shall be conducted in accordance with the provisions (if any) of the laws of Ontario from time to time in effect pertaining to arbitration. Nothing in this clause 22.01 shall prevent the parties from carrying out an arbitration using a single arbitrator, if one can be agreed upon.

**22.02 Costs.** In any proceedings under clause 22.01 to determine any question or dispute, the fees and expenses of the arbitrators and all other expenses of such proceedings shall be borne in such manner as the arbitrators may determine.

**22.03 Judicial Remedies Preserved.** The provisions of this Article 22 regarding the determination of certain questions or matters in dispute by arbitration are acknowledged by the parties to have the intended purpose of providing, where applicable, an equitable and rapid determination, but are not intended and shall not be interpreted as excluding recourse by any party to the Courts as to any matter not expressly required by this Lease to be determined by arbitration, or recourse by any party to any of the remedies available at law or in equity including damages or injunction, and such recourse may be taken notwithstanding the provisions of clause 22.01 in respect of any matter where the substantial rights of a party are involved and might be prejudiced or impaired if such recourse is not taken, notwithstanding that the determination of such matter may involve a question for determination by the Court which would otherwise fall for its determination within the provisions of clause 22.01, but in such case any determination which has already been made pursuant to clause 22.01 shall be binding upon the parties.

## **ARTICLE 23**

### **SIGNS**

**23.00 Tenant's Signs.** The Tenant shall have the following rights in regard to exterior signage and identification of and for the Leased Premises:

(1) To erect and maintain, at its expense, signs upon the exterior of the Tenant Department Store (including upon or over the entrances thereto and upon any exterior wall thereof but excluding the roof) in each case similar in size and character to those generally used by the Tenant in connection with a majority of its other similar department stores in the Greater Toronto Area, provided that: (a) such signs comply with the requirements of Authorities having jurisdiction, and (b) the Landlord shall be given prior notice of any proposed increase in the present square footage of such exterior signs existing on the date of this Lease, and the Tenant shall not be entitled to increase such square footage to the extent that such increase would have a material adverse effect on the Landlord's ability to provide the Shopping Centre and its other tenants with appropriate signage opportunities.

(2) On any free standing pylon signs erected by the Landlord to promote the Shopping Centre which includes the name of any occupant of the Shopping Centre, identification for the Tenant Department Store of size and location no less prominent than that provided to any other occupant and at no cost to the Tenant except for the cost of providing its nameplates;

(3) To have the Tenant's name displayed, at no expense to the Tenant, on any directories of the Landlord located in the Mall; and

(4) Such other exterior signs as it may desire to have and which are consistent with the sign policy referred to in clause 23.01 adopted by the Landlord from time to time for the

Shopping Centre, as the Landlord may approve (such approval not to be unreasonably withheld).

The Tenant shall maintain all such signs or identification referred to in paragraph (1) and (4) in good repair and condition and shall keep them suitably illuminated (to the extent designed to be illuminated) as and when required during the hours when the Tenant Department Store or the applicable part thereof shall be open for business. The Tenant shall have the right to install and maintain within the Tenant Department Store such interior signage as it desires in order to meet the needs of its business. Under no circumstances will there be permitted any "liquidation", "bankruptcy" or any similar signs or sales in or about the Tenant Department Store. No "going out of business" or "store closure" signs or sales shall be permitted unless approved by the Landlord acting reasonably. The Landlord shall maintain its signs and identification, including those referred to in paragraphs (2) (other than the Tenant's nameplates) and (3), in good repair and condition and shall keep them suitably illuminated (to the extent designed to be illuminated) as and when required during the Retail Hours.

**23.01 Landlord's Sign Policy.** The Landlord shall implement, and shall also enforce or cause to be enforced, a sign policy applicable to all tenants (including the Tenant other than in respect of those signs permitted under clause 23.00(1)) of the Shopping Centre and governing signs (including pylon signs and their respective locations) which may be displayed on or in their premises and in the Shopping Centre, and which shall represent good shopping centre practice for a first-class regional centre.

## **ARTICLE 24**

### **REMEDIES AND DEFAULTS**

**24.00 Particular Remedies of Landlord.** In the event that the Tenant is in default of any of its covenants, obligations or agreements under this Lease, other than its covenant to pay rent and Additional Charges, and such default has continued for a period of thirty (30) consecutive days or such longer period as may be reasonably required in the circumstances to cure such default (so long as the Tenant has commenced within such 30 day period to rectify and is continuously thereafter proceeding with diligence to cure any such default), after notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied or without notice if such default creates an emergency, the Landlord, without prejudice to any other rights which it may have with respect to such default, may remedy such default, and the cost thereof to the Landlord together with interest thereon as provided in clause 24.07 from the date such cost was incurred by the Landlord will be added to the rent due on the next succeeding date on which rent is payable, and such amount will thereupon become due and payable as rent under this Lease in addition to the regular payment of rent then due, and the Landlord will have all remedies for the recovery of such amount as are available in the case of any non-payment of rent. The Landlord will be subrogated to the extent of such payment to all rights, remedies and priorities of the payee of the amount paid by the Landlord to remedy such default.

**24.01 Re-Entry.** Without prejudice to any of the rights and recourses of the Landlord herein, and subject to clause 24.00 when:

- (a) the Tenant is in default in the payment of any rent or Additional Charges for a period greater than ten (10) days following receipt of notice by the Landlord to the Tenant;
- (b) the Tenant shall be in default of any of its covenants, obligations or agreements under this Lease or of any term or condition of this Lease (other than its covenant to pay rent and other than the provisions as set out in subsections (c) and (d) below for which no notice shall be required), and such default shall continue for a period of 30 consecutive days (or such longer period as may be reasonably required in the circumstances to cure such default so long as the Tenant has commenced to rectify within such 30 day period and is continuously thereafter proceeding with diligence to cure any such default), after

notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied,

(c) Tenant becomes insolvent or makes application for relief from creditors under the provisions of any statute now or hereafter in force or, under the Bankruptcy and Insolvency Act, files a notice of intention or a proposal, makes an assignment in bankruptcy, has a receiving order made against it or otherwise becomes bankrupt, or insolvent, or any judicial action, steps or proceedings whatever, are taken by the Tenant with a view to the winding up, dissolution or liquidation of Tenant (except for a bona fide corporate re-organization undertaken while the Tenant is solvent) or with a view to the restructuring or compromise of any debt or other obligation of Tenant,

(d) a receiver, interim receiver, trustee, liquidator or a receiver and manager is appointed for the Leased Premises, the Tenant Department Store or the business of the Tenant conducted at the Tenant Department Store and such party remains in place for more than 30 days;

(e) re-entry is permitted under any other terms of this Lease or in law,

then and in any event under sub-clauses (c) or (d), the then current month's rent together with the rent for the 3 months next ensuing shall immediately become due and payable, and in any of such events under sub-clauses (a) through (e) inclusive, at the option of Landlord, the Term shall become forfeited and void, and Landlord may without notice or any form of legal process whatsoever forthwith re-enter the Leased Premises and the Tenant Department Store, anything contained in any statute or law to the contrary notwithstanding, and may expel all persons and remove all property from the Leased Premises and the Tenant Department Store and such property may be removed and sold or disposed of by Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of Tenant without Landlord being considered guilty of trespass or conversion or becoming liable for any loss or damage which may be occasioned thereby, provided, however, that such forfeiture shall be wholly without prejudice to the right of Landlord to recover arrears of rent and damages for any antecedent default by Tenant of its covenants under this Lease. Should Landlord at any time terminate this Lease by reason of any such event, then, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur as a result of such termination.

**24.02 Exceptions to Forfeiture.** The non-performance by the Tenant of any of the covenants, obligations and agreements of the Tenant in this Lease will entitle the Landlord to a forfeiture of the Term of this Lease provided, except in the circumstances set out in clause 24.01 (a), (c) and (d), the Landlord has first given the Tenant thirty (30) days written notice of any such non-performance, and the Tenant, within such period of thirty (30) days (or such longer period as may be reasonably required in the circumstances to cure such default so long as the Tenant has commenced to rectify within such 30 day period and is continuously thereafter proceeding with diligence to cure any such default) has failed to remedy such default.

**24.03 Landlord May Re-Let.** If the Landlord does not exercise its option under this Article to terminate this Lease it may nevertheless in the events set out in this Article from time to time re-enter the Leased Premises and the Tenant Department Store without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises and the Tenant Department Store, and re-let the Leased Premises and the Tenant Department Store or any part thereof as agent for the Tenant for such period or periods (which may extend beyond the Term) and at such rental or rentals and upon such other terms and conditions as the Landlord in its sole discretion may deem advisable. Upon each such re-letting all rentals received by the Landlord from such re-letting shall be applied, first, to the payment of any indebtedness other than rent due from the Tenant to the Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage fees and solicitors' fees and costs of such alterations and repairs; third, to the payment of rent due and unpaid, and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same may become due and payable. If such rentals received from such re-letting during any month are less than that



to be paid during that month by the Tenant, the Tenant shall pay any such deficiency to the Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises and the Tenant Department Store by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention has been given to the Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the Landlord may, subject to the rights of the lessees, pursuant to such re-letting at any time thereafter elect to terminate this Lease by reason of such previous event and if the Landlord does so its rights to damages following termination under clause 24.01 shall be equally applicable to termination under this section.

**24.04 Right to Distrain.** The Tenant waives and renounces the benefit of any present or future statute purporting to limit or qualify the Landlord's right to distrain and agrees with the Landlord that upon the happening of any event described in clause 24.01 the Landlord, in addition to the other rights reserved to it, shall have the right:

- (a) to enter the Leased Premises and the Tenant Department Store as agent of the Tenant either by force or otherwise without being liable for any prosecution therefor and to take possession of any goods and chattels whatever on the Leased Premises and the Tenant Department Store, save and except any such goods and chattels which are not owned by the Tenant,
- (b) if any such goods and chattels have been removed from the Leased Premises and the Tenant Department Store, to levy distress against the goods and chattels of the Tenant at any place to which the Tenant or any other person may have moved them, in the same manner as if such goods and property had remained upon the Leased Premises and the Tenant Department Store,
- (c) to change the locks on the Tenant Department Store to prevent the removal by the Tenant or any other person of the goods and chattels which are the subject matter of the distress without thereby re-entering the Leased Premises and the Tenant Department Store or terminating this Lease,
- (d) to levy distress after dark and on Sundays, and
- (e) to sell any goods and chattels seized at public or private sale without notice and to apply the proceeds of such sale on account of the rent or other sums provided in this Lease to be paid by the Tenant as rent in arrears or in satisfaction of the default by the Tenant of its covenants, obligations and agreements under this Lease; provided that the Tenant shall remain liable for the deficiency, if any.

Notwithstanding any term or condition of this Lease or anything contained in any legislation, none of the goods and chattels of the Tenant at any time during the continuance of the Term shall be exempt from levy by distress for rent or other sums provided in this Lease to be paid by the Tenant as rent in arrears, and upon any claim being made for such exemption by the Tenant, or upon distress being made by the Landlord, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the rights to the levying upon any such goods as are named as exempted in such legislation, the Tenant waiving as it hereby does all and every benefit that it could or might have with regard thereto.

**24.05 Remedies Generally.** Mention in this Lease of any particular remedy or remedies of a party in respect of any default by the other shall not preclude such party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for herein. No remedy shall be exclusive or dependent upon any other remedy, but the non-defaulting party may from time to time exercise any one or more of such remedies generally or in combination, all such remedies being cumulative and not alternatives. Nothing in this Article 24 shall prejudice any rights which the Tenant may have at law to apply for and obtain relief from forfeiture.



**24.06 Particular Remedies of Tenant.** The Tenant, in addition to all other remedies it may have under the express provisions of this Lease and (to the extent not expressly excluded hereby) under the general law, shall have the following rights:

(1) In the event of the failure of the Landlord to pay any amount due to the Tenant under any provision of this Lease when due, and if such failure shall not have been remedied within thirty (30) days after receipt of notice from the Tenant specifying the default, the Tenant shall have the right, in addition and without limitation to any other rights which the Tenant has at law or in equity, to deduct such amount from amounts due or to accrue due to the Landlord under Article 10 of this Lease.

(2) In the event the Landlord is in default under this Lease, other than a default under subsection (1) hereof, and the Landlord shall fail to remedy such default within sixty (60) days after receipt of notice from the Tenant to the Landlord (or such longer period as may reasonably be necessary therefor having regard to the nature of such default provided that the Landlord has commenced to rectify within such 60 day period and is continuously thereafter proceeding with diligence to cure such default), the Tenant may in addition and without limitation to any other rights which the Tenant has at law or in equity, take such reasonable steps as may be necessary to remedy such default, and any costs incurred by the Tenant in so doing shall be promptly repaid to it by the Landlord.

**24.07 Interest on Sums in Default.** If the Tenant fails to pay any rent or other sum owing to the Landlord when it is due or payable or the Landlord fails to pay any sum owing to the Tenant when it is due or payable, in each case such sum so owing shall bear interest from the date such sum so owing was due and payable under the applicable provision of this Lease until such sum is actually paid, at an annual rate equal to 2% plus the Prime Rate (as hereinafter defined) then in effect, compounded semi-annually, not in advance, and such interest shall accrue on, be added to and be recoverable in the same manner as the principal sum upon which it is calculated. "Prime Rate" means the reference rate of interest announced from time to time by Canadian Imperial Bank of Commerce (or its successor bank) for the purpose of determining interest rates on Canadian dollar commercial loans in Canada, commonly known as its "prime rate".

## **ARTICLE 25**

### **MISCELLANEOUS PROVISIONS**

**25.00 Unavoidable Delay.** Whenever in this Lease it is provided that any act or things to be done or performed is subject to Unavoidable Delay, the time for the doing or performance thereof shall be extended for a period equal to the period for which such Unavoidable Delay operates to delay or prevent the act or thing required to be done or performed from being done or performed, and the party obligated to do or perform such act or thing shall not be deemed to be in default until the expiration of such time as so extended. So long as any such impediment exists, such party will be relieved from the fulfilment of such obligation and the other party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. Each party shall promptly notify the other of the occurrence of any Unavoidable Delay of which it is aware which might prevent or delay the doing or performance of acts or things required to be done or performed by such party, if such party intends to rely on such Unavoidable Delay in respect of a particular obligation under this Lease.

**25.01 Waiver.** Any condoning or overlooking by the Landlord or the Tenant of any default, breach or non-performance by the other at any time or times in respect of any obligation contained in this Lease shall not operate as a waiver of such default, breach or non-performance, and any waiver of a particular default, breach or non-performance shall not operate as a waiver of any subsequent or continuing default, breach or non-performance.

**25.02 Certificates.** The Tenant agrees that it will from time to time whenever reasonably required by the Landlord for the purpose of giving assurance to the Landlord and any third party interested (including any prospective or actual assignee or Mortgagee of the Landlord) execute and deliver to the Landlord or as the Landlord may direct a statement in writing

certifying to the Landlord and such third party whether this Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and Tenant, whether or not there are any existing defaults on the part of the Landlord of which the Tenant is aware (and if so, specifying them) and as to any other matters in connection with this Lease in respect of which such a certificate is reasonably requested. The Landlord agrees that it will from time to time whenever reasonably requested for the purpose of giving assurance to the Tenant and any third party interested (including any proposed or actual assignee or Mortgagee of the Tenant) execute and deliver to the Tenant or as the Tenant may direct a statement in writing certifying to the Tenant and such third party whether this Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and the Tenant, whether or not there are any existing defaults on the part of the Tenant of which the Landlord is aware (and if so, specifying them) and as to any other matters in connection with this Lease in respect of which such a certificate is reasonably requested. Such statements may be relied upon by (but only by) the Landlord, the Tenant and the third party for whose benefit they are given.

**25.03 Approvals.** Except insofar as it is otherwise provided in this Lease, any approval or consent which either party is entitled or required to request of the other hereunder shall, unless a shorter period is otherwise designated or contemplated, be either given or refused in writing within twenty (20) days of a written request therefor, and if refused and if such approval or consent is one which the requested party can withhold only on reasonable grounds, the requested party shall also give reasons for such refusal. Any request for approval or consent shall be in writing and shall specify the aforementioned time limitation.

**25.04 Registration.** This Lease shall not be registered against title to the Shopping Centre Lands or the HBC Lands. Either party may register a notice or short form of this Lease on title to the Shopping Centre Lands and the HBC Lands, the form and content of which will be subject to each party's prior approval, which approval shall not be unreasonably withheld or delayed. In no event shall the notice or short form of lease disclose the financial terms of this Lease. All costs related to such registration shall be the responsibility of the party registering the notice.

**25.05 Notices.** Any notice, approval or request for approval which a party is entitled, requested or required to give or make under any provision of this Lease shall be given or made in writing and shall be deemed to have been duly given or made, where intended for the Landlord, if sent by fax or if delivered or mailed in Canada by prepaid registered post addressed to:

the Landlord: c/o 20 Vic Management Inc.  
20 Victoria Street, Suite 900  
Toronto, Ontario  
M5C 2N8

Attention: Managing Director  
Fax Number: 416-955-0569

and, where intended for the Tenant, if sent by fax or if delivered or mailed in Canada by prepaid registered post addressed to:

the Tenant: 401 Bay Street  
Suite 600  
Toronto, Ontario  
M5H 2Y4

Attention: Senior Vice-President Real Estate  
and Development.  
Fax Number: 416-861-6870

and, where intended for the Owners, if sent by fax or if delivered or mailed in Canada by prepaid registered post addressed to:

the Owners:

(a) OMERS Realty Corporation  
c/o Borelais Capital Corporation  
One Financial Place  
1 Adelaide Street East  
Suite 2800, Box 198  
Toronto, Ontario M5C 2V9

Attention: Chief Operating Officer  
Fax Number: 416-361-6062

(b) OMERS Realty Holdings (Yorkdale) Inc.  
c/o Borelais Capital Corporation  
One Financial Place  
1 Adelaide Street East  
Suite 2800, Box 198  
Toronto, Ontario M5C 2V9

Attention: Chief Operating Officer  
Fax Number: 416-361-6062

(c) 1331430 Ontario Inc.  
c/o Hawthorne Realty Advisors Inc.  
4 Robert Speck Parkway, Suite 300  
Mississauga, Ontario L4Z 1S2

Attention: Director  
Fax Number: 905-270-9915

Any such notice, approval or request for approval shall be deemed to have been given or made, if so faxed, upon the day confirmation of the transmission of such fax is received by the sending party, unless such confirmation is received by the sending party after 5:00 p.m., in which case it shall be deemed to have been given on the next business day, or if so delivered, when delivered, or if so mailed, except in the case of publicized postal interruptions (during which any notice or request shall be delivered or faxed), on the fourth next business day (excluding Saturdays) following its mailing. Any party may by notice in writing to the other change the address and/or fax number to which any notice, approval or request for approval is to be given or made. All payments required to be made under this Lease shall be delivered or mailed to the above addresses of the Owners or the Landlord or the Tenant, as the case may be, unless the party entitled to such payment shall otherwise direct in writing.

**25.06 Removal of Trade Fixtures.** Upon or within thirty (30) days after the expiration or sooner termination of the Term the Tenant may, if not then in default, but shall not be obligated to, remove any or all of its fixtures and improvements of the nature of trade or tenants' fixtures which are ordinarily removable by a tenant, but not any improvements of a fixed and permanent nature and the Tenant shall repair and restore any damage thereby occasioned. Tenant shall pay per diem rent for each day after expiration or termination until vacant possession of the Leased Premises and Tenant Department Store is delivered to the Landlord.

**25.07 Interpretation and Construction.** All of the provisions of this Lease are to be construed as covenants and agreements. If any provision of this Lease is illegal, invalid or unenforceable it shall be considered as separate and severable from the remaining provisions, which shall remain in force and binding as though the said provision had never been included. No provision of this Lease which imposes or requires a party to impose or enforce a restriction against any third party shall be read or interpreted as contemplating any violation of the Competition Act (Canada) or any similar legislation, but if and to the extent such imposition or enforcement would cause any such violation, such provision shall be deemed modified to the extent necessary to avoid such violation. The headings and marginal sub-headings of Articles and clauses are for convenience of reference, and are not intended to limit, enlarge or otherwise affect their meanings. References in the singular shall include

the plural, where the context reasonably so requires, and vice versa, and references herein to the parties shall mean the Landlord and the Tenant.

**25.08 Successors.** This Lease shall be binding upon the Landlord and the Tenant and their respective successors and assigns, and shall also enure to the benefit of their respective successors and assigns provided such successors and assigns are permitted successors and assigns under the provisions of Article 21.

**25.09 Applicable Law.** This Lease shall be governed and interpreted by and in accordance with the laws of the Province of Ontario and the laws of the Dominion of Canada applicable thereto.

**25.10 Entire Agreement.** This Lease constitutes the entire agreement between the Landlord and the Tenant relating to the subject matter hereof, and supercedes and replaces any offer to lease or letter agreements for the Leased Premises which preceded the entering into of this Lease. This Lease may be amended only by an agreement in writing signed by the parties hereto and, with respect to the subject matter hereof, neither party is bound by any representations, warranties, promises, agreements or inducements not embodied herein. The provisions of the Letter Agreement are superseded by this Lease and such Letter Agreement is terminated.

**25.11 Transfer Taxes.** The Tenant shall be responsible for the payment of any transfer taxes resulting from the granting of this Lease, including without limitation those transfer taxes which are payable at the time of registration of this Lease.

**25.12 Planning Act.** It is a condition of this Lease that it is to be effective only if the provisions of Section 50 of the *Planning Act of Ontario*, as amended from time to time, or any legislation in substitution therefor are complied with. The Tenant shall apply for and utilize its endeavours (with the assistance of the Landlord to the extent required) to obtain the requisite consent of the appropriate authority to this Lease (including any necessary appeals required if consent is not given on terms satisfactory to the Landlord and the Tenant, acting reasonably). Upon the obtaining of such consent the said condition shall have been fully complied with and this Lease shall be fully effective. Whether upon application by the Landlord or the Tenant, if the costs of complying with any condition to the granting of a consent exceeds \$1,000.00, each of the Landlord and Tenant, acting reasonably and in good faith, must first agree to satisfy the condition if such condition cannot be fully satisfied by the payment of money alone, and if so agreed or if such condition can be fully satisfied by payment of money alone, the Tenant shall reimburse the Landlord the entire amount of the cost of compliance and the Landlord will comply with any such condition. If consent to this Lease is unable to be obtained in accordance with the foregoing and such consent continues to be required in order for this Lease to comply with the Planning Act, notwithstanding anything contained in this Lease the Term shall be deemed to be for a period of twenty-one (21) years less one (1) day, until such time as consent has been obtained or is no longer required. Either the Landlord or the Tenant shall, on demand, cooperate in making such applications or representations to the appropriate Authority or Authorities and shall do all such other acts and things as may appear necessary or desirable from time to time to make effective the provisions of this Lease which are dependant upon compliance with section 50 of the Planning Act of Ontario, as amended from time to time, or any legislation in substitution therefor.

**25.13 Ownership of Tenant Department Store.** The Landlord and Owners hereby acknowledge and agree that as at the date of this Lease the Tenant Department Store is owned by the Tenant and shall, along with any improvements made therein or thereto, during the Term or until such earlier date as this Lease shall be terminated, disclaimed or repudiated or the Tenant Department Store shall be abandoned, remain the sole property of the Tenant, notwithstanding the manner or degree of affixation.

However, upon the termination, disclaimer or repudiation of this Lease prior to the expiration of the Term by effluxion of time or upon abandonment of the Tenant Department Store (collectively, an "Early Termination") or upon expiry of the Term by effluxion of time, the Owners, Landlord and Tenant specifically agree, which agreement shall have priority to the rights of any other party including the Tenant, any lender to the Tenant and

any other party deriving its interest through the Tenant (including without limitation, any trustee in bankruptcy or receiver of the Tenant), that the Tenant Department Store and all Leasehold Improvements (other than Tenant Property) shall be deemed to have been automatically conveyed to and vested in the Owners by the Tenant free and discharged of any encumbrance or claim by the Tenant and any such parties, upon the day immediately preceding the date of the Early Termination or upon the date of expiry of this Lease by effluxion of time, whichever is the earlier to occur, without payment by the Owners or Landlord or any additional compensation to the Tenant or any such party. The Tenant and such parties acknowledge that adequate valuable consideration was included in the price paid to the Tenant by the Owners for the purchase of the HBC Lands and included in the rental terms of this Lease for the foregoing provision.

**25.14 Time of Essence.** Time shall be of the essence with respect to the covenants and obligations of the parties under this Lease.

## ARTICLE 26

### COVENANTS OF OWNERS

**26.00** In consideration of the sum of one (\$1.00) dollar now paid by the Tenant and by the Owners, each to the other (receipt and sufficiency of which is hereby by each acknowledged), and in consideration of the Tenant entering into this Lease with the Landlord, the Owners and the Tenant agree as follows:

- (a) if a Head Lease is terminated for any reason whatsoever, the Owners agree that they shall, upon such termination occurring, unless the Head Lease is forthwith replaced with another lease in favour of the Landlord for the Shopping Centre (which replacement leases shall for the purposes of this Lease constitute the Head Leases), be bound by this Lease as if it were the Landlord and had executed this Lease as Landlord, for the remainder of the Term, including without limitation any extension of the term of this Lease as provided for in Article 3 of this Lease, and upon the request of the Tenant the Owners shall provide to the Tenant such further assurances as are required by the Tenant, acting reasonably, to confirm its lease of the Leased Premises for the remainder of the Term as well as all applicable rights, covenants, provisions, agreements and conditions of the parties pursuant to this Lease;
- (b) the Owners shall give written notice to the Tenant promptly upon any termination of the Head Leases being effected;
- (c) notwithstanding any provisions of this Lease to the contrary, until a Head Lease shall have terminated, no provisions contained in this Lease shall apply to the Owners other than the provisions of clause 21.08 and this Article 26, and the Owners shall not be liable to the Tenant for any obligation or default of the Landlord which has arisen or occurred pursuant to this Lease prior to such termination, except to the extent that such obligation or default is of a material and of a continuing nature, such that it continues to occur after the date of termination, and further provided that the Owners shall be bound by and subject to any right of set off under this Lease for all applicable amounts that as at the date of termination the Landlord owes to the Tenant in respect of expenses incurred by the Tenant pursuant to its remedies under this Lease or pursuant to rental adjustment items;
- (d) each of the Owners shall, in conjunction with any transfer of the whole of its interest in the Shopping Centre, obtain an agreement in writing from its transferee in favour of the Tenant to be bound by the provisions of this Article 26, and upon delivery of such agreement to the Tenant such Owner shall be released from any further liability or obligations under this Article 26 except in respect of any liability of such Owner to the Tenant for any obligation or default of the Landlord of a material and a continuing nature under clause (c) above, to the extent such liability is existing as at the date of such transfer; notwithstanding the aforesaid,

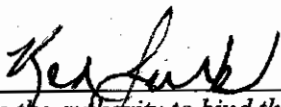
where the transferee of the interest of an Owner also acquires the interest of the Landlord in a Head Lease, the transferee need only enter into the agreement provided for in clause 21.06 hereof, provided that it is doing so as a registered and beneficial owner of its interest in the Shopping Centre; and

- (e) the Owners covenant that they are collectively the registered owners of the Shopping Centre.

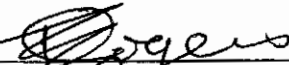
IN WITNESS WHEREOF the Owners, the Landlord and the Tenant have executed this Lease.

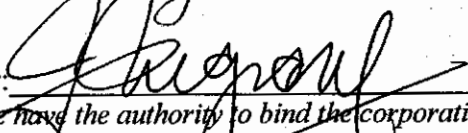
**YORKDALE SHOPPING CENTRE HOLDINGS INC.**

per: 


per:   
(We have the authority to bind the corporation)

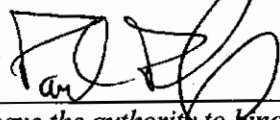
**HUDSON'S BAY COMPANY**

per: 


per:   
(We have the authority to bind the corporation)

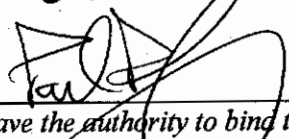
**OMERS REALTY CORPORATION**

per: 

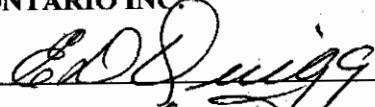
per:   
(We have the authority to bind the corporation)

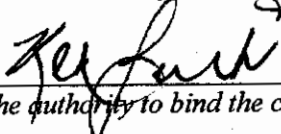
**OMERS REALTY HOLDINGS (YORKDALE) INC.**

per: 

per:   
(We have the authority to bind the corporation)

**1331430 ONTARIO INC.**

per: 

per:   
(We have the authority to bind the corporation)

## **SCHEDULE A**

### **Part 1: Legal Description of Shopping Centre Lands**

#### **Firstly:**

PIN No. 10232-0122(LT), being Parcel 8-3, Section Y-7, FREEHOLD, being part of Lot 8, Concession 2, West of Yonge Street, designated as Part 7 on Reference Plan 66R-13323, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO an easement as set out in Instrument No. NY410178 (B106442).

#### **Secondly:**

PIN No. 10232-0123(LT), being Parcel 8-8, Section Y-7, FREEHOLD, being part of Lot 8, Concession 2, West of Yonge Street, designated as Parts 8 and 9 on Reference Plan 66R-13323, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto).

#### **Thirdly:**

PIN No. 10232-0150(LT), being part of Parcel 8-9, Section Y-7, FREEHOLD, being part of Lot 9, Concession 2, West of Yonge Street, designated as Part 2 on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO easements as set out in Instrument No. NY410177 (B106441) and Parcel 9-2, Section Y-7, FREEHOLD, being part of Lot 9, Concession 2, West of Yonge Street, designated as Part 4 on Reference Plan 66R-13323, City of Toronto, Province of Ontario (City of North York, Municipality of Metropolitan Toronto).

#### **Fourthly:**

PIN No. 10232-0152 (LT), being Part of Parcel 8-1, Section Y-7, FREEHOLD, being part of Lot 9, Concession 2, West of Yonge Street, designated as Part 3 on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto, SUBJECT TO easements as set out in Instrument No. NY410177 (B106441) and TOGETHER WITH easements as set out in Instrument No. C-702847, and Parcel 8-2, Section Y-7, FREEHOLD, being part Lots 8 and 9, Concession 2, West of Yonge Street, designated as Parts 5 and 6 on Reference Plan 66R-13323, save and except Parts 5 and 6 (Freehold and Leasehold) on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO easements as set out in Instrument Nos. NY410177 (B106441) and A-900224 over Part 1 on Reference Plan 66R-10317.

**Part 2:**

**Legal Description of HBC Lands**

**Firstly:**

PIN No. 10232-0124 (LT), being Part of Parcel 8-9, Section Y-7, being part of Lot 8, Concession 2, West of Yonge Street, designated as Parts 10, 11, 12 and 13 on Reference Plan 66R-13323, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), TOGETHER WITH Easement in NY410177 (B-106441); SUBJECT TO Easement in NY410179 (B-106443); SUBJECT TO Covenants in NY399424 (C-93166) and NY401171 (C-93167)

**Secondly:**

PIN 10232-0138 (LT), being Part of Parcel 8-9, Section Y-7, being part of Lot 9, Concession 2, West of Yonge Street, designated as Parts 1 and 2 on Reference Plan 66R-13323, Save and Except Part 2 on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO Easement in NY410177 (B-106441) and NY410179 (B-106443) and Right in NY427518 (B-93168)

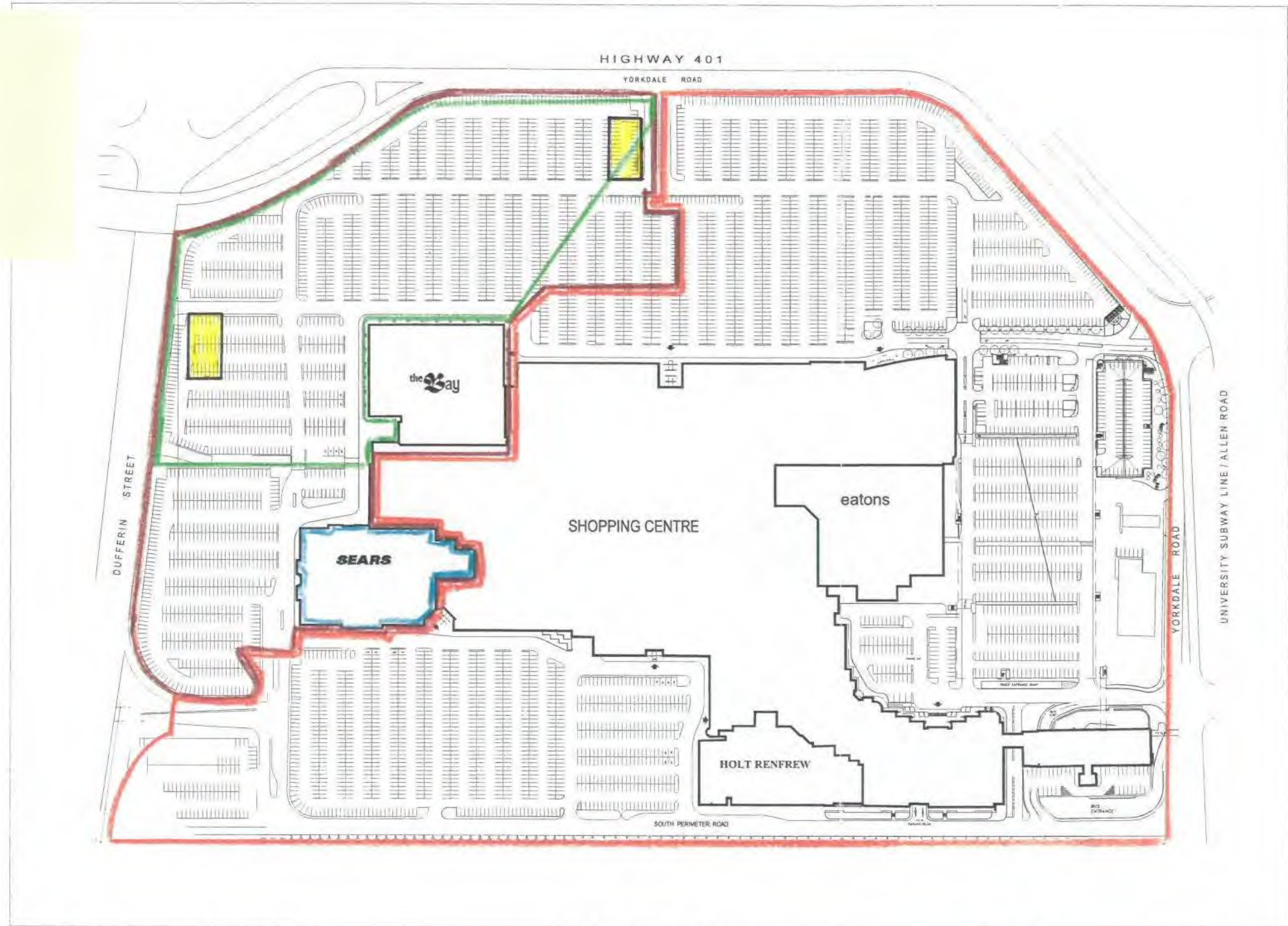
**Thirdly:**

PIN 10232-0139 (LT), being Part of Parcel 8-2, Section Y-7, FREEHOLD, being part of Lots 8 and 9, Concession 2, West of Yonge Street, designated as Parts 5 and 6 on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO Easement in NY410177.

**Fourthly:**

PIN 10232-0146 (LT), being Part of Parcel 8-1, Section Y-7 FREEHOLD, being part of Lots 8 and 9, Concession 2, West of Yonge Street, designated as Parts 3, 14 and 15 on Reference Plan 66R-13323, Save and Except Part 1 on Reference Plan 66R-15578, Save and Except Part 3 on Reference Plan 66R-16192 and Save and Except Part 4 (LEASEHOLD) on Reference Plan 66R-16192, City of Toronto, Province of Ontario (formerly City of North York, Municipality of Metropolitan Toronto), SUBJECT TO Easement in NY329294 (B-108844), NY353722 (B-108843), NY357732 (B-108842) and NY410177 (B-106441) and Covenants in NY353722 (B-108843).





**Yorkdale Shopping Centre**  
Toronto, Ontario

**Site Plan**

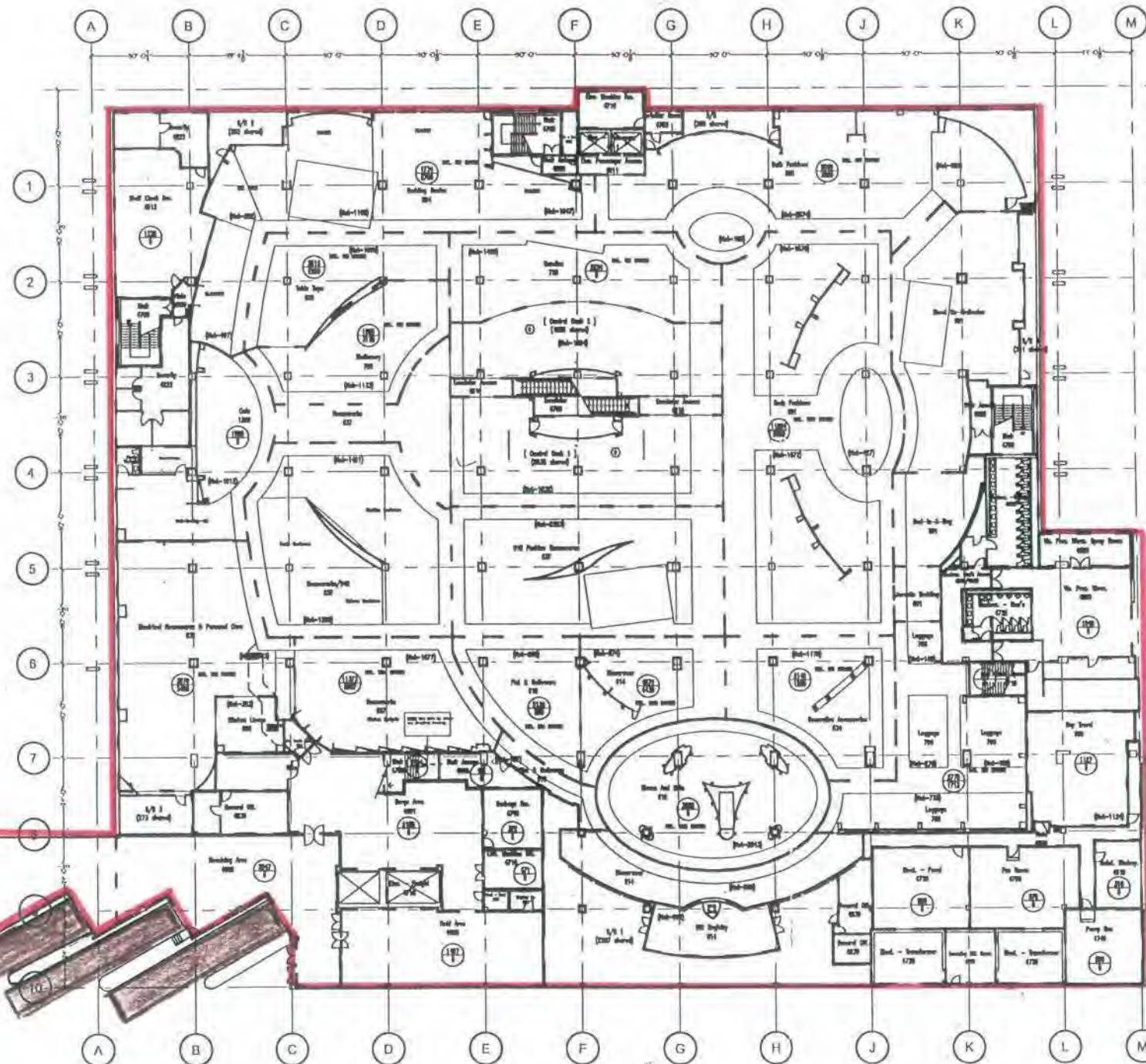
MP 102a S

20 VIC

MMC  
INTERNATIONAL  
ARCHITECTS



SCHEDULE C "1"



SQUARE FOOTAGE SUMMARY			
DIVISION	ACTUAL	REQUIRED	
(Tallied on 01/26/02)			
Division 007	2776		
Accessories + Luggage	(net 1607)	072	
Division 015	28471		
China / Accessories/Stationery	16600	17628	
Division 016	3624		
Seasonal Home	(net 2312)	4328	
Division 017	23083		
Linen / Bath	(net 12862)	16800	
Division 028	2224		
Opportunity Buys	(net 1408)	0	
Division 030	1908		
Food Services	(net 1012)	0	
Division 035	1027		
Licensed Departments	(net 1024)	0	
Total All Divisions	61044 (net 40064)	40062	

X	X	X	00/00/
First Name	FF	FF	00/00/
Pre-Index	00	00	00/00/

CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REPORTING ANY VIOLATIONS TO THE CITY OF VANCOUVER. SUPERVISOR MUST BE PRESENT AT ALL TIMES.

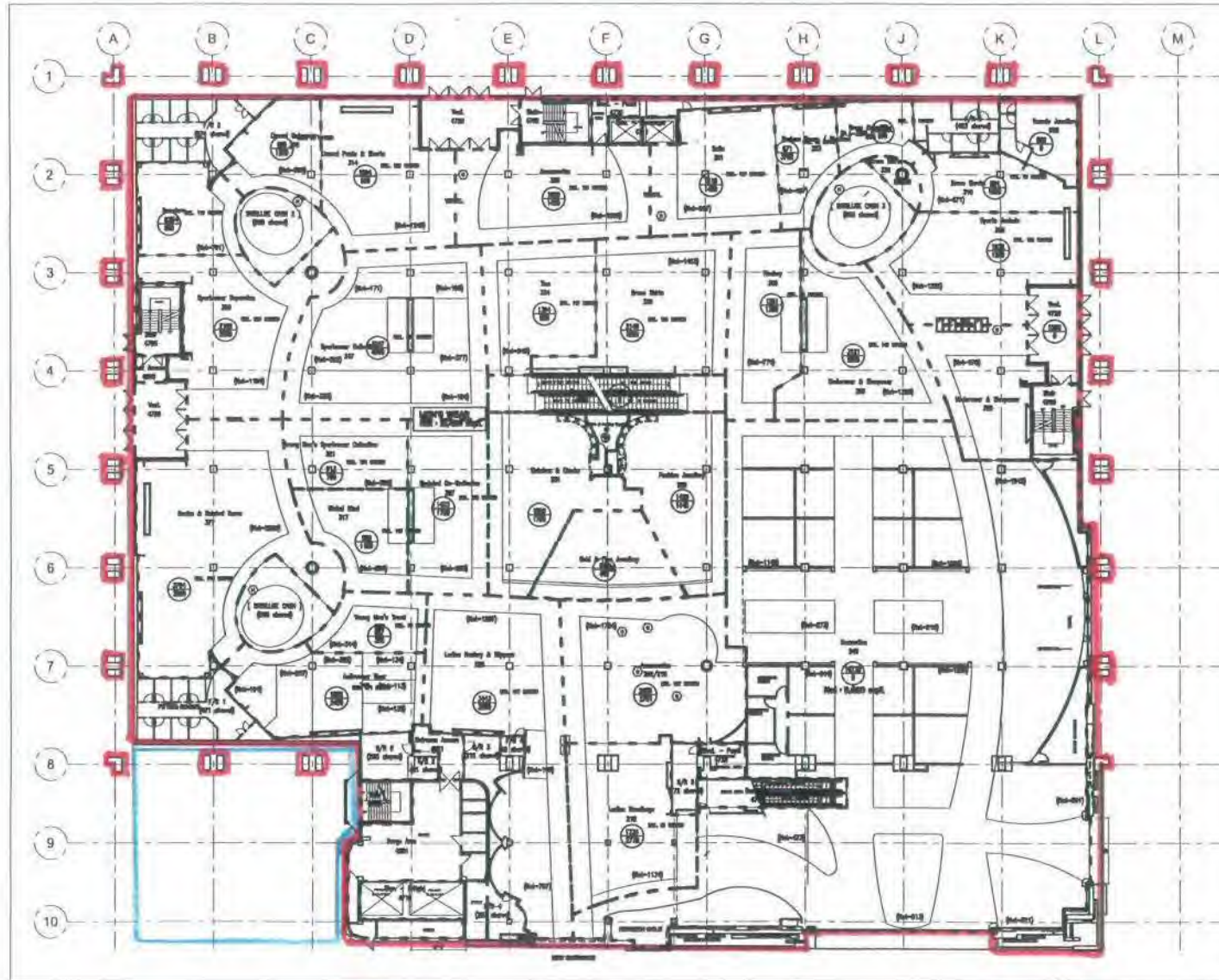
THE BAY

YORKDALE

PROJECT NO. YKD-1554-01 STORE DIVISION BQ. 17 AREA - 151,172			
BL-1			
LOWER LEVEL SQUARE FOOTAGE ANALYSIS 2001			
Drawn By	Scale	Date	Drawn By
1/1" = 1'-0"	DEC. 8, 2001		
Designed By	Checked By	Design Manager	BL-B1A



SCHEDULE C 1/2"



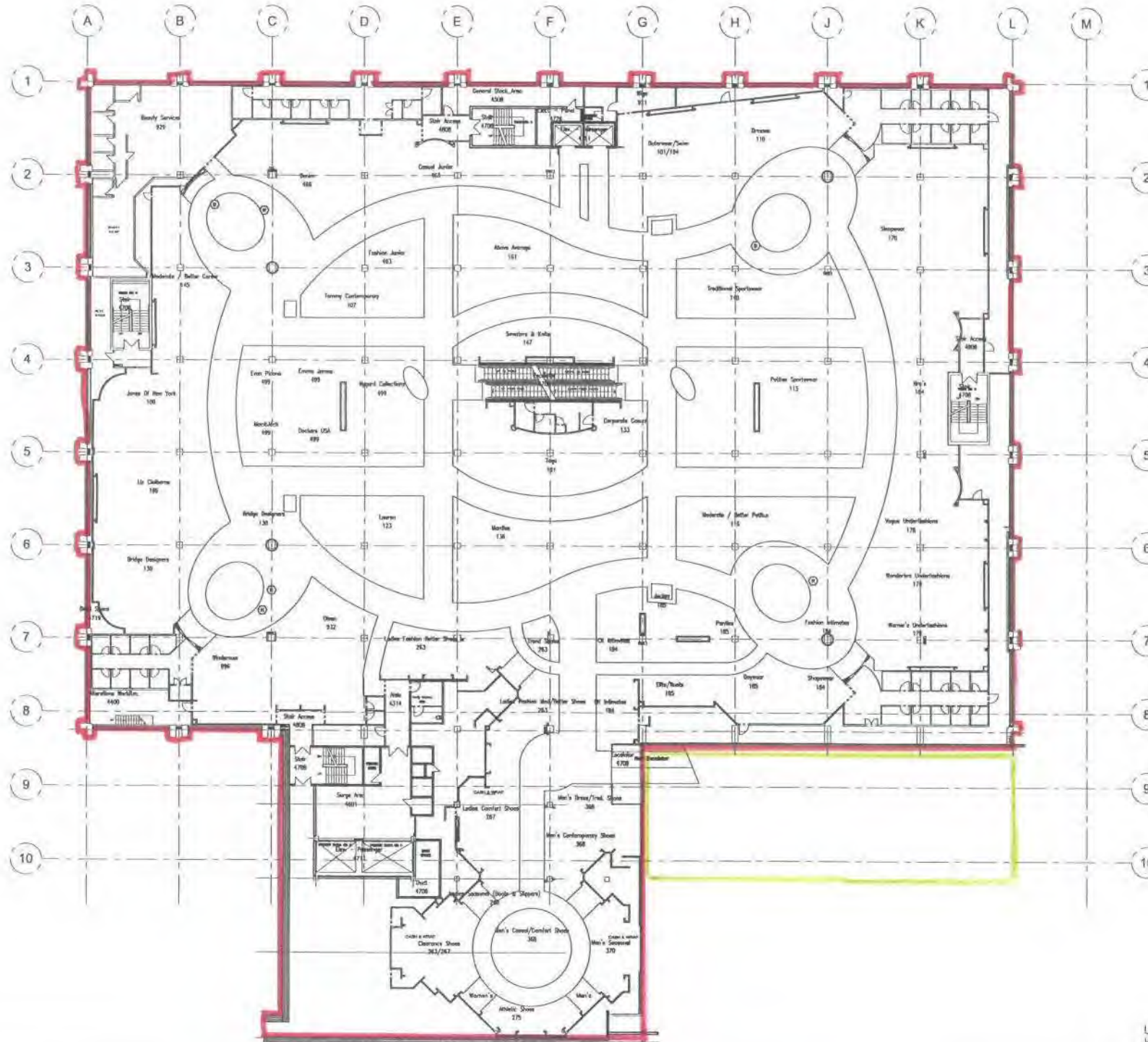
USE THIS DWG. IN CONJUNCTION  
WITH \_\_\_\_\_

SQUARE FOOTAGE SUMMARY

DIVISION	ACTUAL	REQUIRED
[Tallied on 01/29/02]		
Division 006	3048	
Jewellery	(net 3048)	3007
Division 007	7832	
Accessories + Luggage	(net 4692)	9329
Division 009	18728	
Cosmetics	(net 6776)	0
Division 010	10501	
Men's Sportswear	(net 8397)	10800
Division 011	15262	
Men's Furnishings / Clothing	(net 10018)	16442
Division 012	8156	
Young Men's	(net 4930)	7760
Division 035	660	
Licensed Departments	(net 660)	0
Total All Divisions	63128 (net 37707)	47928



SCHEDULE C 134



USE THIS DWG. IN CONJUNCTION WITH

SQUARE FOOTAGE SUMMARY		
DIVISION	ACTUAL	REQUIRED
[Tallied on 01/29/02]		
Division 001	8717	
Women's Special Sizes	(net 5053)	13045
Division 002	12105	
Women's Career / Casual	(net 7031)	10161
Division 003	11348	
Women's Better	(net 6979)	14258
Division 004	4914	
Women's Junior	(net 2762)	6550
Division 005	13300	
Intimate	(net 8248)	11456
Division 008	11790	
Footwear	(net 6958)	0
Division 035	4946	
Licensed Departments	(net 4003)	0
Total All Divisions	68119 (net 41834)	56370

REVISED LINGERIE FLOW	2	DC	18/11/01
RE-ISSUED	1	DC	28/04/01
Print Issue	1	DC	28/04/01
Revision	1	DC	28/04/01

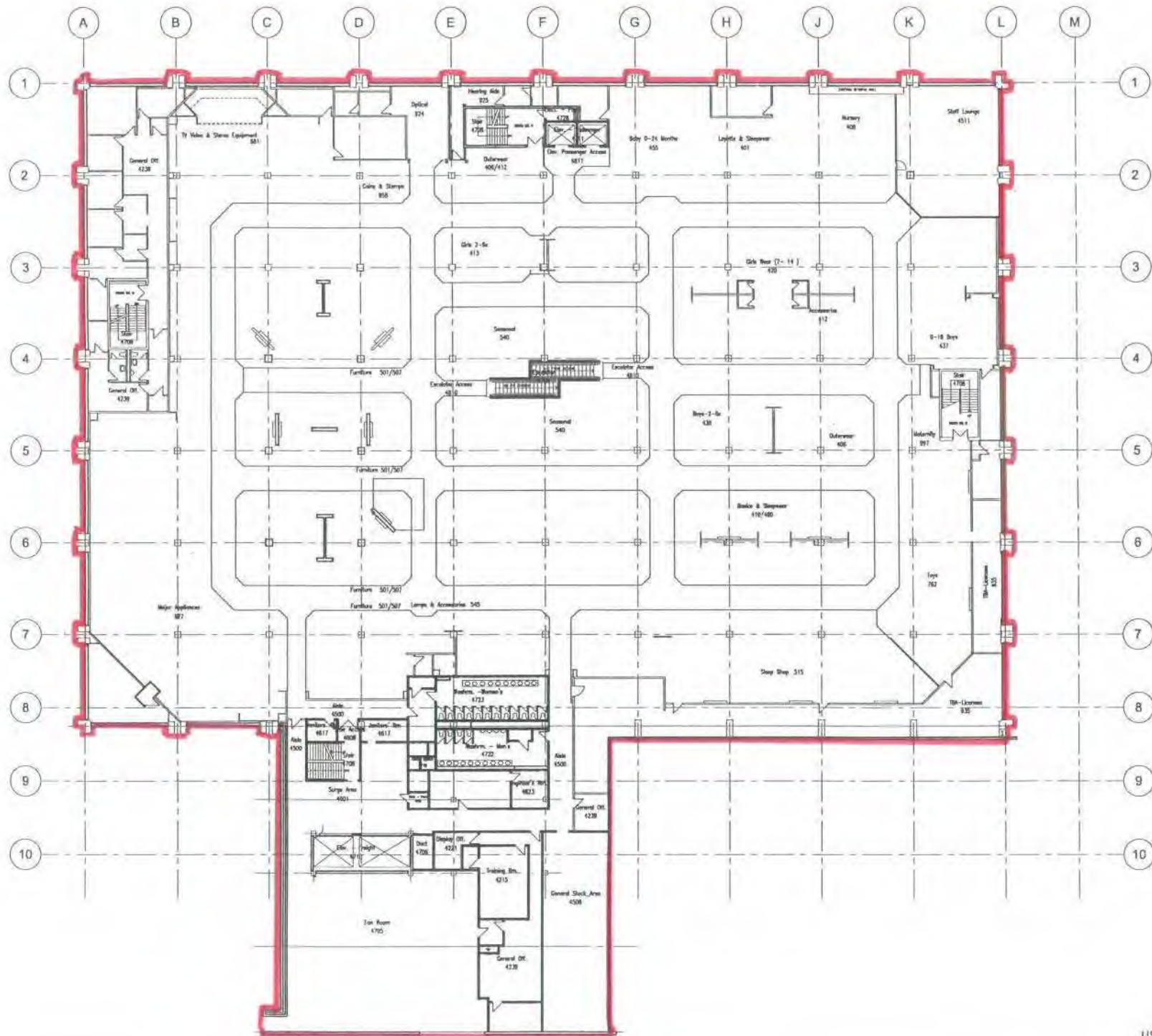
CONTRACTOR SHALL BE RESPONSIBLE FOR CHECKING ALL DIMENSIONS AND REPORTING ANY DISCREPANCY TO THIS OFFICE AND/OR SITE SUPERVISOR BEFORE PROCEEDING WITH WORK.

## THE BAY

PROJECT 1		YORKDALE	
PROJECT No. YHD-1554-01		STORE GROSS SQ. FT. AREA - 261,773	
FILE 1		SECOND LEVEL	
Drawn By		Square Footage Analysis 2001	
By D. CASUCCI	Scale 1/8"=1'-0"	Date DEC 8, 2001	Drawing Number BL-L2A
Designed By D. CASUCCI	Checked By	Design Manager	



DIVISION	ACTUAL	MODEL
	[Tailored on 01/29/02]	
Division 013 Youth Wear	5339 (net 3360)	4000
Division 014 Infants + Toddlers	12339 (net 8056)	10222
Division 016 Seasonal Home	5886 (net 4390)	2500
Division 018 Furniture	28680 (net 21391)	22784
Division 035 Licensed Departments	3817 (net 3037)	0
Total All Divisions	56162 (net 40234)	39508



USE THIS DWG. IN CONJUNCTION  
WITH \_\_\_\_\_

X		X	X	NO/NA/
	Print Issue	88	88	88
	Revised/	88	88	88/NA/

CONTRACTOR SHALL BE RESPONSIBLE FOR CHECKING ALL DIMENSIONS AND REPORTING ANY DISCREPANCY TO THIS OFFICE AND/OR SITE SUPERVISOR BEFORE PROCEEDING WITH WORK.

**THE BAY**

PROJECT :

**YORKDALE**

PROJECT NO: YKD-1504-01      STORE GROSS SQ.FT. AREA - 291,773

FLOOR :

**THIRD FLOOR ANALYSIS 2001**

Drawn by: D CASUCCI	Scale: 1/8" = 1'-0"	Date: DEC. 5, 2001	Sheeting Number: <b>BL-L3A</b>
Designed by: D/CASUCCI	Checked by:	Design Manager:	

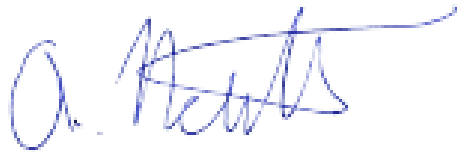
## SCHEDULE D

### RULES AND REGULATIONS

- (1) *Cleanliness.* Tenants shall not perform any act or carry on any practice which may injure the buildings comprising the Shopping Centre; shall keep their premises at all times orderly and tidy and the merchandise properly displayed and with adequate customer aisles for the free movement of customer traffic; shall keep their premises reasonably clean and free from rubbish and dirt and unreasonable accumulations of snow and ice, and store all trash and garbage within their premises and arrange its regular removal; shall not burn any trash or garbage on or about their premises or anywhere else within the confines of the Shopping Centre.
- (2) *Dignified display.* Tenants shall conduct the merchandising, display and advertising in connection with their business in a dignified manner and with high standards.
- (3) *Harmful business conduct.* Tenants shall discontinue immediately upon the request of the Landlord any misleading business conduct or practice carried on by them.
- (4) *Employee Parking.* Upon the written request of the Landlord, given at reasonable intervals, the Tenants shall furnish the Landlord with the automobile license numbers of the tenants and their employees and shall thereafter notify the Landlord of any changes within five (5) days after further request therefor.
- (5) *Pests.* Tenants shall use at their cost a pest extermination contractor as necessary to ensure the cleanliness of their premises.
- (6) *Odours.* Tenants shall take all necessary measures to prevent objectionable odours and noises emanating from their premises.
- (7) *Obstructions.* Except to the extent specifically provided in their leases no parking area, aisle, roadway, driveway, mall, sidewalk, entry, passageway, elevator or staircase on the balance of the Shopping Centre shall be obstructed or used by the tenants, their officers, agents, servants, employees, contractors, customers, invitees or licencees for any purpose other than ingress to and egress from their premises or as permitted in their leases.
- (8) *Flyers.* Tenants shall not conduct or solicit business in the Common Facilities or distribute any handbills or other advertising matter in the Common Facilities or on vehicles parked in the parking areas.
- (9) *Common Facilities.* Tenants shall not place or allow any of their merchandise on any portion of the Common Facilities other than as permitted in their leases without the prior written permission of the Landlord (not to be unreasonably withheld) or in conjunction with a Shopping Centre promotion authorized by the Landlord.

The foregoing rules and regulations are subject to and shall be superseded by any provisions of the Lease to the contrary.

This is **Exhibit “E”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

**YORKDALE SHOPPING CENTRE  
AMENDING AGREEMENT**

**NEITHER THIS AGREEMENT NOR NOTICE THEREOF MAY BE REGISTERED ON TITLE**

THIS AGREEMENT is made as of the 3<sup>rd</sup> day of April, 2014.

**B E T W E E N:**      **YORKDALE SHOPPING CENTRE HOLDINGS INC.**  
(hereinafter called the "**Landlord**")

OF THE FIRST PART

**AND:**                    **OMERS REALTY CORPORATION, OMERS REALTY HOLDINGS  
(YORKDALE) INC., ARI YKD GP INC. and ARI YKD INVESTMENTS LP**  
(hereinafter collectively referred to as the "**Owners**")

OF THE SECOND PART

**AND:**                    **HUDSON'S BAY COMPANY**  
(hereinafter referred to as the "**Tenant**")

OF THE THIRD PART

**WHEREAS:**

- A. The Landlord, as landlord, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc., (the "**Original Owners**") as owners of the shopping centre known as "Yorkdale Shopping Centre" in the City of Toronto, Ontario (the "**Shopping Centre**"), and the Tenant, as tenant, entered into a lease agreement for premises comprising a portion of the said Shopping Centre's lands and improvements, made as of September 26, 2002, notice of which was registered on September 26, 2002, on title to the lands in and upon which the Shopping Centre is situated in the Land Registry Office for the Land Titles Division of Toronto (No. 66) as Instrument No. AT3195, and was re-registered on November 11, 2005 as Instrument No. AT976895;
- B. The said lease agreement was subsequently amended by three separate Partial Surrender of Lease agreements among the aforementioned four parties, each dated as of April 2, 2004, and by a letter agreement between the Landlord and the Tenant, dated June 28, 2011;
- C. The said lease agreement, as so amended, is hereinafter referred to as the "**Lease**";
- D. On September 30, 2013 1331430 Ontario Inc. transferred its interest in the Shopping Centre to ARI YKD GP. Inc. and ARI YKD Investments LP, such that, as of the date first written above, the current owners of the Shopping Centre and successors to the Original Owners under the Lease are OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc., ARI YKD GP Inc. and ARI YKD Investments LP; and
- E. The parties hereto have agreed to further amend the Lease as hereinafter more particularly set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that, in consideration of the covenants and conditions hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree to amend the Lease, subject always to the satisfaction and/or waiver of the conditions to this Agreement set out in Section 10 hereof, in accordance with the following terms and conditions:



1. The parties hereto hereby acknowledge and agree that the foregoing recitals of the present agreement (the "**Agreement**") are true.
2. Words and phrases in this Agreement that are capitalized shall have the meanings that are ascribed to such capitalized terms in the Lease, unless otherwise expressly provided herein.
3. For the purposes of this Agreement and the Lease, the term "**Condition Satisfaction Date**" shall mean the date (if any) upon which all the conditions to this Agreement set out in Section 10 hereof have been duly satisfied or waived in accordance with the provisions of the said Section 10.
4. The Tenant is duly registered under Subdivision (d) of Division V of Part IX of the Excise Tax Act (Canada) with respect to goods and services tax and harmonized sale tax and its registration number is 10242 0296 RT0001.
5. **Parking Ratio Reduction.**
  - (a) In consideration of the Tenant entering into this Agreement, the Owners shall pay to the Tenant within five (5) Business Days (as hereinafter defined) following the Condition Satisfaction Date the sum of Five Million Dollars (\$5,000,000.00), together with any applicable federal and/or provincial sales, value-added, harmonized sales, or goods and services taxes (the "HST") that the Tenant is required to collect pursuant to the applicable legislation (which sum, including all applicable HST, is hereinafter referred to as the "**Base Payment**").
  - (b) The parties further acknowledge and agree that, effective as of the later of:
    - (i) the Condition Satisfaction Date; and
    - (ii) the date upon which the Tenant has received the full amount of the Base Payment from the Landlord:

Subsection 7.04(d) of the Lease shall be deleted in its entirety and replaced with the following:

"(d) The Landlord shall at all times maintain or cause to be maintained sufficient parking spaces to (i) meet all applicable legal requirements for the whole of the Shopping Centre and (ii) maintain not fewer than 4.1 parking spaces for each 1,000 square feet of Gross Leasable Area of Retail Premises (as that term is hereinafter defined) in the Shopping Centre. For the purposes of this Lease, the term "Retail Premises" means all rented or rentable space in the Shopping Centre that is occupied or if unoccupied, is appropriate and intended for use for a business of providing any of the goods or services to the public of the nature commonly found in a shopping centre, including, retail shops, kiosks and other types of sales outlets, service establishments such as banks, trust companies, dry cleaners, barbers, hair and beauty salons, spas and eating establishments such as snack bars, coffee uses and restaurants but excluding all office space and recreational space and any space occupied or appropriate and intended for occupancy for residential, hotel or motel services."

6. **Change to No-Build Exception.** Effective as of the Condition Satisfaction Date, the Lease shall be further amended as follows:
  - (a) The parties acknowledge that, under the existing provisions of Subsection 20.00(5) of the Lease, the Landlord is permitted to construct within the No Build

Area two (2) buildings within the areas shown shaded on **YELLOW** to the Site Plan attached as Schedule "B" to the Lease, subject to the further conditions set out in the said Subsection 20.00(5). Effective as of the Condition Satisfaction Date, Subsection 20.00(5) of the Lease shall be amended such that the Landlord shall thereafter be permitted to construct only one (1) building within the No Build Area, the location of which building (the "**Permitted Building**") shall be the northernmost area shown shaded in **YELLOW** on Schedule "B" to the Lease, provided again that such Permitted Building shall not exceed **8,000** square feet and shall not be used as a fitness facility. For the sake of greater certainty, the parties hereto hereby acknowledge and agree that:

- (i) the said location of the Permitted Building is the area that is shown shaded in **YELLOW** and circled in **RED** on the copy of Schedule "B" that is attached as Appendix 1 to this Agreement; and
  - (ii) the Landlord shall cease to have any right to construct any building within the area that is shown shaded in **YELLOW** and bears a large black "X" on Appendix 1 hereto.
- (b) the plan of the Shopping Centre attached as Appendix 1 to this Agreement is hereby added as Appendix 1 to the Lease.

7. **Tenant Renovation.** Effective as of the Condition Satisfaction Date, the parties agree that, and the Lease shall be further amended to provide that, if the Tenant should elect at any time within two (2) years following the Condition Satisfaction Date to carry out a renovation of the Tenant Department Store (consisting of such alterations, repairs, rebuilding, refurbishment, re-finishing and decorations and improvements in and to the exterior and interior of the Tenant Department Store as the Tenant deems desirable or advantageous for its operations therein and therefrom), the Tenant, acting in its sole discretion, shall have the right to cause the Owners, in consideration for the Renovation Work (as defined below) to pay to the Tenant an allowance of Six Million Dollars (**\$6,000,000.00**) (the "**Renovation Allowance**"), plus any applicable HST, of which Five Million Dollars (**\$5,000,000.00**) will be used as a contribution towards all costs incurred by the Tenant in carrying out all work required to perform its desired alterations, repairs, rebuilding, refurbishment, re-finishing and improvements to the exterior façade of the Tenant Department Store and One Million Dollars (**\$1,000,000.00**) will be used as a contribution towards all costs incurred by the Tenant in carrying out all work required to perform its desired alterations, repairs, rebuilding, refurbishment, re-finishing and decorations and improvements to the interior of the Tenant Department Store (all of which work, both exterior and interior, is hereinafter collectively referred to as the "**Renovation Work**"), which right shall be exercised in accordance with, and subject to, the following terms and conditions:

- (a) The Tenant shall exercise its right to secure payment of the Renovation Allowance by delivering written notice to the Landlord confirming the Tenant's election to do so, provided always that the said notice (the "**Tenant's Election Notice**") shall be delivered to the Landlord no later than two (2) years following the Condition Satisfaction Date, failing which the Tenant's right to secure payment of the Renovation Allowance as aforesaid shall forever cease. The date upon which the Landlord receives the Tenant's Election Notice is herein referred to as the "**Tenant Election Notice Date**".
- (b) In the event that the Tenant exercises the foregoing right to secure payment of the Renovation Allowance:
  - (i) Within twelve (12) months following the Tenant Election Notice Date, the Tenant shall submit to the Landlord for the Landlord's approval the Tenant's drawings, renderings, plans and specifications and cost

estimates for the proposed Renovation Work (hereinafter collectively referred as the "**Renovation Plans**"), which approval shall not be unreasonably withheld, conditioned or delayed. The Landlord shall respond to the Tenant's request for approval of such Renovation Plans in writing within a reasonable time but, in any event, no later than four (4) weeks following the Tenant's submission of such Renovation Plans to the Landlord for approval, failing which the Landlord shall be deemed to have approved the Renovation Plans in question. The Tenant's request for approval will include a reference to this provision and a reminder that if the Landlord has not disapproved the Renovation Plans within four (4) weeks, it shall be deemed to have approved them.

- (ii) The Tenant, at its sole cost, shall use commercially reasonable efforts to secure all municipal and other governmental permits, licenses and approvals that are required for the performance of the Renovation Work (collectively, the "**Governmental Permits**"), and the Landlord hereby covenants to co-operate with the Tenant and provide such assistance (if any) as the Tenant may reasonably require from the Landlord in its efforts to secure such Governmental Permits.
- (iii) Subject to any delays that may be occasioned by the intervention of Unavoidable Delay, the Tenant shall commence the said Renovation Work no later than twelve (12) months following the date upon which it has received all necessary Governmental Permits therefor and shall thereafter carry out the Renovation Work to substantial completion no later than twelve (12) months following the date upon which the Renovation Work has commenced. The actual date on which the Renovation Work commences "**Renovation Commencement Date**") shall be confirmed by way of written notice delivered by the Tenant to the Landlord as soon as possible thereafter;
- (iv) The Tenant shall carry out the Renovation Work in accordance with the Renovation Plans therefor that have been duly approved by the Landlord, provided that the said Renovation Plans may be subject to such reasonable changes as may be agreed at any time between the Landlord and the Tenant, each acting reasonably and without delay, and the Tenant shall promptly provide the Landlord with notice of any changes the Tenant may wish or be required to make to the Renovation Work during the course of its performance of the same.
- (v) The Tenant covenants that the actual costs (exclusive of HST) incurred by the Tenant in carrying out the Renovation Work shall equal or exceed the exact amount of the Renovation Allowance, provided further that the Tenant will incur at least **\$5,000,000** in renovating the exterior façade of the Tenant Department Store and at least **\$1,000,000** in renovating the interior of the Tenant Department Store.
- (vi) The parties hereto hereby further acknowledge and agree that, if the Landlord requires the Tenant to use unionized labour in carrying out the Renovation Work (and the Tenant is not otherwise required by law to do so), the Owners shall, in further consideration of the Renovation Work, contribute to the costs incurred by the Tenant in using unionized labour to carry out the Renovation Work by paying an amount to the Tenant equal to 6.9% of the cost of the Renovation Work (the "**Union Amount**"), plus applicable HST, which payment shall be made by the Owners to the Tenant within five (5) Business Days (as that term is hereinafter defined) of the Landlord's receipt of the Tenant's invoice(s) therefor, which invoices shall be submitted to the Landlord only upon substantial completion of the

Renovation Work and shall be accompanied by evidence of the costs paid by the Tenant in respect thereof. If the Owners fail to make the payment of the Union Amount when due as aforesaid, the Tenant, in addition to any other rights it may have at law, shall be entitled to deduct the amounts so payable by the Owners from any payments of annual basic rent and/or additional rent and/or any other payments that the Tenant is required to make to the Landlord under the Lease.

(vii) the Owners shall pay the Tenant the exact amount of the Renovation Allowance plus applicable HST, in three (3) equal instalments, as hereinafter more particularly provided:

(1) Two Million Dollars (\$2,000,000.00) (the "**First Tranche**"), plus all HST applicable thereto, shall be paid to the Tenant on or before the fifteenth (15<sup>th</sup>) day following the date upon which the Landlord receives written notice from the Tenant confirming the Renovation Commencement Date (the "**First Tranche Due Date**").

(2) An additional Two Million Dollars (\$2,000,000.00) (the "**Second Tranche**"), plus all HST applicable thereto, shall be paid to the Tenant, subject to any holdback requirements applicable to such payment under the then current legislation in the Province of Ontario, including, without limitation, legislation governing construction lien and workers' compensation claims, on or before the later of the following two dates (which later date is herein referred to as the "**Second Tranche Due Date**");

(a) forty-five (45) days following the First Tranche Due Date;  
or

(b) five (5) Business Days (as that term is hereinafter defined) following the date upon which the Tenant has provided the Landlord with: (A) a written demand for payment of the Second Tranche and a statutory declaration signed by a senior officer of the Tenant stating that the Tenant has paid an aggregate amount, exclusive of HST, for work, services and materials performed or supplied by third parties in carrying out the Renovation Work that, subject to statutory holdbacks and any bona fide holdbacks to cover deficiencies or uncompleted work, equals or exceeds the amount of the First Tranche, and identifying any bona fide dispute in respect of any withheld payments and providing relevant particulars of the same, and (B) a subsearch of title to the lands comprising the Shopping Centre Lands indicating that no liens have been filed on title to the said lands in connection with the Renovation Work.

(3) The final Two Million Dollars (\$2,000,000.00) (the "**Third Tranche**") plus all HST applicable thereto shall be paid to the Tenant, subject to any holdback requirements applicable to such payment under the then current legislation in the Province of Ontario, including, without limitation, legislation governing construction lien and workers' compensation claims, on or before the later of the following two dates (which later date is herein referred to as the "**Third Tranche Due Date**");

(a) forty-five (45) days following the Second Tranche Due Date;

- (b) five (5) Business Days (as that term is hereinafter defined) following the date upon which the Tenant has provided the Landlord with (A) a written demand for payment of the Third Tranche and a statutory declaration signed by a senior officer of the Tenant stating that it has paid an aggregate amount, exclusive of HST, for work, services and materials performed or supplied by third parties in respect of the Renovation Work that, subject to statutory holdbacks and any bona fide holdback to cover deficiencies or uncompleted work equals or exceeds the aggregate amount of the First Tranche and Second Tranche, and identifying any bona fide dispute in respect of any withheld payments and providing relevant particulars of the same, and (B) a subsearch of title to the lands comprising the Shopping Centre Lands indicating that no liens have been filed on title to the said lands in connection with the Renovation Work.
- (4) Should the Tenant fail to demand payment of the Second or Third Tranche as aforesaid within the Required Period (as that term is hereafter defined), then, for all purposes of this Agreement and the Lease, the amount of the Renovation Allowance declared in the Tenant's Election Notice (and due to the Tenant hereunder) shall thereupon be automatically deemed to be reduced to the aggregate amount of the instalment(s) of Renovation Allowance that have actually been paid by the Owners to the Tenant. For the purposes of this Agreement and the Lease, the term "**Required Period**" shall mean the sixteen (16) month period commencing on the Renovation Commencement Date, provided that, if the Tenant is unable to complete the Renovation Work within twelve (12) months of the Renovation Commencement Date due to the intervention of Unavoidable Delay, the Required Period shall be extended beyond sixteen (16) months by the number of days during which such circumstances of Unavoidable Delay delayed completion of the Renovation Work beyond the twelfth month following the Renovation Commencement Date.
- (5) Should the Owners not make payments on account of the Renovation Allowance (and/or the HST applicable thereto) when required hereunder, interest shall accrue thereon (including interest on any unpaid HST to the extent and from the date that the Tenant is required to pay HST to the applicable governmental authority) in favour of the Tenant commencing as of the date on which payment was due to the date on which payment is made to the Tenant at an annual rate equal to ten per cent (10%) above the annual rate of interest charged from time to time by the Canadian Imperial Bank of Commerce at its main Toronto branch to its most creditworthy customers, which interest shall be calculated and compounded at the end of each calendar month, and the Tenant, in addition to any other rights it may have at law, shall be entitled to deduct the amounts so payable by the Owners, together with interest thereon, from any payments of annual basic rent, additional rent and/or any other payments that the Tenant is required to make to the Landlord under the Lease.
- (6) Within sixty (60) days following the date upon which the Tenant has completed the Renovation Work the Tenant shall provide the Landlord with a statutory declaration signed by an officer of the

Tenant certifying the date upon which the Renovation Work was completed, the total cost incurred by the Tenant (exclusive of GST) in carrying out the Renovation Work (the "**Renovation Costs**"), and that no liens have been filed against title to the lands comprising the Shopping Centre Lands in respect of the Renovation Work (which statutory declaration is herein referred to as the "**Renovation Work Statutory Declaration**").

- (7) If the actual aggregate amount of Renovation Costs incurred by the Tenant (exclusive of GST) should be less than the amount of the Renovation Allowance that has been paid to it by the Owners hereunder (or deducted from rent otherwise payable by the Tenant under the Lease) the Tenant shall pay to the Owners concurrently with the delivery of the Renovation Work Statutory Declaration to the Landlord a sum equal to the full amount by which the Renovation Allowance so paid (or deemed paid) to the Tenant exceeds the actual aggregate amount of Renovation Costs incurred by the Tenant (the "**Differential**"), plus applicable GST, which sum shall be deemed to be owing to the Landlord as additional rent under the terms of the Lease, in which event, the amount of Added Rent payable by the Tenant hereunder shall be automatically adjusted, with retroactive effect as of the Added Rent Commencement Date, by reducing the amount of the Renovation Allowance used in determining the amount of Added Rent pursuant to Subsection 7(c) of this Agreement by the amount of the Differential.

The parties hereto hereby acknowledge and agree that, for the purposes of this Agreement and the Lease, the term "**Business Days**" shall mean all days of the calendar week other than Saturday, Sunday and any statutory holiday in the Province of Ontario.

- (c) In the event that:
- (i) the Tenant receives payment of the full amount of the Renovation Allowance (and all applicable HST and interest accruing thereon in accordance with the foregoing provisions of this Agreement) payable to it in accordance with the terms of this Agreement; or
  - (ii) the Owners do not pay the Tenant the full amount of the Renovation Allowance (and all applicable HST and interest accruing thereon in accordance with the foregoing provisions of this Agreement) when due hereunder and the Tenant subsequently exercises its right to deduct from its payments of the annual basic rent, additional rent and/or other payments that the Tenant is required to make to the Landlord under the Lease the unpaid amount of the Renovation Allowance (and all applicable HST and interest accruing thereon as aforesaid) so owing to it by the Owners;

then, throughout the period of the Term commencing thirty (30) days after the date upon which the Tenant has obtained the full amount of the Renovation Allowance due to the Tenant (and all HST and interest applicable thereto), whether by receiving payment thereof from the Owners or by deducting the same from its payments of rent under the Lease as aforesaid (which date is hereinafter referred to as the "**Added Rent Commencement Date**") and ending thirty (30) years after the said Added Rent Commencement Date (the "**Added Rent Period**"), the Tenant shall pay to the Landlord, in addition to the annual basic rent, additional rent and/or other payments that the Tenant is currently required to

pay to the Landlord under the Lease, a further monthly rent (the "**Added Rent**") in accordance with, and subject to, the following terms and conditions:

- (i) The monthly amount of Added Rent shall be determined in accordance with the following formula:

$$Z = X / ((1-(1+R)^{-N}) / R)$$

in which formula :

**Z** = the monthly amount of Added Rent to be determined

**X** = the amount of the Renovation Allowance (exclusive of HST)

**R** = the product of the 30 year Bank of Canada Rate (as that term is hereinafter defined) in effect as at the Tenant Election Notice Date, plus 2.5%, divided by 12

**N** = 360, being the number of months contained in the Added Rent Period

The parties hereto hereby acknowledge and agree that, for all purposes of this Agreement and the Lease (as hereby amended) the term "**30 year Bank of Canada Rate**" shall mean the Government of Canada 30 Year Bond Yield issued by the Bank of Canada (as currently published by Bloomberg L.P.).

For greater clarity, and by way of example only, the parties acknowledge and agree that, if (a) based on a Renovation Allowance (exclusive of HST) of **\$6,000,000**, and (b) the 30 year Bank of Canada Rate as of the Tenant Election Notice Date were to be **3.0%**, the resulting value of **R** would be **0.0045833** (i.e.  $(.03 + .025) / 12$ ) and the monthly amount of Added Rent would be **\$34,067.34**, calculated as follows:

$$\text{\$6,000,000} / ((1-(1+0.0045833)^{-360}) / 0.0045833) = \text{\$34,067.34}.$$

- (ii) The Tenant shall pay the Added Rent in equal monthly instalments at the same time and otherwise in accordance with the same provisions as govern the Tenant's payments of annual basic rent to the Landlord under Article 4 ("RENT") of the Lease.
- (iii) Notwithstanding any of the foregoing, the parties hereto acknowledge and agree that the Tenant shall have the right to pay to the Landlord on the first day of any calendar month occurring throughout the Added Rent Period the whole or any portion of the then present value of Added Rent payable by the Tenant throughout the remainder of the Added Rent Period, which present value of Added Rent shall be determined in accordance with the following formula (the "Added Rent Present Value Formula"):

$$PV = X ((1 - (1 + R)^{-P}) / R)$$

in which formula:

**PV** = the present value of the said Added Rent as of the date scheduled for payment (the "**Payment Date**")

**X** = the current monthly amount of Added Rent

**R =** the product of the 30 year Bank of Canada Rate as of the Tenant Election Notice Date, plus 2.5%, divided by 12

**P =** the number of months remaining between the aforementioned Payment Date and the end of the Added Rent Period

For greater clarity, and by way of example only, the parties acknowledge and agree that, if (a) the current monthly amount of Added Rent were to be **\$34,067.34**, (b) the number of months remaining between the proposed Payment Date and the end of the Added Rent Period were to be **240**, and (c) the 30 year Bank of Canada Rate as of the Tenant Election Notice Date were to be **3.0%**, the resulting value of **R** would be **0.0045833** (i.e.  $(.03 + .025) / 12$ ) and the present value of Added Rent payable throughout the remainder of the Added Rent Period as of the Payment Date would be **\$4,952,459.46**, calculated as follows:

$$\mathbf{\$34,067.34 [(1 - (1 + 0.0045833)^{-240}) / 0.0045833] = \$4,952,459.46}$$

The Tenant shall exercise the foregoing right to pay to the Landlord the whole or any portion of the said present value of Added Rent by sending no less than one (1) month's prior written notice thereof to the Landlord.

- (iv) If the Tenant should elect at any time to exercise the foregoing right to pay to the Landlord the whole of the then present value of Added Rent payable throughout the remainder of the Added Rent Period, the Tenant shall be forever relieved of its obligation to pay Added Rent to the Landlord from and after the date upon which such payment is made.
- (v) If the Tenant should elect at any time or from time to time to exercise the foregoing right to pay to the Landlord only a portion of the then present value of Added Rent payable throughout the then current remainder of the Added Rent Period, the monthly amount of Added Rent payable by the Tenant throughout said remainder of the Added Rent Period shall be reduced, effective as of the date upon which payment is so made by the Tenant, in proportion to the percentage reduction so effected in the present value of the Added Rent payable throughout the remainder of the Added Rent Period.

For greater clarity, and by way of example only, the parties acknowledge and agree that, if (a) the Payment Date were to be the first day of the **120<sup>th</sup>** month following the month in which the Added Rent Commencement Date occurs, and (b) the monthly amount of Added Rent as of the Payment Date were to be **\$34,067.34**, and (c) the present value of the Added Rent payable throughout the remainder of the Added Rent Period as of the Payment Date were to be **\$4,952,459.46**, and (d) the Tenant were to elect to pay to the Landlord on the said Payment Date the sum of **\$2,500,000** (which amount equals 50.48% of the said present value of Added Rent), then, from and after the said Payment Date, the monthly amount of Added Rent would be reduced by 50.48% from **\$34,067.34** to **\$16,870.15**.

- (d) Notwithstanding any of the foregoing, the parties hereto further acknowledge and agree that:
  - (i) If the Term of the Lease should expire prior to the end of the Added Rent Period as a result of the Tenant not exercising its right under Article 3 ("TERM, EXTENSIONS AND RIGHT OF TERMINATION") of the Lease to extend the Term of the Lease for any of the periods of extension



occurring throughout the Added Rent Period, the Tenant shall be required to pay to the Landlord on or before the expiration date of the Lease the present value of the Added Rent payable by the Tenant throughout the remainder of the Added Rent Period (determined as of the expiration date in accordance with the aforementioned Added Rent Present Value Formula).

- (ii) If at any time during the Added Rent Period the Landlord should exercise any right it may have under the Lease to terminate this Lease by reason of the Tenant's default thereunder, the Tenant shall be required to pay to the Landlord on or before the date upon which the Lease is so terminated the present value of the Added Rent payable by the Tenant throughout the remainder of the Added Rent Period (determined as of the said termination date in accordance with the aforementioned Added Rent Present Value Formula).

8. **Landlord Option to Increase Annual Minimum Rent.** Effective as of the Condition Satisfaction Date, Article 4 ("RENT") of the Lease shall be amended by adding the following text as a new Section 4.06 after Section 4.05 thereof:

"Section 4.06 The Landlord shall have the right to increase the amount of the annual basic rent payable by the Tenant under Section 4.00 hereof in accordance with, and subject to, the following terms and conditions:

- (a) The Landlord shall exercise the foregoing right by giving the Tenant prior written notice thereof (the "**Rent Increase Notice**") at any time during the remainder of the Term.
- (b) The Rent Increase Notice shall specify the amount by which the annual basic rent payable by the Tenant under Section 4.00 hereof shall be increased (the "**Annual Rent Increase Amount**"), which Annual Rent Increase Amount shall be equal to the average annual amount of the [additional rent payable by the Tenant pursuant to the provisions of Article 10 ("COMMON FACILITIES OPERATING COSTS") of the Lease for the five (5) calendar years immediately preceding the calendar year in which the said increase in annual basic rent takes effect.
- (c) If the Landlord should duly exercise the foregoing right to increase the amount of annual basic rent, then, commencing as of the first day of the first calendar month following the month in which the Tenant receives the Rent Increase Notice from the Landlord and thereafter throughout the remainder of the Term:
  - (i) the amount of annual basic rent payable by the Tenant under the Lease shall be increased by an amount equal to the Annual Rent Increase Amount specified in the Rent Increase Notice; and
  - (ii) the Tenant shall forever cease to be required to pay any additional rent or charge to the Landlord under the provisions of Article 10 ("COMMON FACILITIES OPERATING COSTS") of the Lease."

9. **Owners' Intervention.** Each and every one of the parties comprising the Owners hereunder hereby acknowledges and agrees with the Tenant that it fully accepts and continues to be bound by all the covenants and obligations of the Owners contained in the Lease, as hereby amended, including, without limitation and for the sake of greater certainty, all those covenants and obligations of the Owners contained in Article 26 thereof.


10. The parties hereto hereby agree that this Agreement shall be conditional upon satisfaction (and/or waiver, if applicable) of the following conditions:
  - (a) This Agreement shall be conditional upon the Tenant obtaining approval thereof from the management committee and/or board of directors of Hudson's Bay Company, within thirty (30) days after the date of execution hereof. The aforesaid condition is for the benefit of the Tenant alone and may be waived by the Tenant at any time prior to the expiry of the aforesaid 30-day period. In the event the Landlord does not receive written notice from the Tenant that this condition has been satisfied or is being waived by the Tenant within the aforesaid 30-day period, then this Agreement shall become null and void and the parties shall be relieved of all obligations hereunder.
  - (b) This Agreement shall be conditional upon the Landlord and the Owners obtaining approval thereof from their respective senior executive within thirty (30) days after the date of execution hereof. The aforesaid condition is solely for the joint benefit of the Landlord and the Owners and may be waived by the Owners and the Landlord at any time prior to the expiry of the aforesaid 30-day period. In the event the Tenant does not receive written notice from the Owners and the Landlord that this condition has been satisfied or is being jointly waived by the Owners and Landlord within the aforesaid 30-day period, then this Agreement shall become null and void and the parties shall be relieved of all obligations hereunder.
  - (c) This Agreement shall be conditional upon the Tenant obtaining approval thereof from its lender within thirty (30) days after the date of execution hereof. In the event the Landlord does not receive written notice from the Tenant that this condition has been satisfied or is being waived by the Tenant within the aforesaid 30-day period, then this Agreement shall become null and void and the parties shall be relieved of all obligations hereunder
11. The Lease is hereby amended wherever necessary to give effect to the provisions herein contained and subject thereto, and except as otherwise provided herein, all terms, clauses and conditions of the Lease shall remain in full force and effect, unchanged and unmodified.
12. The Landlord and the Owners represent and warrant that there is no lender to them whose consent is required to the entering into by them of this Agreement.
13. Neither this Agreement nor any notice or short form thereof shall be registered on title to the Shopping Centre or any other lands.
14. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns under the Lease.
15. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, emailed or pdf or faxed form and the parties adopt any signatures received electronically as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other parties an original of the signed copy of this Agreement which was provided electronically.


**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Signed, this 7<sup>th</sup> day of April, 2014

**YORKDALE SHOPPING CENTRE HOLDINGS  
INC.**

Per:   
Name: Jeffrey Hess Authorized Signing Officer

Per:   
Name: Celia Hitch Authorized Signing Officer  
(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014


**HUDSON'S BAY COMPANY**


Per: \_\_\_\_\_  
Name: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
(I/We have authority to bind the Corporation)

Signed, this 7<sup>th</sup> day of April, 2014


**OMERS REALTY CORPORATION**


Per:   
Name: Jeffrey Hess Authorized Signing Officer

Per:   
Name: Celia Hitch Authorized Signing Officer  
(I/We have authority to bind the Corporation)

Signed, this 7<sup>th</sup> day of April, 2014

**OMERS REALTY HOLDINGS (YORKDALE) INC.**

Per:   
Name: Jeffrey Hess Authorized Signing Officer

Per:   
Name: Celia Hitch Authorized Signing Officer  
(I/We have authority to bind the Corporation)

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Signed, this 9<sup>th</sup> day of April, 2014

**YORKDALE SHOPPING CENTRE HOLDINGS  
INC.**

Per: \_\_\_\_\_

Name: CRAIG COLEMAN  
Authorized Signing Officer

Per: \_\_\_\_\_

Name: \_\_\_\_\_

(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

**HUDSON'S BAY COMPANY**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

**OMERS REALTY CORPORATION**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

**OMERS REALTY HOLDINGS (YORKDALE) INC.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

(I/We have authority to bind the Corporation)

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

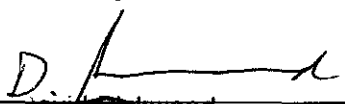
**YORKDALE SHOPPING CENTRE HOLDINGS  
INC.**

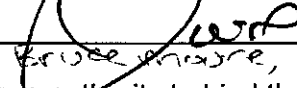
Per: \_\_\_\_\_  
Name: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
(I/We have authority to bind the Corporation)

Signed, this 11<sup>th</sup> day of April, 2014

**HUDSON'S BAY COMPANY**

Per:   
Name: David Pickwood  
SVP & General Counsel

Per:   
Name: Bruce Moore, SVP Real Estate  
(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

**OMERS REALTY CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
(I/We have authority to bind the Corporation)

Signed, this \_\_\_\_ day of \_\_\_\_\_, 2014

**OMERS REALTY HOLDINGS (YORKDALE) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
(I/We have authority to bind the Corporation)

Signed, this 9<sup>th</sup> day of APRIL, 2014

ARI YKD INVESTMENTS LP, by its general partner, ARI YKD GP INC.

Per: [Signature]  
Name: CRAIG COLEMAN  
Authorized Signing Officer

Per: [Signature]  
Name: Melvyn Need  
Authorized Signing Officer  
(I/We have authority to bind the Corporation)

Signed, this 9<sup>th</sup> day of April, 2014

ARI YKD GP INC.

Per: [Signature]  
Name: CRAIG COLEMAN  
Authorized Signing Officer

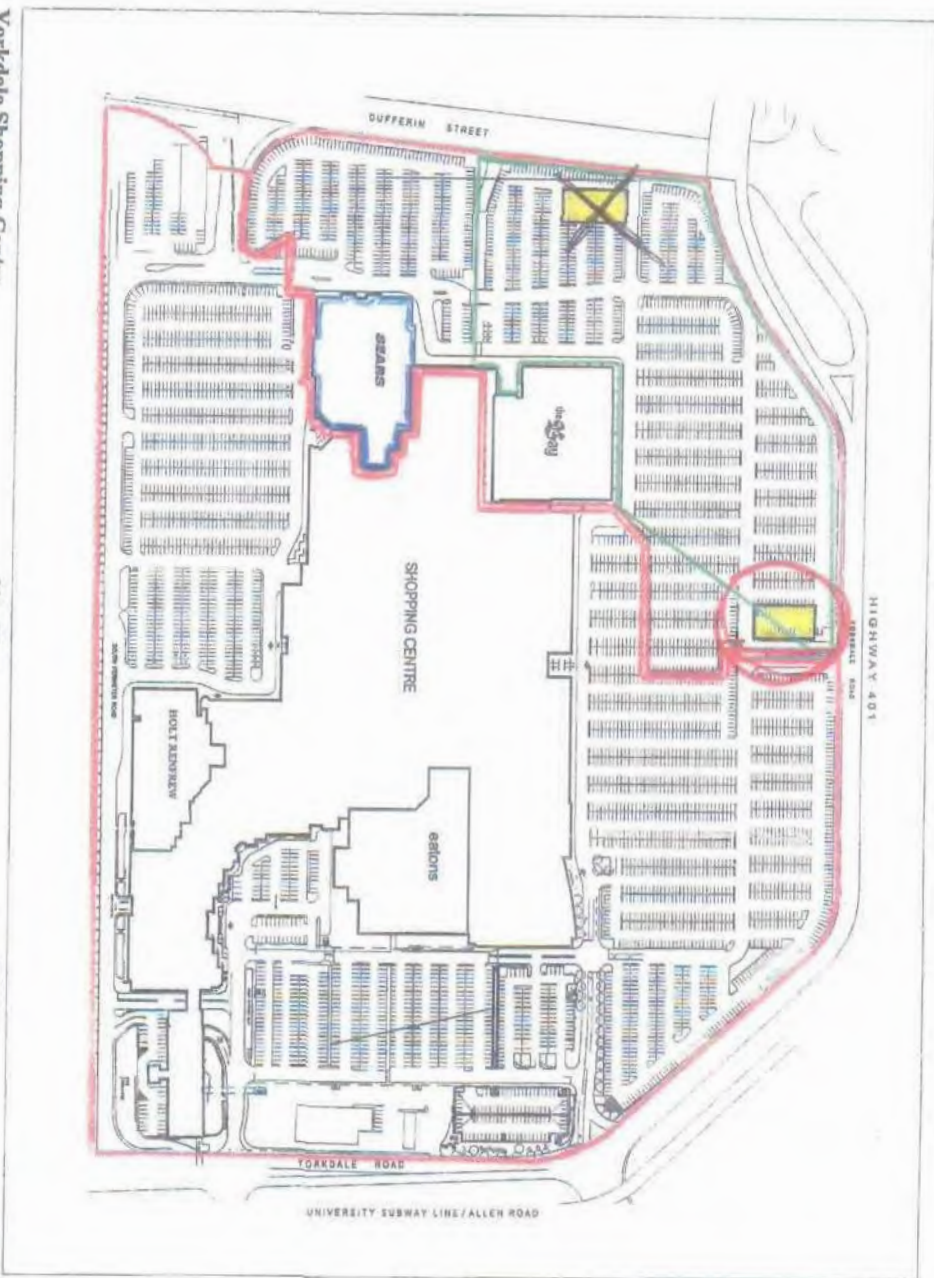
Per: [Signature]  
Name: Melvyn Need  
Authorized Signing Officer  
(I/We have authority to bind the Corporation)

SCHEDULE B

Yorkdale Shopping Centre  
Toronto, Ontario


Site Plan

MP 102a S



APPENDIX "I"

This is **Exhibit “F”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



**Notice of Assignment of Lease**

- To:** The landlord(s) under the Lease (as defined below)  
(collectively, the "**Landlord**")
- Re:** Lease described in Schedule "A" attached hereto, as further amended, supplemented, assigned or otherwise varied from time to time (collectively, the "**Lease**"), relating to a leasehold interest in a portion of the lands municipally known as 3401 Dufferin Street, North York, Ontario, as more particularly described in Schedule "B" attached hereto
- And Re:** Assignment of the Lease (the "**Assignment**") by Hudson's Bay Company ("**HBC**"), as assignor, to HBC, in its capacity as general partner of, HBC YSS 1 Limited Partnership (the "**Assignee**"), as assignee

We hereby give you notice of the Assignment, in favour of the Assignee, as assignee, made effective as of November 25, 2015.

*[Remainder of page is intentionally left blank]*

Dated this 26<sup>th</sup> day of November, 2015.

HUDSON'S BAY COMPANY

By: \_\_\_\_\_

Name: David Pickwood  
Title: Senior Vice President  
& General Counsel

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the corporation.

## **Schedule "A"**

### **DESCRIPTION OF THE LEASE**

- a. Lease dated September 26, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Assignor, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.;
- b. Letter Agreement dated October 24, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Assignor, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.; and
- c. Yorkdale Shopping Centre Amending Agreement dated April 3, 2014 among Yorkdale Shopping Centre Holdings Inc. OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc., ARI YKD GP Inc., ARI YKD Investments LP and the Assignor

(as further amended, supplemented, assigned or otherwise varied from time to time)

## **Schedule "B"**

### **DESCRIPTION OF THE LEASED PROPERTY**

**3401 Dufferin Street, North York, Ontario**

#### LEASEHOLD

Firstly: PIN 10232-0290 (LT)

PART OF LOT 8, CONCESSION 2, WYS, DESIGNATED AS PARTS 10, 11, 12 AND 13, PLAN 66R-13323, EXCEPT PART 1 ON PLAN 66R-20399, CITY OF TORONTO.

Secondly: PIN 10232-0138 (LT)

PART OF LOT 9, CONCESSION 2, WYS BEING PARTS 1 AND 2 ON PLAN 66R-13323. SAVE AND EXCEPT PART 2 ON PLAN 66R-16192.

Thirdly: PIN 10232-0139 (LT)

PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 5 AND 6 ON PLAN 66R-16192.

Fourthly: PIN 10232-0146 (LT)

PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 3, 14 AND 15 ON PLAN 66R-13323. SAVE AND EXCEPT PART 1 ON PLAN 66R-15578. SAVE AND EXCEPT PART 3 ON PLAN 66R-16192 AND SAVE AND EXCEPT PART 4 (LEASEHOLD) ON 66R-16192.

Fifthly: PIN 10232-0150 (LT)

PART OF LOT 9, CONCESSION 2, WYS, BEING PART 2 ON 66R-16192 AND PART 4 ON 66R-13323.

Sixthly: PIN 10232-0288 (LT) [Note: Division from 10232-0152]

PART OF LOT 9, CONCESSION 2, WYS BEING PART 3 ON PLAN 66R-16192.

Seventhly: PIN 10232-0292 (LT) [Note: Division from 10232-0122]

PART OF LOT 8, CONCESSION 2, WYS, BEING PART 7 ON PLAN 66R-13323. SAVE AND EXCEPT PART 3 ON PLAN 66R-20399.

Eighthly: PIN 10232-0294 (LT) [Note: Division from 10232-0123]

PART OF LOT 8, CONCESSION 2, WYS, BEING PARTS 8 AND 9 ON PLAN 66R-13323. SAVE AND EXCEPT PART 2 ON PLAN 66R-20399.

Ninthly: PIN 10232-0151 (LT)

PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 4, 5 AND 6 ON  
PLAN 66R-16192.

This is **Exhibit “G”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

**BENEFICIAL LEASE ASSIGNMENT – YORKDALE SHOPPING CENTRE  
3401 DUFFERIN STREET, NORTH YORK, ONTARIO**

**THIS BENEFICIAL LEASE ASSIGNMENT** made as of the 25th day of November, 2015 (the “Agreement”)

**BETWEEN:**

**HUDSON’S BAY COMPANY** (the “Assignor”)

- and -

**HUDSON’S BAY COMPANY**, in its capacity as general partner of  
**HBC YSS 1 LIMITED PARTNERSHIP** (the “Assignee”)

**WHEREAS:**

- A. The Assignor is the legal and beneficial owner of a leasehold interest in the lands and premises in the North York District of the City of Toronto, in the Province of Ontario, described on Schedule “A” hereto (collectively, the “**Property**”).
- B. Pursuant to a contribution and subscription agreement of even date herewith between, *inter alios*, the Assignor and the Assignee (said agreement as further amended, extended, restated or supplemented from time to time being hereinafter collectively referred to as the “**Contribution Agreement**”), the Assignor agreed to transfer, assign, convey and set over and contribute its beneficial leasehold interest in the Property, but not including any Excluded Assets as same relate to the Property, to the Assignee.
- C. The Assignee agreed to assume, perform and discharge all of the obligations and liabilities of the Assignor under the lease, in respect of the Property, described in Schedule “B” (collectively, the “**Lease**”).

**NOW THEREFORE** in consideration of the sum of Ten Dollars (\$10.00) now paid by each party hereto to the other party hereto, the completion of the transactions contemplated by the Contribution Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto, intending to be legally bound hereby, covenants and agrees as follows:

- 1. Capitalized terms used herein and not otherwise defined have the meanings specified in the Contribution Agreement.
- 2. The Assignor hereby conveys, transfers, sells and assigns to the Assignee its beneficial leasehold right, title and interest in and to the Property and all of the right, title and interest of the Assignor to and benefits of the Assignor under the Lease, together with the unexpired residue of the said term of years and all renewals thereof, but not including any Excluded Assets as same relate to the Property, subject to the HBC Permitted Encumbrances.
- 3. As and from the date hereof, the Assignee hereby assumes and shall discharge, perform and fulfil all of the obligations and liabilities of the Assignor under the Lease arising in respect of the period after the date hereof and not related to any default existing at, prior to or as a consequence of Closing.




4. Subject to the terms and conditions of the Contribution Agreement, the Assignee will have no liability under or with respect to the Property or the Lease with respect to either any liabilities, claims, actions or payment to be made by or on behalf of the Assignor or any other obligation to be observed or performed thereunder by or on behalf of the Assignor relating to the period prior to closing and the Assignor will indemnify and save the Assignee harmless with respect thereto. The provisions of Article 5 of the Contribution Agreement shall apply, mutatis mutandis, with respect to the indemnity of the Assignor set forth in this Section.
5. Subject to the terms and conditions of the Contribution Agreement and the HBC Subleases, the Assignor will have no liability under or with respect to the Property or the Lease with respect to either any liabilities, claims, actions or payment to be made by or on behalf of the Assignee or any other obligation to be observed or performed thereunder by or on behalf of the Assignee relating to the period from and after closing and the Assignee will indemnify and save the Assignor harmless with respect thereto. The provisions of Article 5 of the Contribution Agreement shall apply, mutatis mutandis, with respect to the indemnity of the Assignee set forth in this Section.
6. This Agreement is made in accordance with and subject to the terms and conditions of the Contribution Agreement.
7. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
8. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
9. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
10. Each of the parties hereto hereby agrees not to register this Agreement or any notice thereof in any public office.
11. This Agreement may be executed in counterpart and transmitted by telecopier, e-mail, pdf or other electronic forms of transmission and the reproduction of signatures in counterpart by way of telecopier, e-mail, pdf or other electronic forms will be treated as though such reproductions were executed originals.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF this Agreement is executed by each of the parties hereto as of the date first written above.

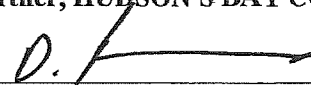
**HUDSON'S BAY COMPANY**

Per:   
Name: David Pickwood  
Title: Senior Vice President  
& General Counsel

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the corporation.

**HBC YSS 1 LIMITED PARTNERSHIP, by its  
general partner, HUDSON'S BAY COMPANY**

Per:   
Name: David Pickwood  
Title: Senior Vice President  
& General Counsel

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the limited partnership.

## SCHEDULE "A"

### PROPERTY

**3401 Dufferin Street, North York, Ontario**

#### LEASEHOLD

Firstly: PIN 10232-0290 (LT)

PART OF LOT 8, CONCESSION 2, WYS, DESIGNATED AS PARTS 10, 11, 12 AND 13, PLAN 66R-13323, EXCEPT PART 1 ON PLAN 66R-20399, CITY OF TORONTO.

Secondly: PIN 10232-0138 (LT)

PART OF LOT 9, CONCESSION 2, WYS BEING PARTS 1 AND 2 ON PLAN 66R-13323. SAVE AND EXCEPT PART 2 ON PLAN 66R-16192.

Thirdly: PIN 10232-0139 (LT)

PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 5 AND 6 ON PLAN 66R-16192.

Fourthly: PIN 10232-0146 (LT)

PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 3, 14 AND 15 ON PLAN 66R-13323. SAVE AND EXCEPT PART 1 ON PLAN 66R-15578. SAVE AND EXCEPT PART 3 ON PLAN 66R-16192 AND SAVE AND EXCEPT PART 4 (LEASEHOLD) ON 66R-16192.

Fifthly: PIN 10232-0150 (LT)

PART OF LOT 9, CONCESSION 2, WYS, BEING PART 2 ON 66R-16192 AND PART 4 ON 66R-13323.

Sixthly: PIN 10232-0288 (LT) [Note: Division from 10232-0152]

PART OF LOT 9, CONCESSION 2, WYS BEING PART 3 ON PLAN 66R-16192.

Seventhly: PIN 10232-0292 (LT) [Note: Division from 10232-0122]

PART OF LOT 8, CONCESSION 2, WYS, BEING PART 7 ON PLAN 66R-13323. SAVE AND EXCEPT PART 3 ON PLAN 66R-20399.

Eighthly: PIN 10232-0294 (LT) [Note: Division from 10232-0123]

PART OF LOT 8, CONCESSION 2, WYS, BEING PARTS 8 AND 9 ON PLAN 66R-13323. SAVE AND EXCEPT PART 2 ON PLAN 66R-20399.

Ninthly: PIN 10232-0151 (LT)

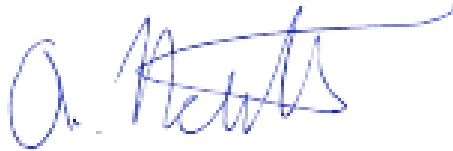
PART OF LOTS 8 AND 9, CONCESSION 2, WYS, BEING PARTS 4, 5 AND 6 ON PLAN 66R-16192.

## **SCHEDULE "B"**

### **LEASE**

- a. Lease dated September 26, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Assignor, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.;
- b. Letter Agreement dated October 24, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Assignor, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.; and
- c. Yorkdale Shopping Centre Amending Agreement dated April 3, 2014 among Yorkdale Shopping Centre Holdings Inc. OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc., ARI YKD GP Inc., ARI YKD Investments LP and the Assignor.

This is **Exhibit “H”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

**Sublease**

**HUDSON'S BAY COMPANY, in its capacity as  
general partner of HBC YSS 1 LIMITED  
PARTNERSHIP**

**(as Sublandlord)**

**- and -**

**HUDSON'S BAY COMPANY**

**(as Subtenant)**

**3401 Dufferin Street, North York, Ontario**

**November 25, 2015**

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## **SUBLEASE**

THIS SUBLEASE made as of the 25th day of November, 2015 (the “**Effective Date**”).

BETWEEN:

**HUDSON’S BAY COMPANY, in its capacity as  
general partner of HBC YSS 1 LIMITED  
PARTNERSHIP**

(hereinafter called the “**Sublandlord**”)

- and -

**HUDSON’S BAY COMPANY**  
(hereinafter called the “**Subtenant**”)

**WHEREAS** the Sublandlord and the Subtenant have agreed to enter into this Sublease;

**NOW THEREFORE** in consideration of the premises and mutual covenants and agreements set forth in this Sublease and the sum of \$10.00 paid by the Subtenant to the Sublandlord and for good and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

## **ARTICLE 1**

### **DEFINITIONS INTERPRETATIONS AND SCHEDULES**

#### **1.1 Definitions**

In and for the purposes of this Sublease, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the meanings indicated:

“**ABL Financing**” means any corporate borrowing by the Subtenant and/or one or more of its Affiliates that is secured, in whole or in part, by the inventory of the Subtenant located at the Leased Property.

“**ABL Lender**” means any lender (including a trustee for bondholders) who from time to time has provided ABL Financing to the Subtenant and/or one or more of its Affiliates.

“**Acceptable Department Store**” means:

- (a) a top-tier department store which is part of a recognized chain with a high quality image, which specializes in high quality and/or luxury merchandise (both private

label and recognized upscale brands) at high or mid-to-high price-points; it is agreed that as of the Commencement Date a top-tier department store operated as “Bloomingdale’s”, “Neiman Marcus”, “Holt Renfrew”, “John Lewis”, “Saks”, or “Selfridges” is an Acceptable Department Store and will continue to be so for so long as it meets the aforesaid standards in this paragraph (a); and

- (b) a mid-tier department store which is part of a recognized chain with a medium to high quality image, which specializes in mid-to-high or mid-price-point merchandise; it is agreed that, without limiting the foregoing and by way of example only, as of the Commencement Date a mid-tier department store operated as “Macy’s” or “Simons” is an Acceptable Department and will continue to be so for so long as it meets the aforesaid standards in this paragraph (b); and
- (c) a discount store operating with a name that references any department store permitted pursuant to paragraphs (a) or (b) of this definition; it is agreed that, without limiting the foregoing and by way of example only, as of the Commencement Date, a discount store operated as a “Saks Off 5th” (or any other name that references Saks) or “hr2” is an Acceptable Department Store and will continue to be for so long as it meets the aforesaid standards in this paragraph (c).

**“Additional Rent”** means all amounts payable under the provisions of the Head Lease as additional rent, operating costs or otherwise (other than Head Rent) by the Sublandlord to the Head Landlord for periods of time occurring during the Term hereof.

**“Affiliate”** means, in respect of any Person (in this definition, such Person being referred to as the **“Subject Person”**), any other Person, directly or indirectly, Controlling, Controlled by, or under direct or indirect common Control with, the Subject Person.

**“Applicable Laws”** (i) where “Applicable Laws” or “Laws” or other similar term is defined in the Head Lease, “Applicable Laws” herein shall have the same meaning; and (ii) otherwise means all statutes, laws, by-laws, regulations, building codes, permits, ordinances, judgments, orders and requirements of any governmental authorities having jurisdiction, and all amendments thereto, at any time and from time to time having force of law in the jurisdiction in which the Leased Property is located, including without limitation all Environmental Laws.

**“Basic Rent”** has the meaning set out in Section 3.1(a).

**“Business Day”** or **“business day”** (i) where “Business Day” or “business” days is defined in the Head Lease, **“Business Day”** herein shall have the same meaning; (ii) otherwise means any day which is not a Saturday, Sunday or statutory holiday in the jurisdiction in which the Leased Property is located.

**“Claims”** means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever and **“Claim”** means



any one of the foregoing, but excluding any punitive or aggravated damages, losses or claims (unless permitted by the Head Lease).

**“Commencement Date”** means November 25, 2015.

**“Control”** or **“control”** means, in respect of any Person, the power to direct the management and policies, business and affairs of such Person, whether directly or indirectly, and the words **“Controlled”** and **“Controlling”** have corresponding meanings.

**“Effective Date”** means November 25, 2015.

**“Encumbrances”** means (i) all mortgages, encumbrances, pledges, charges, liens (statutory or otherwise), debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments or agreements charging, or creating a security interest in or otherwise restricting or encumbering the Leased Property, or any part thereof, and (ii) all agreements, options, leases, subleases, licenses, easements, rights of way, servitudes, rights to use, restrictions, restrictive covenants, encroachments, title defects or irregularities, adverse claims, rights or registrations that create, evidence, give notice of an interest or right in or to, or that restrict or otherwise affect title to or the use of the Leased Property.

**“Environmental Laws”** means all applicable common law decisions and requirements of the common law, federal, provincial, regional, municipal or local statutes, regulations or by-laws, or any policies, codes, guidelines or directives issued by any governmental authority relating to Hazardous Substances pollution or protection of human or occupational health or the environment, as they may be amended from time to time.

**“Event of Default”** has the meaning set out in Section 8.1.

**“Extension Term”** has the meaning set out in 2.2(b).

**“Hazardous Substances”** include, without limitation, any solid, liquid, smoke, waste, odor, heat, radiation, or combination thereof, which is deemed, classed or found to be injurious or to deleteriously affect the natural, physical, chemical or biological quality of the environment, or which is or is likely to be injurious to the health or safety of persons, or which is or is likely to be injurious or damaging to property, plant or animal life, or which interferes with or is likely to interfere with the comfort, livelihood or enjoyment of life by a person, or which is declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Sublandlord, the Subtenant or the Leased Property, and without limiting the generality of the foregoing, shall include any dangerous, noxious, toxic, flammable or explosive substance, radioactive material, asbestos or PCBs.

**“HBC Sublease”** means, as of any date, each of the Scarborough Town Centre Sublease and the Square One Sublease that, as of such date, can be extended by the Subtenant in accordance with the provisions thereof.

**“Head Lease”** means, collectively: (i) the lease dated September 26, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Subtenant, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.; (ii) the letter agreement dated October 24, 2002 made between Yorkdale Shopping Centre Holdings Inc., the Subtenant, OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc. and 1331430 Ontario Inc.; and (iii) the Yorkdale Shopping Centre amending agreement dated April 3, 2014 among Yorkdale Shopping Centre Holdings Inc., OMERS Realty Corporation, OMERS Realty Holdings (Yorkdale) Inc., ARI YKD GP Inc., ARI YKD Investments LP and the Subtenant.

**“Head Landlord”** means Yorkdale Shopping Centre Holdings Inc.

**“Head Rent”** means all amounts payable under the provisions of the Head Lease as basic rent by the Sublandlord to the Head Landlord for periods of time owing during the Term hereof.

**“Initial Term”** has the meaning set out in 2.2(a).

**“Interest Charges”** means any amounts payable by the Subtenant as interest on overdue amounts pursuant to this Sublease.

**“Leased Property”** means the property leased by the Sublandlord from the Head Landlord pursuant to the Head Lease.

**“Permitted Uses”** means those uses that are permitted pursuant to Section 4.1.

**“Person”** means any person, firm, partnership, trust, corporation or any government or governmental board, department or agency, or any group of persons, firms, partnerships, trusts, corporations or governments or governmental boards, departments or agencies, or any combination thereof.

**“Personal Leased Property”** means, collectively, all of the personal property, equipment and trade fixtures located in the Leased Property on the Effective Date.

**“Prime Rate”** means the rate of interest, per annum, from time to time publicly quoted by the Royal Bank of Canada, at Toronto as the reference rate of interest (commonly known as its “prime rate”) used by it to determine rates of interest chargeable in Canada on Canadian dollar demand loans to its commercial customers.

**“Rent”** means all Basic Rent, Additional Rent and Head Rent payable pursuant to this Sublease.

**“Sales Taxes”** means all goods and services taxes, harmonized sales taxes, value added taxes, sales taxes, use, consumption taxes and other similar taxes of whatever name or description, whether or not in existence at the Commencement Date, now or hereafter imposed, levied, rated, charged or assessed by any governmental authority in respect of the Rent payable by the Subtenant under this Sublease or in respect of this Sublease or the rental of space under this Sublease.

**“Scarborough Town Centre Sublease”** means the sublease of even date herewith between the Sublandlord, as sublandlord, and the Subtenant, as subtenant, in respect of a portion of the premises located at 300 Borough Drive, Scarborough, Ontario.

**“Square One Sublease”** means the sublease of even date herewith between Hudson’s Bay Company, in its capacity as general partner of HBC YSS 2 Limited Partnership, as sublandlord, and the Subtenant, as subtenant, in respect of a portion of the premises located at 100 City Centre Drive, Mississauga, Ontario.

**“Stipulated Rate”** means the rate per annum equal to the Prime Rate plus 3%.

**“Sublandlord Persons”** means: (i) all of the officers, directors, employees, agents, contractors or subcontractors of the Sublandlord or any successor thereof; and (ii) any other Person for whom the Sublandlord or any successor thereof is or may be legally responsible.

**“Sublandlord’s Mortgage”** means any mortgage, charge or security instrument (including a deed of trust or mortgage securing bonds) which may now or hereafter charge the Sublandlord’s interest in the Leased Property or any part thereof, and all extensions, modifications and extensions thereof, to the extent permitted by the Head Lease.

**“Sublandlord’s Mortgagee”** means any mortgagee, chargee or secured party or trustee for bondholders, as the case may be, who from time to time holds a Sublandlord’s Mortgage.

**“Sublease”** means this sublease.

**“Sublease Year”** means the period commencing on November 25th of the applicable calendar year and ending on November 24th of the next calendar year; accordingly the initial Sublease Year shall commence on November 25, 2015 and end on November 24, 2016.

**“Subtenant”** means Hudson’s Bay Company and its successors and permitted assigns.

**“Subtenant Persons”** means: (i) all of the officers, directors, employees, agents, contractors and subcontractors of the Subtenant; and (ii) any other Person for whom the Subtenant is or may be legally responsible.

**“Term”** means the Initial Term and each Extension Term that is exercised by the Subtenant in accordance with Section 2.2(b). Notwithstanding any other provision of this Sublease, the maximum length of the Term shall be the maximum term available to the Sublandlord under the Head Lease, excluding the last day of the final renewal or extension term of the Head Lease.

**“Unavoidable Delay”** has the meaning given thereto in the Head Lease.

1.2 **Extended Meanings**

Words importing the singular include the plural and *vice versa*. Words importing the masculine gender include the feminine and neuter genders.

1.3 **Headings**

The division of this Sublease into Articles, Sections and other subdivisions, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Sublease. The expressions “herein”, “hereof”, “hereto”, “hereunder”, “above” and “below” and similar expressions mean and refer to this Sublease and not to any particular section; “Article”, “Section”, “paragraph”, “subparagraph” and “clause” mean and refer to the specified Article, Section, paragraph, subparagraph and clause of this Sublease.

1.4 **Currency**

In this Sublease all references to currency shall refer to Canadian funds.

1.5 **Severability**

If a part of this Sublease or the application of it to a Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:

- (a) is independent of the remainder of the Sublease and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Sublease; and
- (b) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance except those as to which it has been held or rendered invalid, unenforceable or illegal.

1.6 **Governing Law**

This Sublease shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties agree that the Courts of Ontario shall have the exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Sublease and the parties hereby irrevocably attorn to the exclusive jurisdiction of such court.

1.7 **Time**

Time shall be of the essence of this Sublease. If the time limited for the performance or completion of any matter under this Sublease expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Sublease may be extended or abridged only by an agreement in writing by the parties. All references herein to time are references to Toronto time.

1.8 **Obligations as Covenants**

Each obligation or agreement of the Sublandlord or the Subtenant set out in this Sublease shall be a covenant for all purposes.

**ARTICLE 2**

**DEMISE AND TERM**

2.1 **Demise; Prior Occupancy; "As-Is" Condition; Personal Leased Property.**

- (a) **Demise.** In consideration of the agreements, terms, covenants, conditions, requirements, provisions and restrictions to be kept, observed, performed, satisfied and complied with by Subtenant, and for the rent herein provided, and upon the terms and conditions herein stated, Sublandlord hereby lets, leases and demises unto Subtenant, and Subtenant hereby leases, takes and accepts from Sublandlord, the entirety of the Leased Property.
- (b) **Prior Occupancy.** Subtenant acknowledges that (i) Sublandlord has acquired the leasehold interest in the Leased Property from Subtenant as of the Effective Date; (ii) prior to the Effective Date hereof, Subtenant was and that Subtenant currently remains in possession of the Leased Property; and (iii) Subtenant has examined the Leased Property and is familiar with the physical condition of the Leased Property.
- (c) **"As-Is".** In furtherance of clause (b) above, Subtenant accepts the Leased Property in its "as is" condition existing as of the Effective Date, without requiring any alterations, improvements, repairs or decorations to be made by Sublandlord, or (except as provided in Section 6.3 of this Sublease) at Sublandlord's expense, either at the time possession is given to Subtenant or during the entire term of this Sublease. Subtenant acknowledges that Sublandlord has not made and does not make any representations or warranties as to the physical condition, expenses, operation and maintenance, zoning, status of title, the use that may be made of the Leased Property or any other matter or thing affecting or related to the Leased Property.
- (d) **Personal Leased Property.** Subtenant accepts the Leased Property with all of the Personal Leased Property.

2.2 **Term**

- (a) The Sublandlord and Subtenant covenant and agree that the initial term of this Sublease (the "**Initial Term**") will be the period of time commencing on the

Commencement Date and expiring on the date that is twenty-five (25) years from the Commencement Date.

- (b) Following the expiration of the first fifteen (15) years of the Initial Term, the Subtenant shall have the option to extend the Term of this Sublease for consecutive periods of fifteen (15) years each (each such period, an “**Extension Term**”) commencing on the expiration of the Initial Term or the immediately preceding Extension Term (or in the case of the final Extension Term, for a period equal to the remainder of the existing term of the Head Lease and all renewal or extension terms available to the Sublandlord under the Head Lease), excluding the last day of the final renewal or extension term of the Head Lease, as the case may be, provided that (i) in the case of the first Extension Term, the Subtenant gives the Sublandlord written notice exercising such option to extend not later than 5:00 p.m. on the date which is six (6) months after the expiration of the first fifteen (15) years of the Initial Term, or (ii) in the case of the second Extension Term and each subsequent Extension Term, the Subtenant gives the Sublandlord written notice exercising such option to extend not later than 5:00 p.m. on the date which is six (6) months after the commencement date of such Extension Term, as applicable. Notwithstanding anything to the contrary, there shall be no further right to extend the Term or renew this Sublease beyond the maximum term available to the Sublandlord under the Head Lease (being the remainder of the existing term and all remaining renewal or extension terms available to the Sublandlord under the Head Lease), excluding the last day of the final renewal or extension term of the Head Lease which will not be included in this demise but which will be held by the Sublandlord in trust for the full benefit and use of the Subtenant (subject to the same limitations and restrictions on use as provided herein). If the Term is validly extended in accordance with this Section 2.2(b), all provisions, terms and conditions of this Sublease shall be applicable during the relevant Extension Term. Any exercise by the Subtenant of its option to extend this Sublease will not be effective unless the Subtenant concurrently exercises its option to extend each HBC Sublease that is capable of being extended on such date. If the Subtenant does not exercise any of its options to extend the Term of this Sublease in accordance with this Section 2.2(b), the Sublandlord will have the right to terminate this Sublease at any time during the remainder of the Initial Term or the applicable Extension Term, as the case may be.
- (c) The Sublandlord irrevocably and unconditionally covenants and agrees with the Subtenant that it will exercise from time to time all rights to renew and extend the term of the Head Lease as are available to the Sublandlord under and in accordance with the terms of the Head Lease in order to provide to the Subtenant the longest possible Term.
- (d) Notwithstanding the foregoing, the Subtenant acknowledges and agrees that in the event of the termination of the Head Lease prior to the expiration of the Term hereof, this Sublease shall automatically terminate, and be of no further force and effect, and the parties hereto shall be released from all duties, obligations, liabilities and responsibilities under this Sublease accruing thereafter except for

any duties, obligations, liabilities and responsibilities of one party to the other that arise out of any default by either party under this Sublease. Notwithstanding the foregoing, the Sublandlord shall not voluntarily terminate or surrender the Head Lease without the prior written consent of the Subtenant in its sole discretion.

### **ARTICLE 3**

#### **RENT**

##### **3.1 Rent.**

- (a) The Subtenant covenants to pay basic rent (the “**Basic Rent**”) to the Sublandlord during each Sublease Year of the Term as provided in subparagraph (b) below.
- (b) During the Term, the Subtenant will pay Basic Rent to the Sublandlord as follows:
  - (i) during the initial Sublease Year of the Term, the sum of \$30.00 for each square foot of gross leasable area of the Leased Property; and
  - (ii) during each Sublease Year of the Term following the end of the initial Sublease Year, a sum equal to the Basic Rent payable during the immediately preceding Sublease Year plus an amount equal to 2% of the Basic Rent for such immediately preceding Sublease Year.
- (c) The Subtenant also covenants to pay all Additional Rent and Head Rent.

##### **3.2 Time and Method of Payment**

- (a) The Basic Rent for each Sublease Year shall be payable by equal consecutive monthly instalments in advance on the first day of each month during such Sublease Year except that the Subtenant shall pay, on the Commencement Date, as Basic Rent for the period from the Commencement Date to the last day of the calendar month in which the Commencement Date occurs, an amount calculated by multiplying the annual Basic Rent for the first Sublease Year by the number of days during such period and dividing by 365.
- (b) Unless otherwise notified by the Sublandlord, the Subtenant will pay all Rent and other amounts payable to the Sublandlord when due under this Sublease as follows: (i) to the Head Landlord, Additional Rent, Head Rent and other amounts due and payable to the Head Landlord when due; and (ii) any remaining Rent and other amounts to the Sublandlord. Upon request of the Sublandlord, the Subtenant will provide the Sublandlord with evidence of payment of the amounts specified under subclause (i) above.

3.3 **Accrual of Rent**

Rent shall be considered as accruing from day to day hereunder from the Commencement Date and where it becomes necessary for any reason to calculate the Rent for an irregular period during the relevant Sublease Year, an appropriate apportionment and adjustment shall be made on a per diem basis based upon the relevant Sublease Year.

**ARTICLE 4**

**USE OF THE LEASED PROPERTY**

4.1 **Permitted Business and Uses**

From and after the Commencement Date, the Subtenant will use and operate the Leased Property in compliance with the provisions of the Head Lease at all times.

**ARTICLE 5**

**HEAD LEASE**

5.1 **Terms of Head Lease.**

- (a) Except as herein otherwise expressly provided, all of the terms, covenants, conditions, agreements, requirements, restrictions and provisions of the Head Lease required to be performed or complied with by Sublandlord, as tenant under the Head Lease in respect of the Leased Property, are incorporated herein by reference as terms, covenants, conditions, agreements, requirements, restrictions and provisions of this Sublease to be performed and complied with by Subtenant for the benefit of Sublandlord, and Subtenant hereby expressly assumes the same for the benefit of Sublandlord. Except as herein otherwise expressly provided, all duties, obligations, liabilities and responsibilities of Sublandlord, as "tenant" or "lessee" under the Head Lease, shall be duties, obligations, liabilities and responsibilities of Subtenant to Sublandlord. Sublandlord shall have all of the rights and remedies of Head Landlord under the Head Lease as against Subtenant, including without limitation, the right of re-entry.
- (b) Without limiting the generality of subparagraph (a) above, Subtenant shall obtain and maintain all insurance types and coverages specified in the Head Lease to be obtained and maintained by the "tenant" or "lessee" under the Head Lease, in amounts not less than those specified in the Head Lease, and Subtenant shall also obtain and maintain waiver of subrogation endorsements from its insurer. All policies of insurance obtained by Subtenant shall name Head Landlord as additional insured thereon in accordance with the Head Lease and shall also have Sublandlord as an additional insured and unless prohibited by the Head Lease, loss payee (in the case of damage to the Leased Property) thereunder, and all endorsements waiving the right of subrogation of Subtenant's insurers shall benefit Head Landlord and Sublandlord. Subtenant will deliver to Head Landlord



and Sublandlord annually certificates reflecting that Subtenant has obtained and is maintaining the required insurance coverages in the appropriate amounts.

- (c) Subtenant may, upon prior consultation with Sublandlord, deal directly with Head Landlord in connection with all claims and disputes (including reconciliation of all payments and charges thereunder) between Head Landlord and Subtenant with respect to the Leased Property arising during the Term of this Sublease; provided, however, such actions shall in no event adversely impact Sublandlord's rights or obligations under the Head Lease and/or this Sublease.
- (d) Except as expressly provided in this Sublease, Subtenant expressly acknowledges and agrees that Sublandlord shall not have any liability or responsibility of any kind or nature whatsoever for any act or omission of Head Landlord, or for any failure by Head Landlord to perform and comply with its duties, obligations, liabilities and responsibilities under the Head Lease. Notwithstanding the foregoing, however, Sublandlord shall at the request of Subtenant use commercially reasonable efforts to enforce such terms and conditions of the Head Lease, the failure of which will have a material adverse impact on the Subtenant's rights under this Sublease. All reasonable costs and expenses incurred by Sublandlord in performing its obligations under the foregoing sentence shall be reimbursed by Subtenant upon demand.
- (e) Subtenant covenants and agrees that Subtenant will not do anything that would constitute a breach or default under the Head Lease or omit to do anything which Subtenant is obligated to do under the terms of this Sublease and which would constitute a breach or default under the Head Lease.
- (f) This Sublease is subject and subordinate to the Head Lease.
- (g) The terms and provisions of this Sublease are cumulative of and in addition to the provisions of the Head Lease.
- (h) Sublandlord shall not amend, modify, consent to, grant any approval or take any action or omit to take any action under or with respect to the Head Lease during the Term that would have a material adverse effect on the rights and obligations of Subtenant under this Sublease. Without limiting in any manner the obligations of Subtenant under this Sublease, Sublandlord shall comply with the terms and conditions of the Head Lease during the Term and Sublandlord shall be solely responsible for any costs, expenses and charges of any kind arising from any default or breach by Sublandlord under the Head Lease (other than any default or breach which is caused by any default or breach by Subtenant under this Sublease).

## ARTICLE 6

### **REPAIRS, MAINTENANCE AND ALTERATIONS**

#### **6.1 Maintenance and Repair**

(a) During the Term, the Subtenant, at its own cost, shall maintain and repair the Leased Property in compliance with the Head Lease.

(b) Upon the expiry or earlier termination of this Sublease, the Subtenant shall deliver vacant possession of the Leased Property to the Sublandlord in the condition required by the Head Lease, free and clear of any mortgages, charges, liens or other Encumbrances of any nature or kind whatsoever.

#### **6.2 Changes to the Leased Property**

To the extent permitted pursuant to the Head Lease, the Subtenant shall be permitted to make all internal and external alterations, expansions, additions, modifications, renovations, restorations and other improvements to the Leased Property in its sole discretion from time to time during the Term, in each case without the consent of, or notice to, the Sublandlord. All such alterations shall be completed in compliance with the Head Lease and all Applicable Laws, and Subtenant shall, prior to commencing any alterations, obtain at its expense all necessary permits and licenses required by Applicable Laws and any applicable Head Landlord consents in respect of the performance and installation of the alterations. All alterations pursuant to this Section 6.2 shall be performed at the Subtenant's cost, and in a good and workmanlike manner. To the extent any notice is required to be delivered to the Head Landlord pursuant to the Head Lease in connection with any such alterations, the Subtenant shall deliver a copy of such notice to the Sublandlord concurrently with delivery to the Head Landlord.

#### **6.3 Sublandlord's Work**

*Intentionally deleted.*

## ARTICLE 7

### **TRANSFERS**

#### **7.1 Assignment**

The Subtenant shall not have the right at any time and from time to time, to assign, convey, mortgage or otherwise transfer or encumber, in whole or in part, this Sublease to any Person at any time unless permitted by the Head Lease and with the prior written consent of the Sublandlord, not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, to the extent permitted pursuant to the Head Lease, the Subtenant may assign this Sublease, without the consent of, but upon prior written notice to, the Sublandlord, to the operator of an Acceptable Department Store.

7.2 **Subleasing**

If and to the extent permitted pursuant to the Head Lease, the Subtenant and any subtenant that is the operator of an Acceptable Department Store shall have the right at all times and from time to time, with the prior written consent of the Sublandlord, not to be unreasonably withheld, delayed or conditioned, to enter into subleases for any portion of the Leased Property. The Subtenant shall not be permitted to enter into a Sublease of the entire Leased Property, without the prior written consent of the Sublandlord, not to be unreasonably withheld, delayed or conditioned, provided that, so long as the Subtenant has obtained any Head Landlord consent required pursuant to the Head Lease, no consent of the Sublandlord but prior written notice to the Sublandlord shall be required for a Sublease of all or substantially all of the Leased Property to the operator of an Acceptable Department Store.

7.3 **No Release**

No assignment, conveyance, mortgage, sublease or other transfer or encumbrance will release the Subtenant from its obligations under the Sublease.

7.4 **Transfers by Sublandlord**

To the extent permitted pursuant to the Head Lease, the Sublandlord shall have the unrestricted right to sell, transfer, lease, charge or otherwise dispose of all or any part of its interest in the Leased Property or its interest in this Sublease (including any Sublandlord's Mortgage) at any time and from time to time. In connection with any such sale, transfer, lease, charge or disposal, the Sublandlord shall cause such transferee to assume the obligations of the Sublandlord under this Sublease in favour of the Subtenant. In the event of any sale, transfer or other disposition pursuant to which the Sublandlord absolutely disposes of its entire interest in the Leased Property, to the extent that the transferee of the Sublandlord agrees in writing with the Subtenant to assume the obligations of the Sublandlord under this Sublease (such agreement to be in form satisfactory to the Subtenant, acting reasonably) the Sublandlord shall thereupon, and without further agreement, be released of all liability under this Sublease to the extent such liability is assumed by the transferee.

**ARTICLE 8**

**DEFAULT AND REMEDIES**

8.1 **Event of Default**

- (a) Any of the following constitutes an “**Event of Default**” under this Sublease:
  - (i) any default or event of default under the Head Lease arising from or relating to any default or breach by the Subtenant under this Sublease;
  - (ii) the Subtenant defaults in the payment of Rent and fails to remedy the default within ten (10) Business Days after written notice from the Sublandlord;

- (iii) the Subtenant fails to maintain any required insurance, and such default continues for three (3) Business Days after written notice is given to the Subtenant;
- (iv) the Subtenant commits a breach of this Sublease (other than a breach otherwise set out in this Section 8.1(a)) that has a material and adverse effect on the Leased Property and/or the Sublandlord, and:
  - (A) the Subtenant fails to remedy such breach within thirty (30) days after receipt of notice thereof from the Sublandlord; or
  - (B) if such breach cannot reasonably be remedied within thirty (30) days, the Subtenant fails to commence to remedy such breach within such thirty (30) days or thereafter fails to continue diligently and expeditiously to complete the remedy of such breach;
- (v) the Subtenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors (including, but not limited to, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended), or makes any proposal, assignment or arrangement with its creditors;
- (vi) a receiver or a receiver and manager is appointed for all or substantially all of the property of the Subtenant located in the Leased Property, which appointment is not set aside or revoked within thirty (30) days; and
- (vii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the existence of the Subtenant or for the liquidation of the assets of either or both of them other than in connection with a corporate reorganization of the Subtenant.

(b) Upon the occurrence of any Event of Default, the Sublandlord shall be entitled to all of the same rights and remedies as are available to the Head Landlord pursuant to the Head Lease.

## 8.2 **Remedies Cumulative, etc.**

(a) The remedies of the Sublandlord specified in this Sublease are cumulative and are in addition to any remedies of the Sublandlord under Applicable Laws. Without limitation, the Sublandlord will have the right to seek specific performance and other injunctive relief in respect of any default by the Subtenant under this Sublease. No remedy shall be deemed to be exclusive, and the Sublandlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

(b) In the event of any breach by the Sublandlord under this Sublease, the Subtenant shall have the remedies of specific performance and other injunctive relief in respect of any breach by the Sublandlord under this Sublease, and the right to seek damages against the

Sublandlord (but not the right of set-off), it being acknowledged that a claim for damages may not adequately compensate the Subtenant for any such breach.

## ARTICLE 9

### **ESTOPPEL CERTIFICATES, SUBORDINATION AND ATTORNMENT**

#### 9.1 **Estoppel Certificates**

Upon request of either party at any time and from time to time, the Sublandlord and the Subtenant shall execute and deliver to the other, or to any actual or proposed lender, purchaser or assignee of the other, within ten (10) Business Days after receipt of the request, a written instrument, duly executed:

- (a) certifying that this Sublease has not been amended or modified and is in full force and effect or, if there has been a modification or amendment, that this Sublease is in full force and effect as modified or amended, and stating the modifications or amendments;
- (b) specifying the date to which the Rent has been paid;
- (c) stating whether, to the best knowledge of the party executing the instrument (without independent inquiry), the other party is in default and, if so, stating the nature of the default;
- (d) with respect to the Head Lease, stating the then remaining term; and
- (e) such other particulars as to the status of this Sublease, provisions thereof, and the obligations of the parties thereunder that the Person requesting such instrument may reasonably require.

#### 9.2 **Subordination and Attornment**

This Sublease and the rights of the Subtenant hereunder shall have priority over all Sublandlord's Mortgages. Whenever requested by the Sublandlord or a Sublandlord's Mortgagee, the Subtenant shall, within five (5) Business Days after such request, enter into an agreement (a "**non-disturbance agreement**") with the Sublandlord's Mortgagee, in a form satisfactory to the Subtenant and the Sublandlord, both acting reasonably, whereby the Subtenant agrees that whenever requested by such Sublandlord's Mortgagee, notwithstanding the priority of this Sublease over the relevant Sublandlord's Mortgage, the Subtenant shall attorn to and become the tenant of such Sublandlord's Mortgagee, or any purchaser of the Leased Property upon realization, in the event of the exercise by the Sublandlord's Mortgagee of any of its mortgage remedies, for the then unexpired residue of the Term upon all the terms and conditions of this Sublease, provided that all of the Sublandlord's obligations and covenants under and in this Sublease (whether or not they run with the land) shall be complied with and the Sublandlord's Mortgagee agrees that the Subtenant's occupancy of the Leased Property shall not be disturbed except pursuant to this Sublease, provided that in no event shall the Sublandlord's

Mortgagee or any such purchaser have any liability in respect of any obligations or covenants of the Sublandlord relating to the period prior to the time the Sublandlord's Mortgagee or such purchaser becomes an owner or mortgagee in possession. If the Sublandlord's Mortgagee requires the subordination of this Sublease to its related Sublandlord's Mortgage, the Subtenant will also agree in such non-disturbance agreement to subordinate this Sublease to such Sublandlord's Mortgage on terms and conditions satisfactory to the Subtenant, including customary non-disturbance covenants from the Sublandlord's Mortgagee.

### 9.3 **Waiver of Distress Agreements in favour of ABL Lenders**

Upon written request of any ABL Lender, the Sublandlord shall enter into an agreement (a "**waiver of distress agreement**") with such ABL Lender in a form that is satisfactory to the Sublandlord, the Subtenant and such ABL Lender, each acting reasonably. Such waiver of distress agreement shall contain: (i) a waiver of distress or other liens by the Sublandlord in favour of such ABL Lender; (ii) a right for such ABL Lender to conduct a liquidation of inventory from the Leased Property for a limited period of time (but not less than one hundred and fifty (150) days) and upon such commercially reasonable terms and conditions as the parties agree, acting reasonably, provided that in no event shall such liquidation include any inventory or goods brought to the Leased Property for the purpose of such liquidation that were not a part of the Subtenant's inventory at the Leased Property in the ordinary course; and (iii) such other commercially reasonable terms and conditions agreed upon by the parties, each acting reasonably; provided that all of the foregoing terms and conditions shall be subject to any limitations imposed on such terms and conditions contained in the Head Lease.

## **ARTICLE 10**

### **INDEMNITY**

#### 10.1 **Subtenant's Indemnity**

The Subtenant shall fully indemnify and save harmless the Sublandlord and all Sublandlord Persons from and against any and all Claims relating to or arising prior to or during the Term out of:

- (a) any default or event of default under the Head Lease arising from or relating to any default or breach by the Subtenant, any Subtenant Person or any sub-subtenants or any other Person from time to time on the Leased Property at the invitation of the Subtenant, any Subtenant Person, any sub-subtenants or any other Person for whom the Subtenant is responsible at law, under this Sublease;
- (b) the negligent acts or omissions or wilful misconduct by the Subtenant, any Subtenant Person or any sub-subtenants or any other Person from time to time on the Leased Property at the invitation of the Subtenant, any Subtenant Person, any sub-subtenants or any other Person for whom the Subtenant is responsible at law;
- (c) any breach, violation or non-performance of any covenant, condition or agreement of this Sublease set forth and contained on the part of the Subtenant to

be fulfilled, kept, observed or performed whether such breach, violation or non-performance results from an act or omission of the Subtenant, any Subtenant Person or any sub-subtenant; or

- (d) the use or occupation of the Leased Property by the Subtenant, any Subtenant Person, any sub-subtenant, or any other Person for whom the Subtenant is responsible at law.

Notwithstanding the foregoing, this indemnity does not apply to: (i) Claims to the extent they are caused, or contributed to by, a breach of this Sublease by the Sublandlord, or by the negligent acts or omissions or wilful misconduct of the Sublandlord or any Sublandlord Persons; (ii) the matters covered by the indemnity in Section 10.2 below, and (iii) any Claims for punitive or aggravated damages or losses made by the Sublandlord, Affiliates of the Sublandlord or any Sublandlord Persons.

## 10.2 **Sublandlord's Indemnity**

The Sublandlord shall fully indemnify and save harmless the Subtenant and the Subtenant Persons from and against any and all Claims relating to or arising during the Term out of:

- (a) any default or event of default under the Head Lease arising from or relating to any default or breach by the Sublandlord or any Sublandlord Persons or any other Person from time to time on the Leased Property at the invitation of the Sublandlord or any Sublandlord Person or for whom the Sublandlord is responsible at law, under this Sublease;
- (b) the negligent acts or omissions or wilful misconduct of the Sublandlord or any Sublandlord Persons or any other Person from time to time on the Leased Property at the invitation of the Sublandlord or any Sublandlord Person or for whom the Sublandlord is responsible at law; and
- (c) any breach, violation or non-performance of any covenant, condition or agreement of this Sublease set forth and contained on the part of the Sublandlord to be fulfilled, kept, observed or performed whether such breach, violation or non-performance results from an act or omission of the Sublandlord or any Sublandlord Person.

Notwithstanding the foregoing, this indemnity does not apply to: (i) Claims to the extent they are caused, or contributed to by, a breach of this Sublease by the Subtenant, or by the negligent acts or omissions or wilful misconduct of the Subtenant, any Subtenant Persons or any sub-subtenants; (ii) the matters covered by the indemnity in Section 10.1 above; (iii) Claims waived under Section 10.4 hereof; and (iv) any Claims for consequential, special, punitive or aggravated damages or losses made by the Subtenant, Affiliates of the Subtenant or any Subtenant Person. Except for any Sublandlord liability under Section 10.2(a) above, in no event shall the Sublandlord be liable for any damages, direct or indirect, resulting from or contributed to by any interruption or cessation in supply of any utilities or heating, ventilating, air-conditioning and

humidity control and shall not be liable or responsible for any such injury, death, loss or damage to any persons or property caused or contributed to by any of the following: fire, explosion, steam, water, rain, snow, leakage, electricity or gas or by dampness or leaks from any pipes, appliances, plumbing works, roof, exterior walls or any other source whatsoever, and the Sublandlord shall not be liable or responsible in any way for any injury, death, loss or damage to any Person or property caused by any occupants of any adjoining property or by the public or by the construction of any public, quasi-public or private works or utilities.

#### 10.3 **Actions Against Sublandlord**

The Subtenant shall, in any and every event in which the Sublandlord or any Sublandlord Person is made a party to any Claim to which the Subtenant's obligation to indemnify and save harmless the Sublandlord under the provision of this Article 10 (or any other provision of this Sublease) extends, if so requested by notice from the Sublandlord and any such Sublandlord Person, defend such Claim in the name of the Sublandlord with counsel acceptable to Sublandlord, acting reasonably, and shall pay all costs, expenses and reasonable legal fees in connection with the Claim; provided that the Subtenant may, in any such event, elect to settle any such claim and to pay or otherwise satisfy such settlement.

#### 10.4 **Waiver of Recovery and Subrogation**

Notwithstanding any other provision of this Sublease, the Subtenant (on behalf of itself and the Subtenant Persons) hereby releases the Sublandlord and the Sublandlord Persons from liability for all Claims incurred by the Subtenant and the Subtenant Persons, and any Claims that the Subtenant or any Subtenant Persons may have against the Sublandlord or any of the Sublandlord Persons, to the extent of insurance proceeds actually paid to the Subtenant or any Subtenant Person with respect to such Claims under the policies of insurance maintained by the Subtenant or any Subtenant Person, or which would have been paid if the Subtenant had maintained with third-party insurers the insurance it is required to maintain under this Sublease and complying with all of its obligations thereunder. The provisions of this Section 10.4 shall be binding upon the Subtenant Persons without any further documentation but if requested by the Sublandlord the Subtenant shall deliver a written confirmation that the provisions of this Section 10.4 are binding upon them.

### **ARTICLE 11**

#### **GENERAL PROVISIONS**

##### 11.1 **Amendment of Agreement**

No alteration, amendment, change, waiver or supplement of or to this Sublease is binding upon either party unless it is in writing and signed by the both parties.

##### 11.2 **Further Assurances**

Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further



acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Sublease.

#### 11.3 **Entire Agreement**

This Sublease constitutes the entire agreement between the parties hereto pertaining to the Subtenant's lease of the Leased Property. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties concerning this Sublease except those set out in this Sublease.

#### 11.4 **Waiver**

No waiver of any of the provisions of this Sublease shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. The Subtenant waives any statutory or other rights in respect of any abatement, set-off or compensation in its favour that may exist or come to exist in connection with Rents.

#### 11.5 **Unavoidable Delay**

In the event that a party to this Sublease shall be delayed in the performance of any obligation under this Sublease, except the payment of Rent, Sales Taxes or Interest Charges or the performance of any other financial obligation, by reason of any Unavoidable Delay, and to the extent that the Sublandlord would be entitled to such relief pursuant to the Unavoidable Delay provisions of the Head Lease, then such party shall be deemed not to be in default of the performance of such obligation, and the time for the performance thereof shall be extended accordingly, but in no event shall any Unavoidable Delay relieve the Subtenant of its obligation to pay Rent, Sales Taxes or Interest Charges as they become due or to comply with its other financial obligations under this Sublease or to comply with the provisions of the Head Lease (except as otherwise provided in the Head Lease), nor shall it postpone or suspend any such obligations to pay Rent, Sales Taxes or Interest Charges or to perform such other financial obligations. If any party becomes aware of an Unavoidable Delay, it shall forthwith thereafter notify the other party thereof. Any party that is delayed in the performance of any of its obligations under this Sublease by reason of any Unavoidable Delay shall use all commercially reasonable efforts to minimize the delay and shall provide the other party with timely updates, in reasonable detail, in respect of the status of the Unavoidable Delay (and the expected consequential delay) until such time as the cause of the Unavoidable Delay has been eliminated.

#### 11.6 **Brokerage Commissions**

Each of the Sublandlord and the Subtenant represent and warrant to the other that it has not retained a broker or real estate agent in respect of this Sublease or anything related to it and each of them agrees with the other that it will indemnify and hold harmless the other from any claims for commissions or fees with respect to this Sublease or any matter related to it from any broker or real estate agent whose claim is based upon the actions, agreements or representations of such indemnifying party.

## 11.7

Notices

(a) Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (a “**Notice**” or “**notice**”) to be given by the Sublandlord to the Subtenant or by the Subtenant to the Sublandlord under or in connection with this Sublease shall be in writing and shall be given by prepaid registered mail, return receipt requested, by courier or other actual delivery to the applicable addresses set out below, or by e-mail addressed or sent as set out below or to such other address, individual’s attention as may from time to time be the subject of a notice:

Subtenant: Hudson’s Bay Company  
698 Lawrence Avenue West  
Toronto, Ontario M6A 3A5  
Attention: David Pickwoad, Senior Vice President & General Counsel  
Facsimile: 416.256.2365  
Email: david.pickwoad@hbc.com

Sublandlord: c/o Hudson’s Bay Company  
698 Lawrence Avenue West  
Toronto, Ontario M6A 3A5  
Attention: David Pickwoad, Senior Vice President & General Counsel  
Facsimile: 416.256.2365  
Email: david.pickwoad@hbc.com

with a copy to: Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9  
  
Attention: Doug Klaassen  
Facsimile: 416.947.0866  
Email: dklaassen@stikeman.com

and with a copy to: RioCan Real Estate Investment Trust  
2300 Yonge Street, Suite 500  
P.O. Box 2386  
Toronto, Ontario M4P 1E4  
Attention: Jonathan Gitlin, Senior Vice President, Investments  
Facsimile: 416.866.3020  
Email: jgitlin@riocan.com

and with a copy to: Fogler, Rubinoff LLP  
77 King Street West  
TD Centre, Suite 3000, P.O. Box 95  
Toronto, Ontario M5K 1G8

Attention: Leneo Sdao  
Facsimile: 416.941.8852  
Email: lsdao@foglers.com

Any Notice shall be deemed to have been validly and effectively given and received: (i) if sent by prepaid registered mail, return receipt requested, on the third Business Day following the date of such mailing; (ii) if sent by courier or other actual delivery as permitted in accordance with the provisions of this Section 11.7, on the date of such delivery; and (iii) if sent by email, on the Business Day following the date such email is actually received; provided that in the case of any notice given by courier or other actual delivery, if such notice is received on any day that is not a Business Day, or at any time after 5:00 p.m. on a Business Day, then it shall be deemed to have been validly given and received on the next Business Day thereafter.

(b) Each of the parties agrees that if at any time there is any change in the address, individual's attention of any Person to whom any Notice to such party is to be given, or if it wishes to delete any Person to whom a copy of a Notice to such party must be given, then such party shall provide the other party with Notice of such change forthwith thereafter.

#### 11.8 **Planning Act, Ontario**

This Sublease has been entered into subject to the express condition precedent that it shall not be effective to create or convey any interest in the Leased Property until the provisions of section 50 of the *Planning Act* (Ontario), as amended, supplemented, restated or replaced from time to time, have been complied with if same should be applicable. In the event that compliance with the *Planning Act* (Ontario) is required, the maximum term of this Sublease shall be deemed to be twenty-one (21) years less one (1) day, until such time until the provisions of the *Planning Act* (Ontario) have been complied with.

#### 11.9 **Registration and Confidentiality**

The Subtenant will not register or permit the registration of this Sublease or any assignment or sublease or other document evidencing an interest of the Subtenant or anyone claiming through or under the Subtenant in this Sublease or the Leased Property.

#### 11.10 **Amendments**

No amendment, supplement, restatement or termination of any provision of this Sublease is binding unless it is in writing and signed by each party to this Sublease at the time of the amendment, supplement, restatement or termination.

11.11        **Quiet Enjoyment**

If the Subtenant pays the rents herein reserved and observes and performs the covenants, conditions and agreements set out in this Sublease, in all material respects, the Subtenant may hold and use the Leased Property during the Term without any interruption or disturbance from the Sublandlord or any other Person or Persons lawfully claiming from or under the Sublandlord (provided that any work undertaken by the Sublandlord pursuant to Section 6.3 hereof will not constitute a breach of this Section 11.11). Notwithstanding any other provision of this Sublease, in the event of any breach of the provisions of this Section 11.11, the Subtenant shall have the right to claim, in addition to any claims for damages, specific performance or other injunctive relief, but excluding any special, consequential, punitive or aggravated damages or losses of any kind.

11.12        **Signage**

The Subtenant will be entitled, at its cost, to erect, maintain and replace all signs on the Leased Property to the extent permitted by, and in accordance with, the provisions of the Head Lease.

11.13        **Survival**

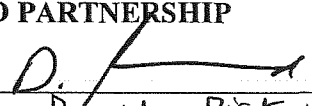
The covenants, agreements, obligations and liabilities of each of the Sublandlord and the Subtenant contained in this Sublease shall survive the expiration or earlier termination of this Sublease and shall continue in full force and effect thereafter.

*[Remained of page intentionally left blank.]*

IN WITNESS WHEREOF the parties have caused this Sublease to be duly executed by their respective duly authorized signing officers.

**HUDSON'S BAY COMPANY, as  
general partner of, HBC YSS 1  
LIMITED PARTNERSHIP**

by

  
Name: David Pickwood  
Title: Senior Vice President  
& General Counsel

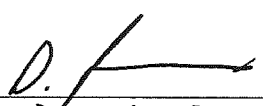
Name:

Title:

I/We have authority to bind the  
corporation and limited partnership.

**HUDSON'S BAY COMPANY**

by

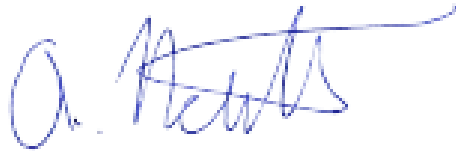
  
Name: David Pickwood  
Title: Senior Vice President  
& General Counsel

Name:

Title:

I/We have authority to bind the  
corporation.

This is **Exhibit “I”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

**CERTAIN LEASE TERMS – HBC HEAD LEASE AT YORKDALE**

<u>LEGAL NAME OF TENANT</u>	<u>GROSS LEASEABLE AREA (GLA)</u>	<u>LEASE EXPIRY DATE and OUTSTANDING RENEWAL OPTIONS</u>	<u>REQUIRED USE AND PROHIBITED USE</u>	<u>TERMS APPLICABLE TO TRANSFERS (ASSIGNMENT, SUBLEASE, ENCUMBRANCE, CONCESSION/LICENSE)</u>	<u>OPERATING COVENANT</u>	<u>TENANT REPAIR OBLIGATIONS</u>	<u>OTHER TERMS</u>
As of October 14 <sup>th</sup> (to Oxford’s knowledge) 1242939 B.C. Unlimited Liability Company (formerly Hudson’s Bay Company ULC) as general partner of HBC YSS 1 Limited Partnership	300,870  Lease of lands under the Bay Building. Tenant owns the Building.	<b>September 25, 2142</b>  117 years  (23 options of 5 years each) <i>S. 3.01</i>  After the 50 <sup>th</sup> year, LL may terminate on 12 months’ notice if 75% or more of the SC lands are no longer used for retail purposes.	<i>Article 6.00</i> T shall continuously operate in all or substantially all of the T Department Store as a <b>single integrated traditional retail department store</b> , subject to Unavoidable Delay and provided that the LL is operating the balance of the SC as a first-class regional shopping centre. Parties acknowledge <b>that the type of store presently [in 2002] operated by the T under its Bay banner and the type of store presently operated under the Sears, Bloomingdales, Macy’s or Nordstrom’s banners are single integrated traditional retail department stores</b> . Parties further acknowledge the fluid and dynamic nature of a department store operation and agree that the departments and types of merchandise and services typically featured in such an operation are subject to change over time to better accommodate the operator’s perception of its target market.  <b>Any other type of store, department store, junior department store, specialty store or specialty department store not of the specific type or kind required to be operated under the preceding paragraph shall be a prohibited use and shall not be permitted to operate</b> in the T’s Department Store.  When T is required to operate, it shall be operated or have the appearance of being operated as a single integrated business, controlled by a single overall	Definition: “ <b>Transfer</b> ” means any assignment, <b>sublease... or other transaction or occurrence...</b> which has or might have the effect of changing the identity of the Tenant or the persons controlling Tenant or <b>changing the identify of the person having lawful use, occupancy or possession of the whole or any part of the Tenant Department Store</b> , whether such change is or might be immediate, deferred, conditional, exclusive, non-exclusive, permanent or temporary.”  <i>Article 21:</i>  No Transfer affecting T, the Tenant Department Store or the business of T at the T Department Store shall be permitted or effective unless and until LL’s consent is delivered, not to be unreasonably withheld so long as transferee is <b>creditworthy</b> and a <b>suitable replacement tenant</b> and one who is <b>sufficiently experienced and competent in operating a business of the type required to be operated in the Tenant Department Store</b> . <i>S. 21.00</i>  <b>LL is deemed to be acting reasonably and may arbitrarily withhold consent if a proposed Transferee has not agreed with the LL in writing and on a form acceptable to LL, to assume and perform each of the covenants, obligations and agreements of the Tenant</b> , and if the requirements of clause 21.00 have not been satisfied. <i>S. 21.02</i>  <b>The ownership of the Tenant Department Store and the leasehold interest in the Lease shall co-exist entirely in the same entity, and any Transfer of either interest which has the effect of causing a breach of this</b>	<i>Article 6.00</i> T shall continuously operate in all or substantially all of the T Department Store throughout the Term as a <b>single integrated traditional retail department store</b> , subject to Unavoidable Delay and provided that the LL is operating the balance of the SC as a first-class regional shopping centre. ... While the Tenant is required to operate, it <b>shall have the appearance of being operated as a single integrated business, controlled by a single overall operator</b> having regard to the T’s rights under Clause 21.00 (transfer provisions), with a major access to and from the Mall at each level... <i>S. 6.00</i>  Should the T Department Store cease to be operated for a period of 6 months (excluding during Unavoidable Delays and any period where the SC is not operated as a first-class regional shopping centre), the LL may give the T notice that unless the T reopens the T Department Store for business within 6 months after receipt of such notice this Lease will terminate upon the expiry of such six-month period. Should the T within 30 days of receiving such notice not advise the LL in writing that it intends to reopen for business, or should the Tenant not reopen within 6 months of receiving the LL’s notice, the Lease shall terminate at the	T is responsible at all times, at its sole cost and expense, for operating, maintaining, repairing, insuring and replacing the mechanical, electrical, plumbing, telecommunication, heating, ventilation and air conditioning equipment and facilities and connections, and shall promptly repair, at its sole cost, any damage to the building and/or balance of the SC that is caused by or arises out of the installation, operation, maintenance, repair or replacement of any such equipment and facilities and connections. Prior to installation, T shall obtain LL’s approval for the location and method of installation... <i>S. 8.00(6)</i>  The Tenant Department Store and Truck Standing Area are the sole risk of the T and T shall maintain and keep them in a good and substantial state of repair <b>consistent with the standards of a careful and prudent owner</b> , and accordingly the T will from time to time whenever necessary diligently carry out repairs thereto, including those made necessary by age and damage or destruction by casualty or any other reason and any necessary replacements and rebuilding, but excluding reasonable wear and tear which does not materially impair the use thereof for the purposes required by Article 6 (use	With respect to any alterations to the interior of the Tenant Department Store, <b>no alterations shall change the single integrated traditional retail department store appearance and character of the Tenant Department Store or be, or appear to be, a multiple lessee business</b> . <i>S. 19.00(8)</i>  Subject to the terms of the Lease, in the course of repairs or rebuilding, LL may alter or expand the buildings and improvements on the Shopping Centre other than the Bay store and the Truck Standing Area. <i>S. 12.01</i> .  Subject to the terms of the Lease, LL has the right to make alterations or additions to or subtractions from the Shopping Centre other than the Premises, the T Department Store and the no-build (except as permitted) to build adjoining the T’s Store. LL also reserves the right to alter, expand, reconstruct, demolish or construct other buildings or improvements in the Shopping Centre other than the T’s Department Store and has the right to change the size and dimensions of the buildings the number and locations of buildings, parking areas and malls and to change the store dimensions, identities, types of stores and tenancies. <i>S. 20.00(1)</i>

**CERTAIN LEASE TERMS – HBC HEAD LEASE AT YORKDALE**

<u>LEGAL NAME OF TENANT</u>	<u>GROSS LEASEABLE AREA (GLA)</u>	<u>LEASE EXPIRY DATE and OUTSTANDING RENEWAL OPTIONS</u>	<u>REQUIRED USE AND PROHIBITED USE</u>	<u>TERMS APPLICABLE TO TRANSFERS (ASSIGNMENT, SUBLEASE, ENCUMBRANCE, CONCESSION/LICENSE)</u>	<u>OPERATING COVENANT</u>	<u>TENANT REPAIR OBLIGATIONS</u>	<u>OTHER TERMS</u>
			<p>operator having regard to T's rights under S. 21.00.</p> <p>The T Department Store shall be operated under the principal name used by the T from time to time in a majority of its similar operations in Canda unless the LL agrees to the use of a different name. <i>S. 21.04</i></p>	<p><b>provision shall be void and of no effect.</b> <i>S. 21.00(1)</i></p> <p>T is entitled to grant franchises, subleases, concessions or licenses of any part of the Department Store but only so long as they do not in the aggregate exceed 25% of the Department Store and there is the appearance of a single integrated department store. <i>S. 21.00(2)</i></p> <p>If any portion of the shares or voting rights of shareholders of T or an Affiliated Corporation are transferred by sale, assignment, operation of law or other disposition or are issued by subscription or allotment or are cancelled or redeemed, so as to result in any change in the holding of effective voting or other control of the Tenant or an Affiliated Corporation from that which existed on the date of execution of the Lease, such change of control is a Transfer which requires LL consent, not to be unreasonably withheld. <i>S. 21.03</i></p> <p>T may without consent, but with notice: (1) assign or sublease to an Affiliated Corporation (consent required if the affiliation ceases), (2) assign to the assignee of a majority of the T's traditional retail department stores in Canada. <i>S. 21.00</i></p> <p>The change of control provisions in s. 21.03 shall be suspended and have no application at all times when HBC is the tenant in possession or when the T in possession is a corporation whose shares are listed and traded on a recognized stock exchange in North America, so long as, in each case, at the time of such COC, other than those occurring on a stock exchange, no rental default or bankruptcy/insolvency is outstanding and so long as the COC is not intended to</p>	<p>end of the 6-month period. <i>S. 6.01</i></p>	<p>clause) in a first class regional Shopping Centre setting. All Leasehold Improvements and all exterior signs and lighting, all utilities and services exclusively servicing the T Department Store and facilities and equipment shall be operated, repaired, replaced and maintained by and at the expense of the T in a state of repair consistent with the covenants of the T in this clause 12.00. <i>S. 12.00</i></p> <p>T's obligation to repair, replace or rebuild hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services, including HVAC and Mechanical Equipment, exclusively serving the store (reasonable wear and tear excepted), and to make all repairs required in a good and workmanlike manner, with reasonable expedition and in accordance with all laws.</p>	




CERTAIN LEASE TERMS – HBC HEAD LEASE AT YORKDALE

<u>LEGAL NAME OF TENANT</u>	<u>GROSS LEASEABLE AREA (GLA)</u>	<u>LEASE EXPIRY DATE and OUTSTANDING RENEWAL OPTIONS</u>	<u>REQUIRED USE AND PROHIBITED USE</u>	<u>TERMS APPLICABLE TO TRANSFERS (ASSIGNMENT, SUBLEASE, ENCUMBRANCE, CONCESSION/LICENSE)</u>	<u>OPERATING COVENANT</u>	<u>TENANT REPAIR OBLIGATIONS</u>	<u>OTHER TERMS</u>
				<p>avoid the necessity of obtaining LL consent. <i>S. 21.03</i></p> <p>T may sublease or assign to a mortgagee in connection with bona fide financing provided such mortgagee covenants with LL, as a condition precedent to exercising its right to obtain possession or title to the T’s interest, to be bound by all the T’s covenants until an assignment or sublease by the creditor. The LL need not permit any Transfer or other exercise of right by such mortgagee by which the T’s leasehold interest may be further assigned or subleased. <i>S. 21.05</i></p> <p>“Affiliated Corporation” means a holding corporation, subsidiary corporation or affiliate of T as per CBCA.</p>			

T = Tenant  
LL = Landlord  
SC = Shopping Centre

This is **Exhibit “J”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

[STRAIGHT-TO-LEASE]

## LEASE OF RETAIL SPACE

**BETWEEN:**  
(address)

**UPPER CANADA MALL LIMITED**

95 Wellington Street West  
Suite 300  
Toronto, Ontario  
M5J 2R2  
G.S.T. #R137328027

**AND:**  
(address)

**FAIRWEATHER LTD.**

111 Orfus Road  
Toronto, Ontario  
M6A 1M4  
G.S.T. #R102510419

**CENTRE:**

**UPPER CANADA MALL**

**PREMISES NUMBER:**

**EE9**

**BUSINESS NAME:**

**"FAIRWEATHER"**

# LEASE OF RETAIL SPACE

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# LEASE OF RETAIL SPACE

DATE: November 11, 2002

BETWEEN:  
(address)

UPPER CANADA MALL LIMITED

95 Wellington Street West  
Suite 300  
Toronto, Ontario  
M5J 2R2

("Landlord")

AND:  
(address)

FAIRWEATHER LTD.

111 Orfus Road  
Toronto, Ontario  
M6A 1M4

("Tenant")

FOR PREMISES IN: Upper Canada Mall  
Newmarket, Ontario

PREMISES #EE9

LANDLORD AND TENANT, in consideration of the covenants herein contained, hereby agree as follows:

## ARTICLE 1.00 DEFINITIONS

1.01 *Definitions* In this Lease (and in addition to the words and phrases defined in Exhibit B):

- (a) "Annual Rent" means the amount payable by Tenant to Landlord in respect of each year of the Term under Article 4.01;
- (b) "Article" means an article of this Lease;
- (c) "Architect" has the same meaning as defined in Section 1.01 of Exhibit B;
- (d) "Authority" means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, Landlord, Tenant, the Premises or the Project, including the businesses carried on therein;
- (e) "Commencement Date" means the first day of the Term;
- (f) "Contaminant" means any solid, liquid, gas, odour, heat, sound vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may, if released into the environment, have an adverse effect on the natural environment or on people, property or the normal conduct of business;
- (g) "Discharge" means any movement of a Contaminant into the indoor or outdoor air, onto the ground, into the surface water or ground water, or into the sewers or any watercourse, and includes a leak;
- (h) "Environmental Law" means the statutes, regulations, policies, directives, orders, approvals and other legal requirements of an Authority or of the common law which affect the Premises or Tenant's business, and which impose any obligations relating to the protection, conservation or restoration of the natural environment;
- (i) "Exhibit A" means the plan(s) attached hereto as Exhibit A;
- (j) "Exhibit B" means the provisions relating to Occupancy Costs and other matters attached hereto as Exhibit B;
- (k) "Exhibit C" means the provisions relating to the finishing of the Premises and other matters attached hereto as Exhibit C;

- (l) "Exhibit D" means the legal description(s) attached hereto as Exhibit D;
- (m) "Exhibit E" means the Rules and Regulations attached hereto as Exhibit E;
- (n) "Fiscal Year" means a twelve month period (all or part of which falls within the Term) from time to time determined by Landlord with the concurrence of the appropriate taxation authorities, at the end of which Landlord's books are balanced for auditing and/or taxation purposes;
- (o) "Hazardous Waste" means any hazardous waste, hazardous product, Contaminant, deleterious substance, special waste, liquid industrial waste, dangerous goods or substance which is controlled or regulated under Environmental Law. For ease of reference, this includes, but is not limited to,
  - (a) any waste which is composed in whole or in part of substances which are:
    - (i) corrosive,
    - (ii) ignitable,
    - (iii) pathological,
    - (iv) radioactive,
    - (v) reactive, or
    - (vi) toxic; and
  - (b) liquid waste, whether or not from a commercial or industrial process, that cannot lawfully be disposed of through the municipal sewers;
- (p) "Lease" means this lease, Exhibits A, B, C, D, and E to this Lease, and every properly executed instrument which by its terms amends, modifies or supplements this Lease;
- (q) "Lease Year" means a period of twelve calendar months except that the first Lease Year of the Term will begin on the Commencement Date and end on the last day of the calendar month in which the first anniversary of the day immediately preceding the Commencement Date occurs and succeeding Lease Years will comprise successive periods of twelve calendar months (and the last Lease Year in the Term may contain less than twelve calendar months), but if Landlord deems it expedient, it may by written notice to Tenant specify an annual date upon which any Lease Year will terminate, in which event the appropriate adjustments will be made between the parties;
- (r) "Occupancy Costs" means amounts payable by Tenant to Landlord under Article 4.03;
- (s) "Other Charges" means amounts payable by Tenant to Landlord under Article 4.04;
- (t) "Percentage Rent" means amounts payable by Tenant to Landlord under Article 4.02;
- (u) "Premises" means the premises containing 6,194 square feet, more or less, on the 2nd floor(s) of the Building as generally indicated on Exhibit A;
- (v) "Project" has the same meaning as defined in Section 1.01 of Exhibit B;
- (w) "Rent" means the aggregate of all amounts payable by Tenant to Landlord under Articles 4.01, 4.02, 4.03, 4.04 and all other amounts payable by Tenant to Landlord under this Lease;
- (x) "Term" means the period of time set out in Article 3.01;
- (y) "Toxic Substances" means any substance which is listed on the List of Toxic Substances prescribed under the Canadian Environmental Protection Act (as amended from time to time, or any replacement legislation), or is designated to be toxic or hazardous by an Authority.



## ARTICLE 2.00 GRANT OF LEASE

- 2.01 **Grant** Landlord hereby demises and leases the Premises to Tenant, and Tenant hereby leases and accepts the Premises from Landlord, to have and to hold during the Term, subject to the terms and conditions of this Lease.
- 2.02 **Quiet Enjoyment** Landlord will warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term, subject to the terms and conditions of this Lease.
- 2.03 **Covenants of Landlord and Tenant** Landlord covenants to observe and perform all of the terms and conditions to be observed and performed by Landlord under this Lease. Tenant covenants to pay the Rent when due under this Lease, and to observe and perform all of the terms and conditions to be observed and performed by Tenant under this Lease.

## ARTICLE 3.00 TERM AND POSSESSION

- 3.01 **Term** Notwithstanding Articles 3.02 and 3.03, the term of this Lease will be ten (10) years, two (2) months and thirteen (13) days, beginning on the 18th day of the month of November, 2002 and ending on the last day of the month of January, 2013, unless terminated earlier as provided in this Lease.
- 3.02 **Early Occupancy** If Tenant begins to conduct business in all or any portion of the Premises before the Commencement Date, Tenant will pay to Landlord on the Commencement Date a rental in respect thereof from the date Tenant begins to conduct business in all or any part of the Premises to the Commencement Date, which rental will be that proportion of Rent for one calendar year which the number of days in such period bears to 365. Except where clearly inappropriate, the provisions of this Lease will be applicable during such period. Tenant will not conduct business from the Premises before the Commencement Date without Landlord's prior written approval.
- 3.03 **Delayed Possession** If Landlord is delayed in delivering possession of all or any portion of the Premises to Tenant on or before the Commencement Date, then unless such delay is principally caused by or attributable to Tenant, its employees, servants, agents or independent contractors, Tenant will take possession of the Premises on the date (not later than one year after the Commencement Date) when Landlord delivers possession of all of the Premises, which date will be conclusively established by notice to Tenant, accompanied and confirmed by an Architect's certificate, at least five days before such date. This Lease will not be void or voidable nor will Landlord be liable to Tenant for any loss or damage resulting from any delay in delivering possession of the Premises to Tenant, but no Rent will be payable by Tenant for the period prior to the date on which Landlord can so deliver possession of all of the Premises, unless Tenant elects to take possession of a portion of the Premises, whereupon Rent will be payable in respect of such portion from the date such possession is so taken.
- 3.04 **Acceptance of Premises** Taking possession of all or any portion of the Premises by Tenant will be conclusive evidence as against Tenant that the Premises or such portion thereof are in satisfactory condition on the date of taking possession, subject only to latent defects and to those deficiencies (if any) listed in writing in a notice delivered by Tenant to Landlord not more than 30 days after the later of the date of taking possession and the Commencement Date.

## ARTICLE 4.00 RENT AND OCCUPANCY COSTS

4.01 **Annual Rent** Tenant will pay to Landlord as Annual Rent for the Premises in respect of each year of the Term the following sums, which will be payable in advance and without notice in equal monthly installments, the first installment being due on the Commencement Date, and subsequent installments being due on the first day of each calendar month thereafter during the Term:

- (a) \$260,148.00 per annum for the first five (5) years of the Term, based on a charge of \$42.00 per annum per square foot of the Premises, payable in monthly installments of \$21,679.00; and
- (b) \$278,730.00 per annum for the remaining years of the Term, based on a charge of \$45.00 per annum per square foot of the Premises, payable in monthly installments of \$23,227.50.

These amounts, having been determined on the basis of the number of square feet stated in Article 1.01(u), will be subject to a proportionate adjustment in the event that the number of Square Feet of Space in the Premises as calculated by the Architect pursuant to Section 3.01 of Exhibit B is greater or lesser than the number stated in the said Article 1.01(u).

In this Article 4.01, "year of the Term" means a period of twelve (12) consecutive calendar months, except that the first year of the Term will begin on the Commencement Date and end on the last day of the calendar month in which the first anniversary of the day immediately preceding the Commencement Date occurs, and succeeding years of the Term will comprise successive periods of twelve (12) calendar months and, except further, that the last year of the Term may be less than twelve (12) calendar months.

4.02 **Percentage Rent** In addition to Annual Rent, Tenant will pay to Landlord as Percentage Rent for the Premises an amount for each Lease Year equal to:

- (a) 5% of Gross Revenue in the Lease Year, minus
- (b) Annual Rent for such Lease Year,

payable in ~~monthly~~ quarterly installments on a cumulative basis at the times and in the manner provided in Article 4.07.

4.03 **Occupancy Costs** It is the stated purpose and intent of Landlord and Tenant that this Lease will be fully net to Landlord except as otherwise set out in this Lease. Tenant will pay to Landlord, at the times and in the manner provided in Article 4.08, the Occupancy Costs (including, without limiting the generality of the foregoing, common area costs and taxes) determined under Exhibit B.

4.04 **Other Charges** Tenant will pay to Landlord, at the times and in the manner provided in this Lease or, if not so provided, as reasonably required by Landlord, all amounts (other than that payable under Articles 4.01, 4.02 and 4.03) which are payable by Tenant to Landlord under this Lease.

4.05 **Payment of Rent - General** All amounts payable by Tenant to Landlord under this Lease will be deemed to be Rent and will be payable and recoverable as Rent in the manner herein provided, and Landlord will have all rights against Tenant for default in any such payment as in the case of arrears of Rent. Rent will be paid to Landlord, without deduction or set-off, in legal tender of the jurisdiction in which the Project is located. If and to the extent Landlord so requires, Rent will be paid to Landlord, at Tenant's expense, by an automated debiting system, under which payments are deducted from Tenant's bank account and credited to Landlord's bank account, without prejudice to any other right or remedy of Landlord; otherwise, Rent will be paid to Landlord at the address of Landlord as set forth in the beginning of this Lease, or to such other person or at such other address as Landlord may from time to time designate in writing. Tenant's obligation to pay Rent will survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, it is understood and agreed that so long as Tenant is Fairweather Ltd., and provided Tenant is not in monetary or material default of the terms of this Lease, the obligation to participate in the automated debiting system with respect to payment of Rent will be suspended.

The Tenant will not be required to pay the amount of the Federal Goods and Services Tax (the "G.S.T.") paid or payable by the Landlord on the purchase of goods and services included in Occupancy Costs which is available to and successfully claimed by the Landlord either as a credit in determining the Landlord's net tax liability or as a refund on account of the G.S.T.

The Tenant acknowledges that the aforesaid exemption will not relieve the Tenant from payment of the G.S.T. attributable to the payment of any amounts (including, but not limited to, Annual Rent, Percentage Rent, Occupancy Costs, Promotion Fund/Merchants' Association contributions and other Tenant's expenses as set out in Schedule B herein) payable pursuant to this Lease.

- 4.06 **Rent - Adjustment for Partial Months** If the Commencement Date is not the first day of a calendar month, the installment of Rent payable on the Commencement Date will be that proportion of the Rent which the number of days from the Commencement Date to the last day of the calendar month in which the Commencement Date occurs (both the Commencement Date and the last day being inclusive) bears to 365. If the Term ends on a day other than the last day of a calendar month, the installment of Rent payable on the first day of the last calendar month of the Term will be that proportion of the Rent which the number of days from the first day of such last calendar month to the last day of the Term (both the first day and the last day being inclusive) bears to 365.
- 4.07 **Payment - Percentage Rent**
- (a) On or before the tenth day of the second and each succeeding calendar month during the Term and of the month following the end of the Term, Tenant will deliver to Landlord a written statement certified to be correct by Tenant showing in reasonable detail the Gross Revenue in the immediately preceding month. ~~If the percentage (as stipulated in Article 4.02(a)) of Gross Revenue in such month exceeds the installment of Annual Rent which was payable in and for such month, the statement will be accompanied by payment to Landlord of an amount equal to the excess.~~ If the aggregate of the amounts resulting from the application of the percentage stipulated in Article 4.02(a) to the Gross Revenue for each quarterly period of each Lease Year exceeds the aggregate of payments of Annual Rent and Percentage Rent (if any) theretofore paid by Tenant for such Lease Year, then the excess will be paid by Tenant to Landlord within 10 days after the expiry of each quarterly period.
- (b) Unless delayed by causes beyond Tenant's reasonable control, Tenant will deliver to Landlord within 60 days after the end of each Lease Year (or, if so delayed, as soon as practical thereafter) a written statement certified to be ~~audited and found correct by an independent, practicing chartered accountant~~ the chief financial officer of the Tenant showing in reasonable detail and by month the Gross Revenue for the preceding Lease Year. If the aggregate of ~~monthly~~ quarterly installments of Percentage Rent actually paid by Tenant to Landlord in respect of such Lease Year differs from the amount of Percentage Rent payable for such Lease Year under Article 4.02, within 30 days after the date of delivery of such statement Tenant will pay or Landlord will refund the difference without interest, (as the case may be), subject to the deduction by Landlord of Rent and any other amount then owing by Tenant to Landlord.
- 4.08 **Payment - Occupancy Costs**
- (a) Prior to the Commencement Date (or as soon as possible thereafter) and the beginning of each Fiscal Year thereafter, Landlord will compute and deliver to Tenant a bona fide estimate of Occupancy Costs for the appropriate Fiscal Year and without further notice Tenant will pay to Landlord in monthly installments one-twelfth of such estimate simultaneously with Tenant's payments of Annual Rent during such Fiscal Year.
- (b) Unless delayed by causes beyond Landlord's reasonable control, Landlord will deliver to Tenant within 120 days after the end of each Fiscal Year a written statement (the "Statement") setting out in reasonable detail the amount of Occupancy Costs for such Fiscal Year and certified to be correct by ~~an~~ the chief financial officer of Landlord or of the management company for the Project appointed by Landlord. If the aggregate of monthly installments of Occupancy Costs actually paid by Tenant to Landlord during such Fiscal Year differs from the amount of Occupancy Costs payable for such Fiscal Year under Article 4.03, within 30 days after the date of delivery of the Statement Tenant will pay or Landlord will refund the difference without interest, (as the case may be), subject to the deduction by Landlord of Rent and any other amount then owing by Tenant to Landlord under this Lease.
- (c) If Landlord and Tenant disagree on the accuracy of Occupancy Costs as set forth in a Statement, Tenant will nevertheless make payment in accordance with any notice given by Landlord, but the disagreement will immediately be referred by Landlord for prompt decision

by a mutually acceptable chartered accountant, architect, insurance broker or other professional consultant who will be deemed to be acting as expert and not arbitrator, and a determination signed by the selected expert will be final and binding on both Landlord and Tenant. In the event that Landlord and Tenant do not agree on the appointment of such expert either party may apply to have such appointment made by a single arbitrator appointed under the law dealing with arbitrations applicable in the jurisdiction in which the Project is located. Any adjustment required to any previous payment made by Tenant or Landlord by reason of any such decision will be made within 14 days thereof, and the party required to make payment under such adjustment will bear all costs of the expert making such decision.

- (d) Neither party may claim a re-adjustment in respect of Occupancy Costs for a Fiscal Year if based upon any error of computation or allocation except by notice delivered to the other party within ~~six months~~ one year after the date of delivery of the Statement.

4.09 **Gross Revenue** "Gross Revenue" will be construed to include the entire amount of the sale price as charged to the general public at the time of sale, whether for cash or otherwise, of all sales (including rentals) of merchandise and services and of all other receipts whatsoever, in respect of all business conducted at, in, upon or from the Premises although orders based upon such sales or other receipts may be filled elsewhere, and including all sales by any sublessee, concessionaire, licensee, vending machine, coin operated machine (except those vending or coin operated machines installed for the sole benefit of Tenant's employees), or otherwise in the Premises. No deduction will be allowed for uncollected or uncollectible credit accounts. Gross Revenue will not include, however, any sums (other than any commission or service fee to Tenant) shown separately from the price, collected and paid out for any sales tax or service tax or similar tax, imposition or assessment levied, imposed or assessed by any governmental authority which Tenant is required to remit to such authority; nor the exchange of goods or merchandise between the stores of Tenant, if any, where such exchange of goods or merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has been made at, in, from or upon the Premises; nor the amount of any discount on sales actually given to bona fide employees of Tenant; nor the amount of returns to shippers or to manufacturers; nor the amount of merchandise sold or some part thereof which is thereafter returned by the purchaser and accepted by Tenant; nor sales of fixtures or other capital items sold by Tenant after use thereof in the conduct of Tenant's business in the Premises. All exclusions from Gross Revenue permitted by this Article 4.09 must be documented to the reasonable satisfaction of Landlord to allow for complete and detailed verification of the validity of such exclusions. Each sale upon an installment or credit basis (which, without limiting the generality of the foregoing, includes lay-away sales or any other sale made where deposits are received by Tenant) will be included and treated as a sale for the full price in the month in which such sale is made regardless of whether (or the time when) Tenant will receive payment in full.

In addition to the foregoing, Gross Revenue will not include:

- (a) the amount of interest, finance, credit, and/or carrying charges separately charged to Tenant's customers not included as part of the purchase price, provided that such interest, finance, credit, and/or carrying charges are levied by Tenant as a service for Tenant's customers, Tenant hereby covenanting that it is not primarily in the financing business, or primarily in the business of lending money for profit;
- (b) the amount separately charged to Tenant's customers for delivery of merchandise sold out of the Premises or for repairs or alterations to merchandise sold out of the Premises provided that there is no profit to Tenant from such delivery, repair or alteration services and that such services are incidental to and a minor portion of Tenant's business carried on in the Premises;
- (c) sales of gift or merchandise certificates provided that the amount of sales of merchandise or services on or from the Premises paid for in whole or in part by such certificates will be included in Gross Revenue;
- (d) the sale of fixtures, goods and chattels included in a bulk sale associated with a permitted assignment of this Lease or subletting of the Premises;
- (e) the amount of any refunds or exchange of merchandise whether in cash or merchandise provided that the amount of sale of merchandise on or from the Premises paid for in whole or in part from such refund or exchange will be included in Gross Revenue; and

- (f) goods and services taxes, value added taxes, business transfer taxes, multi-stage taxes or any other similar impositions levied by and actually paid to any authorities having jurisdiction in that regard or which serve as a credit or offset in determining the Tenant's net tax liability.

4.10 **Gross Revenue - Records** Full true and accurate records from which Gross Revenue in any Lease Year may be readily and correctly determined will be kept by Tenant at the Premises or at the Tenant's head office in accordance with all the requirements of Articles 4.02, 4.07, 4.09 and 4.11 including, without limiting the generality of the foregoing, the requirement to retain all sources of primary sales records (that is, cash register tapes, prenumbered sales tickets, daily sales reports, etc.) and otherwise in accordance with generally accepted accounting principles until at least the fifth anniversary of the end of such Lease Year. Landlord or anyone designated by Landlord will have access to such records at any and all times during business hours upon 48 hours' prior written notice for the purpose of examining and reviewing all the accounting records and procedures adopted by Tenant for the purpose of recording and control of all transactions affecting the determination of Gross Revenue provided the Landlord does not materially interfere with the Tenant's business on the Premises. Tenant covenants to comply with all reasonable directions issued to it by Landlord from time to time respecting the accounting records and procedures to be adopted for the proper and accurate recording and control of all transactions affecting the determination of Gross Revenue including, without limiting the generality of the foregoing, the ~~mandatory~~ use of a cash register ~~approved by Landlord~~ of a type used by Tenant in its other stores in Canada. Landlord will not disclose any confidential information so obtained except to the extent that disclosure is reasonable in the conduct of Landlord's business which includes, without limitation, the sale or financing of all or any part of the Project.

4.11 **Gross Revenue - Audit**

- (a) As the bona fide reporting of Gross Revenue and the due payment of Percentage Rent are essential to Landlord, in addition to its rights specified in Article 4.10, Landlord will be entitled ~~at any time and~~ from time to time after ten (10) days' written notice to have all or any of the accounting records and procedures of Tenant affecting the determination of Gross Revenue specially audited or examined by an independent practicing accountant or professional consultant designated by Landlord and who may be required by Landlord to report to Landlord his opinion as to any matters arising under Article 4.10, including the adequacy of Tenant's accounting records and procedures, whether Tenant has complied with Article 4.10, whether Tenant has accurately reported Gross Revenue, and the amount of Gross Revenue and of Percentage Rent payable for any period.
- (b) If such independent practicing accountant or professional consultant reports to Landlord that in his opinion as at the date of his audit or examination:
- (i) Tenant's accounting records and procedures were inadequate or Tenant was not complying with Article 4.10;
  - (ii) Tenant's accounting records and procedures were not sufficient to permit a determination of Gross Revenue for any period and such report will therein set out his determination of Gross Revenue for such period and the amount of any overpayment or underpayment of Percentage Rent; or
  - (iii) Tenant's accounting records and procedures which he was able to inspect were not sufficient to permit a determination of Gross Revenue for any period;

then, in the corresponding cases:

- (i) Landlord may deliver a copy of such accountant's or consultant's report to Tenant, and Tenant will forthwith and for the remainder of the Term take such steps as may be recommended, necessary or advisable to remedy the default;
- (ii) Landlord will deliver a copy of such accountant's or consultant's report to Tenant and Landlord will forthwith repay to Tenant any amount therein set out as overpayment of Percentage Rent (subject to the deduction by Landlord of any Rent or other amounts then owed by Tenant to Landlord) or Tenant will forthwith pay to Landlord any amount therein set out as an underpayment of Percentage Rent, as the case may be; or
- (iii) Landlord may thereafter deliver to Tenant an estimate made by Landlord of Gross Revenue for such period and the amount of any underpayment of Percentage Rent (which estimate will be based upon any information accessible to Landlord which

Landlord considers reliable, the apparent business conducted on or from the Premises, and such records of Tenant as have been made available, having regard to the possibility of errors, omissions or inaccuracies therein), and Tenant will forthwith pay to Landlord any amount therein set out as an underpayment of Percentage Rent. Every such estimate will be binding upon Tenant until and except to the extent that Tenant proves it inaccurate, and in no event will such estimate be contestable by Tenant after one year from delivery thereof.

- (c) All costs of any special audit or examination or report under Article 4.11 (a) will be payable by Tenant to Landlord on demand if such accountant or consultant reports that in his opinion Tenant's accounting records and procedures were inadequate or Tenant was not complying with Article 4.02, 4.09 or 4.10, or if Gross Revenue for any period as determined by such accountant or consultant is greater by three percent or more than that reported by Tenant, or if Landlord is entitled under Article 4.11 (b) to make an estimate of the Percentage Rent payable by Tenant.
- (d) The acceptance by Landlord of any statement of Gross Revenue delivered by Tenant or any payment of Percentage Rent based thereon or on any accountant's or consultant's determination or Landlord's estimate, will not be deemed to relieve Tenant from its obligations to comply with the provisions of this Lease or from the consequences of any default thereunder, nor be a waiver by Landlord of any of the obligations of Tenant or any of the rights of Landlord under this Lease. Without limiting the generality of the foregoing, Landlord will be entitled to all its remedies under this Lease and in any event will have the remedy of termination of the Lease and forfeiture if there is any substantial or continuing breach of such obligations by Tenant, or if there has been any refusal or omission by Tenant to report or to maintain or produce records affecting the determination of Gross Revenue, or to maintain accounting procedures recommended by an independent practicing accountant or professional consultant appointed by Landlord.

4.12 **Gross Revenue - Informal Report** Landlord may infrequently require informal reports of Gross Revenue immediately after the end of each month, and Tenant will instruct its personnel at the Premises to furnish such information to Landlord (without representation as to the accuracy thereof) when so requested by an authorized representative of Landlord.

## ARTICLE 5.00 USE OF PREMISES

5.01 **Use and Business Name.** The Premises will be used and occupied only as a store for the sale at retail of ladies' wear, children's wear, junior ladies' wear, unisex clothing and accessories, and in not more than 10% of the retail sales area of the Premises and also not as a separate store within the Premises, footwear, provided that such footwear is sold as a fashion co-ordinate to such ready-to-wear fashions and is also sold in all of tenant's stores in the Province of Ontario having the same business name as carried on in the Premises, and the business of Tenant in the Premises will be carried on under the name and style of "**FAIRWEATHER**" and under no other name and style unless approved by Landlord in writing. Unless (and then only to that extent) expressly permitted under the provisions of this Article 5.01, Tenant will not use nor permit the whole or any part of the Premises to be used for or in respect to or in connection with the sale or distribution of any food or food product.

5.02 **Hours of Business** During the Term of this Lease, Tenant will conduct its business in the Premises on such days and during such hours as is required, from time to time, by regulation of Landlord unless prevented from so doing by properly constituted authority.

In the event Tenant fails to conduct its business in accordance with this Article 5.02 then Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.02.

5.03 **Continuous Occupancy** Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project, the renewal of other leases therein, the efficient and economic supply of services and utilities, the maintenance of Percentage Rent, and in the character and quality of the other tenants in the Project. Tenant therefore covenants and agrees that subject to Article 5.02, throughout the Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.02 and not vacate or abandon the Premises at any time during the Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord. Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to ~~obtain~~ apply for an injunction requiring Tenant to comply with the provisions of this Article 5.03.

### 5.04 **Restrictions on Use & Occupancy**

- (a) Tenant will carry on its business on the Premises in a reputable manner and in compliance with all the provisions of this Lease, and in particular Tenant will not advertise, do, omit, permit or suffer to be done or exist upon the Premises anything which will be or result in or bring about a breach of any provision of this Lease.
- (b) Tenant will not conduct or advertise on or from or pertaining to the Premises as any part of its business a mail order or catalogue store or the sale of bankruptcy, distress or secondhand goods, war surplus articles, insurance salvage stock, fire sale stock or merchandise damaged by fire or purported to be damaged by fire, unless such damage actually occurred on the Premises, or hold any auctions or conduct any business which because of the merchandise likely to be sold or the merchandising methods likely to be used would tend to lower the character of the Project or injure the Project or the business done therein.
- (c) Tenant, or anyone acting through, for, or in place of Tenant, will not conduct or advertise on or from or pertaining to the Premises any auction, bankruptcy or receivership sale or any closing out wholesale business, nor will Tenant grant any concession, license or permission to any third party to sell or take orders for merchandise or services in the Premises. Tenant will not divert to another location business that would normally be conducted on or from the Premises.
- (d) Tenant will not use in the Premises any travelling or flashing lights or signs or any loudspeakers, television, phonographs, radio or other audio-visual or mechanical devices in a




manner so that they can be heard or seen outside the Premises. Landlord will be entitled to remove such equipment ~~without notice at any time~~ if Tenant fails to do so within two (2) days of Landlord's request and such removal will be done and all damages as a result thereof will be made good, in each case at the cost of Tenant payable as Rent forthwith on demand.

- 5.05 ***Inventory, Staff and Fixtures*** Tenant will maintain available a substantial stock of goods, wares and merchandise adequate to ensure successful operation of Tenant's business, and will employ and maintain sales and other personnel sufficient at all times for proper service to customers, but Tenant will store and stock in the Premises only such inventories as Tenant intends to sell at retail on or from the Premises; and unless otherwise agreed by Landlord, Tenant will use for office, storage and other non-selling purposes only such space in the Premises as is reasonably required to maintain Tenant's retail sales therein. Tenant will install and maintain at all times in the Premises modern and high quality fixtures, furnishings, fittings and equipment adequate, appropriate and properly laid out to sustain Tenant's retail sales.
- 5.06 ***Promotion of Name*** Tenant will display such name as Landlord may from time to time designate for the retail area(s) of the Project ~~in its stationery used upon the Premises, and in material which is given, visible or available to customers of Tenant upon the Premises and will promote such name~~ in any advertisements or promotional material published or initiated by Tenant specifically in regard to its business from the Premises.
- 5.07 ***Display Windows*** Tenant will keep display windows (if any) neatly dressed. Display windows and lighted signs (if any) will be kept illuminated by Tenant on all business days until at least one half hour after the Project closes for business.
- 5.08 ***Compliance with Laws*** The Premises will be used and occupied in a safe, careful and proper manner so as not to contravene any present or future governmental or quasi-governmental laws in force or regulations or orders including, without limitation, each Environmental Law. If, due solely to Tenant's use of the Premises, improvements are necessary to comply with any of the foregoing or with the requirements of insurance carriers, Tenant will pay the entire cost thereof.
- 5.09 ***Nuisance*** Tenant will not cause or maintain any nuisance or hazard in or about the Premises and will keep the Premises free of debris, trash, rodents, vermin and anything of a dangerous, noxious or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or any unusual or objectionable noises or odours or anything which may disturb the enjoyment of the Project and all the Common Areas and facilities thereof by customers and other tenants of the Project. Tenant will not place or keep any merchandise or other thing beyond the permanent floor mounted storefront or closure of the Premises or in the Common Areas.
- 5.10 ***Advertising, Trade Names and Restricted Marks***
- (a) Tenant will may throughout the Term advertise its business and its products or services or both in advertising media directed at residents of the trade area of the Project. In its advertising, Tenant will use the name of the Project, such trade names, symbols and slogans as may be designated by Landlord or the Merchants' Association (as the case may be), but Tenant will not indulge in any advertising or sales promotion which is undignified or not in conformity with the highest standards of practice among stores dealing in similar merchandise or might harm or tend to harm the business reputation of Landlord or reflect unfavourably on the Project, or might confuse or mislead or tend to confuse or mislead the public. Tenant will not sell, advertise, conduct or solicit business anywhere within the Project other than in the Premises.
  - (b) The name for the Project which Landlord may from time to time adopt and every name or mark adopted by Landlord in connection with the Project will be used by Tenant only in association with sales made at or from and the business carried on in the Premises during the Term and Tenant's use thereof will be subject to such regulations as Landlord may from time to time impose. Tenant will not acquire any rights in any such restricted name or mark, and upon the termination of this Lease all its interest herein will be deemed to have been surrendered to Landlord and Tenant will thereafter cease and abandon all use thereof. If Landlord so requests, Tenant will execute registered user applications or agreements or both to protect Landlord's trade mark rights.

- 5.11 **Non-Competition** Tenant will not during the Term of this Lease, without the prior written consent of Landlord (which consent may be unreasonably or arbitrarily withheld), either individually or in partnership or in conjunction with any Person ("Person" including any person or persons, firm, partnership, corporation or other entity under Tenant's control or which controls Tenant or which is associated or affiliated with Tenant) as principal, agent, shareholder, employee, lender, or, without limitation, in any other manner whatsoever, directly or indirectly participate in, manage, operate, have any beneficial interest in, advise, lend money to, guarantee the debts or obligations of, furnish any other assistance to or permit Tenant's name (or names) or any part thereof to be used in connection with any business located in premises which are within 9 kilometers of the Project which is competitive to any business carried on or required to be carried on by Tenant in the Premises under the terms of this Lease.

These restrictions will not apply to any premises occupied by Tenant in or from which such competitive business is carried on as of the Commencement Date, so long as such premises is neither increased in size nor changed in location thereafter. Tenant agrees that all restrictions upon Tenant set out in this Article 5.11 are reasonable and valid and Tenant waives all defences to the strict enforcement thereof by Landlord.

Without limiting the other remedies of Landlord, whenever there is a breach by Tenant of any of the restrictions set out in this Article 5.11 Landlord may, at its discretion, increase the Annual Rent to the aggregate of Annual Rent and Percentage Rent paid or payable for the Lease Year immediately preceding the date upon which Tenant first breaches the restrictions set out in this Article 5.11 or if less than one Lease Year has elapsed from the Commencement Date to the date of such breach, or there has been an abatement of Rent during the said Lease Year, the Annual Rent payable by Tenant may be increased to be equal to the product obtained by multiplying 365 by the average daily Annual Rent and Percentage Rent paid or payable during the period in question (excluding from such calculations, all rental and all days during which there has been an abatement of Rent), and the Percentage Rent payable by Tenant during the balance of the Term from the date of such breach will be the amount, if any, by which the percentage (as stipulated in Article 4.02(a)) of Gross Revenue in each Lease Year exceeds the increased Annual Rent for each Lease Year during the balance of the Term.



## ARTICLE 6.00 SERVICES, MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD

- 6.01 **Operation of Project** During the Term Landlord will operate and maintain the Project in accordance with all applicable laws and regulations and with standards from time to time prevailing for first-class buildings of its type in the area in which the Project is located and, subject to participation by Tenant by payment of Occupancy Costs under Article 4.03, will provide the services set out in Articles 6.02 and 6.03.
- 6.02 **Services** Landlord will provide in the Project:
- (a) domestic hot (or tempered) and cold running water and necessary supplies in common washrooms sufficient for the normal use thereof,
  - (b) heat, ventilation, air conditioning, lighting, electric power, domestic hot (or tempered) and cold running water, and janitor service in the Common Areas (where appropriate), and
  - (c) maintenance, repair, and replacement as set out in Article 6.03.
- 6.03 **Maintenance, Repair and Replacement** Landlord will operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Project and for provision of Landlord's services under Article 6.02 (except as such may be installed by or be the property of Tenant or others (excluding Landlord) or both and except for the heating, ventilating and air conditioning equipment installed for the Premises where such equipment is not part of a shared or central system), and will be responsible for and will expeditiously maintain and repair the foundations, structure and roof of the Project (~~ex-including the roof membrane; however, the costs of the repair and maintenance will be included in the common area costs charged to the tenants~~) and repair damage to the Project which Landlord is obligated to insure against under Article 9.00, provided that:
- (a) if all or part of such systems, facilities and equipment are destroyed, damaged or impaired, Landlord will have a reasonable time in which to complete the necessary repair or replacement, and during that time will be required only to maintain such services as are reasonably possible in the circumstances;
  - (b) Landlord may temporarily discontinue such services or any of them at such times as may be necessary due to causes (except lack of funds) beyond the reasonable control of Landlord;
  - (c) Landlord will use reasonable diligence in carrying out its obligations under this Article 6.03, but will not be liable under any circumstances for any consequential damage to any person (including without limitation, Tenant) or any property for any failure to do so;
  - (d) no reduction or discontinuance of such services under clauses (a) or (b) of this Article 6.03 will constitute as an eviction of Tenant or (except as specifically provided in this Lease) release Tenant from any obligation of Tenant under this Lease; and
  - (e) nothing contained herein will derogate from the provisions of Articles 16.01, 16.02, 16.03, 16.04 or 16.05.
- 6.04 **Alterations by Landlord** Landlord may from time to time upon ten days' prior written notice (where reasonably possible):
- (a) make repairs, replacements, changes or additions to the structure, systems, facilities and equipment in the Premises where necessary to serve the Premises or other parts of the Project;
  - (b) make changes in or additions to any part of the Project not in or forming part of the Premises; and
  - (c) change or alter the location of Common Areas,

provided that in doing so Landlord will not disturb or interfere with Tenant's use of the Premises and operation of its business any more than is reasonably necessary in the circumstances and will repair any damage to the Premises caused thereby and provided such alterations do not affect the pedestrian traffic flow or visibility of the Premises from the common areas of the Project any more than is reasonably necessary in the case of a temporary alteration, and do not materially

affect the pedestrian traffic flow in front of or in close proximity to the Premises or visibility of the Premises from the common areas of the Project in the case of any permanent alteration.

- 6.05 *Access by Landlord* Tenant will permit Landlord, after 48 hours' prior written notice (except in the case of an emergency when notice is not required) to enter the Premises outside normal business hours, and during normal business hours where such will not unreasonably disturb or interfere with Tenant's use of the Premises and operation of its business, to examine, inspect and (during the last six (6) months of the Term) show the Premises to persons wishing to lease them, to provide services or make repairs, replacements, changes or alterations as set out in this Lease, and to take such steps as ~~Landlord may deem~~ are necessary for the safety, improvement or preservation of the Premises or the Project. Landlord will whenever possible consult with ~~or give reasonable notice to~~ Tenant prior to such entry, but no such entry will constitute an eviction or entitle Tenant to any abatement of Rent.
- 6.06 *Energy, Conservation and Security Policies* Landlord will be deemed to have observed and performed the terms and conditions to be performed by Landlord under this Lease, including those relating to the provision of utilities and services, ~~if in so doing it acts~~ it observes and performs such terms and conditions in accordance with a directive, policy or request of a governmental or quasi-governmental authority serving the public interest in the fields of energy, conservation or security.

## ARTICLE 7.00 UTILITIES, SERVICES, MAINTENANCE AND ALTERATIONS BY TENANT

- 7.01 **Cleaning** During the Term, Tenant will keep the Premises in a clean and wholesome condition, and will provide at its own expense therein janitor services, removal of debris and garbage, and cleaning of all interior and exterior windows, doors and ~~the exterior~~ storefront of the Premises.
- 7.02 **Heat, Ventilation, Air Conditioning, Utilities** Subject to Article 7.03, during the Term, Tenant will provide in the Premises at its own expense heat, ventilation, air-conditioning, water, gas, electricity, steam and other utilities and services.
- 7.03 **Common Utilities** If heat, ventilation, air conditioning, water, gas, electricity, steam or any other utility or service is provided by Landlord, but is not metered or is supplied to the Premises through meters common to other tenants or a group of tenants in the Project, Landlord will pay the cost thereof and, if not otherwise provided in this Lease, Landlord will apportion such cost pro rata among the tenants utilizing the utility or service or supplied through such common meters, acting reasonably and equitably, and Tenant will reimburse Landlord the amount of its pro rata share of such cost plus 15% to cover Landlord's costs of administration of such pro rata share, provided that if Landlord will from time to time reasonably determine that the use of any such utility or service in the Premises is disproportionate to the use of other tenants, Landlord may adjust Tenant's share of the cost thereof from a date reasonably determined by Landlord to take equitable account of the disproportionate use. At Landlord's request, Tenant will install and maintain at Tenant's expense metering devices for checking the use of any such utility or service in the Premises. In all cases Tenant will reimburse Landlord for any demand of energy charges. It is understood and agreed that if there is a separate meter for utilities consumed on the Premises, the administration fee of 15% as hereinbefore set out will not be applicable.
- 7.04 **Condition of Premises** Except to the extent that Landlord is specifically responsible therefor under this Lease and except for repairs and replacements due to structural defects and weaknesses, Tenant will maintain the Premises and all improvements therein in good order and condition, including:
- (a) repainting and redecorating the Premises and cleaning drapes and carpets (if any) at reasonable intervals as needed;
  - (b) making repairs and replacements as needed to glass, plate glass, store windows and storefronts, signs, mouldings, doors, hardware, partitions, walls, fixtures, lighting, finishes, plumbing, wiring, ductwork and piping (including that portion which is contiguous to, and serves the Premises), ceilings, floors and thresholds in the Premises;
  - (c) maintaining, repairing and replacing as needed all elevators, escalators, mechanical, electrical and plumbing systems, facilities and equipment in the Premises. Without limiting the generality of the foregoing, Tenant will be responsible for maintaining, repairing and replacing the heating, ventilating and air-conditioning equipment (the "Tenant HVAC System") installed for the Premises where such equipment is not part of a shared or central system, provided that Landlord may, at its option and upon written notice to Tenant, elect to carry out the maintenance and repair of the Tenant HVAC System as may be required from time to time, in which case Tenant will thereafter cease to be responsible for the maintenance and repair of the Tenant HVAC System and Tenant will reimburse Landlord for Tenant's pro rata share (determined on a reasonable basis) of the costs incurred by Landlord in carrying out maintenance and repairs to heating, ventilating and air-conditioning equipment installed for premises as may be required from time to time plus an administration fee equal to 15% of such costs. Landlord will compute and deliver to Tenant prior to the Commencement Date (or as soon as possible thereafter) and prior to the beginning of each Fiscal Year thereafter, a bona fide estimate of the costs of such maintenance and repairs for the appropriate Fiscal Year and without further notice Tenant will pay to Landlord in monthly installments one-twelfth of such estimate simultaneously with Tenant's payments of Annual Rent during such Fiscal Year, subject to adjustment following delivery of a written statement after the end of each Fiscal Year in the same manner as set out in Article 4.08(b). If Landlord elects to carry out the maintenance and repair of the Tenant HVAC System as aforesaid, Landlord or its authorized representatives will be entitled to enter the Premises upon reasonable notice and without undue interference with Tenant's business for the purpose of performing such repairs and maintenance from time to time without liability to Tenant for any loss or damage thereby incurred, but Landlord will repair any damage to the Premises caused by Landlord;



- (d) making other repairs and replacements in the Premises as needed, except repairs and replacements to the Premises for which Landlord is specifically responsible under this Lease; and
- (e) keeping the Premises in such condition as to comply with the requirements of any governmental or quasi-governmental authority having jurisdiction.

7.05 **Failure to Maintain Premises** If Tenant fails to perform any obligation under Articles 7.01, 7.02, 7.03, 7.04, 7.06, 7.07, 7.08 or 7.09, then on not less than ten days' notice to Tenant, and provided the Tenant, within such 10 day period has not diligently commenced and continually proceeded to remedy such failure, Landlord may, at Landlord's sole option, enter the Premises and perform such obligation without liability to Tenant for any loss or damage to Tenant thereby incurred provided, however, that Landlord shall be responsible for any loss or damage caused by the wilful acts, negligence of Landlord or those for whom Landlord is in law responsible, and Tenant will pay Landlord for the cost thereof incurred by Landlord, plus 20% of such cost for overhead and supervision, upon receipt of Landlord's invoice therefor.

7.06 **Alterations by Tenant** Tenant may from time to time at its own expense make changes, additions and improvements in the Premises to better adapt the same to its business, provided that any such change, addition or improvement will:

- (a) comply with the requirements of Landlord's insurer and any governmental or quasi-governmental authority having jurisdiction;
- (b) be made only with the prior written consent of Landlord, not to be unreasonably withheld and only required if total cost exceeds \$25,000.00 or affects any part of structure or building systems or storefront;
- (c) equal or exceed the then current standard for the Project; and
- (d) be carried out only by competent and reputable persons selected by Tenant ~~and approved in writing by Landlord~~, who will, if required by Landlord, deliver to Landlord before commencement of the work, ~~performance and payment bonds as well as~~ proof of worker's compensation and public liability and property damage insurance coverage, with Landlord as an additional named insured in amounts, with companies and in form reasonably satisfactory to Landlord, which will remain in effect during the entire period in which the work will be carried out.

Any increase in property taxes on or fire or casualty insurance premiums for the Project, or any part thereof, attributable to such change, addition or improvement will be borne by Tenant and Tenant will pay Landlord for the cost of such increase upon receipt of Landlord's invoice therefor.

7.07 **Trade Fixtures and Personal Property** Tenant may install in the Premises its usual new trade fixtures and personal property in a proper manner, provided that no such installation will interfere with or damage the mechanical, plumbing, sprinkler or electrical systems or all or any part of the structure of the Project. If Tenant is not then in default under this Lease, trade fixtures and personal property installed in but not affixed to the Premises by or on behalf of Tenant may be removed from the Premises:

- (a) from time to time in the ordinary course of Tenant's business or in the course of permitted reconstruction, renovation or alteration of the Premises by Tenant; and
- (b) during a reasonable period prior to the expiration of the Term,

provided that Tenant in all cases promptly repairs at its own expense any damage to the Premises resulting from such installation and removal. In no case will such trade fixtures or personal property include the ceiling or ceiling panels, ~~electric~~ recessed light fixtures, carpeting where laid, doors, storefront, plumbing fixtures and fittings or any affixed cabinets, shelves, hardware or decorative items in or upon the Premises which upon installation become the property of Landlord.

7.08 **Liens** Tenant will pay before delinquency all costs for work done or caused to be done by Tenant in the Premises which could result in any lien or encumbrance on Landlord's interest or Tenant's interest or both in the Land or the Project or any part thereof, will keep the title to the Land and the Project

and every part thereof free and clear of any lien or encumbrance in respect of such work and will indemnify and hold harmless Landlord against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien or otherwise, arising out of the supply of material, services or labor for such work. Tenant will immediately notify Landlord of any such lien, claim of lien or other action of which it has or reasonably should have knowledge and which affects the title to the Land or Project or any part thereof, and will cause the same to be removed within five days (or such additional time as Landlord may consent to in writing), failing which Landlord may take action as Landlord deems necessary to remove the same (other than payment to the claimant) and the entire cost thereof will be immediately due and payable by Tenant to Landlord.

7.09 *Signs* Any sign, decal, lettering or design of Tenant which is visible from the exterior of the Premises will be at Tenant's expense and subject to approval by Landlord, and will conform to the uniform pattern of identification signs for tenants in the Project as prescribed by Landlord. Tenant will not inscribe or affix any sign, lettering or design in the Premises or Project which is visible from the exterior of the Project.

7.10 *Encumbering of Tenant's Trade Fixtures and Personal Property* Notwithstanding anything contained in this Lease to the contrary, Tenant will not be deemed to be in default under the terms of this Lease by reason of any lien, mortgage, charge or encumbrance (each one hereinafter referred to as an "encumbrance") which may attach to the goods, moveable trade fixtures, equipment or other personal property of Tenant, (excluding leasehold improvements and fixtures which Tenant is not permitted to remove from the Premises upon the expiration or early termination of this Lease) (the "Chargeable Property"), so long as:

- (a) the encumbrance arises through a bona fide financing done by Tenant in accordance with Tenant's normal business practice or by reason of any sale or leaseback agreement entered in by Tenant for financing purposes with respect to the Chargeable Property;
- (b) Landlord has given its prior approval to the form of document used in respect of the encumbrance (which approval may not be unreasonably withheld);
- (c) Tenant is not in default under the encumbrance;
- (d) neither this Lease, nor the Premises, nor Tenant's interest in either of them has been mortgaged, charged, encumbered, assigned, sublet, or otherwise disposed of pursuant to the encumbrance except as otherwise permitted under this Lease; and
- (e) the encumbrance in no way prejudices or affects the priority of the Landlord's rights or the obligations of Tenant, in respect of (i) the Chargeable Property, and (ii) all laws relating to bankruptcy, insolvency, protection of debtors and to distress.

Tenant covenants and agrees that it will not cause, suffer or permit any document respecting the encumbrance to be registered against title to the Land or the Project, or any portion thereof, unless such registration is required by law. In the event of any such requirement for registration, Tenant will first obtain Landlord's written approval to the registration document and provide registration particulars thereof to Landlord when same are available.

## ARTICLE 8.00 TAXES

- 8.01 **Landlord's Taxes** Landlord will pay before delinquency (subject to participation by Tenant by payment of Occupancy Costs under Article 4.03) every real estate tax, assessment, local improvement, licence fee, excise and other charge, excepting Tenant's Taxes under Article 8.02, which is imposed, levied, assessed or charged by any governmental or quasi-governmental authority having jurisdiction and which is payable in respect of the Term upon or on account of the Land or the Project.
- 8.02 **Tenant's Taxes** Tenant will pay before delinquency every tax, assessment, licence fee, local improvement, excise and other charge, however described, which is imposed, levied, assessed or charged by any governmental or quasi-governmental authority having jurisdiction and which is payable in respect of the Term upon or on account of:
- (a) operations at, occupancy of, or conduct of business in or from the Premises by or with the permission of Tenant;
  - (b) fixtures or personal property in the Premises which do not belong to Landlord; and
  - (c) the Rent paid or payable by Tenant to Landlord for the Premises or for the use and occupancy of all or any part thereof,

provided that if Landlord so elects by notice to Tenant, Tenant will add any amounts payable under this Article 8.02 to the monthly installments of Annual Rent payable under Article 4.01 and Landlord will remit such amounts to the appropriate authorities.

- 8.03 **Changes in Taxes** If by law, regulation or otherwise all or any part of any tax, assessment, local improvement, licence fee, excise or other charge referred to in Article 8.02 is made payable by Landlord or if the mode of collecting such tax, assessment, local improvement, licence fee, excise or other charge is so altered so as to make Landlord liable in whole or in part therefor instead of Tenant or if all or any part of Tenant's taxes under Article 8.02 is imposed, levied, assessed or charged upon or on account of the Land or the Project, Tenant will repay to Landlord, from time to time, within seven days after demand the amount payable by Landlord, from time to time as a result of such change, as determined by Landlord in the same manner as Occupancy Costs is determined under the terms of this Lease and Tenant will indemnify and save Landlord harmless from any cost or expense in respect thereof.
- 8.04 **Right to Contest** Landlord and Tenant will each have the right to contest in good faith the validity or amount of any tax, assessment, local improvement, licence fee, excise and other charge which it is responsible to pay under Articles 8.01, 8.02 or 8.03, provided in each case: (a) Tenant has given prior written notice to Landlord of each such contest; (b) Tenant will at the same time appeal, as agent of Landlord, the assessment of Landlord's interest in the Tenant's portion of the Project; (c) no contest by Tenant may involve the possibility of forfeiture, sale or disturbance of Landlord's interest in the Premises; and, (d) upon the final determination of any contest by Tenant, if Tenant has not already done so, Tenant will immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. Notwithstanding anything contained herein to the contrary, Tenant will not have the right in the event of any such contest to withhold payment to Landlord of the amounts which are the subject of the contest if such amounts are otherwise payable to Landlord and Landlord remains liable for payment of such amount to the authority imposing such tax, assessment, local improvement, licence fee, excise or other charge notwithstanding such contest. Tenant will fully indemnify Landlord for all costs and expenses (including legal fees and disbursements) incurred by Landlord as a result of any contesting by Tenant as provided for in this Article 8.04.



## ARTICLE 9.00 INSURANCE

9.01 **Landlord's Insurance** During the Term, Landlord will maintain at its own expense (subject to participation by Tenant by payment of Occupancy Costs under Article 4.03) liability insurance, fire insurance with extended coverage, boiler and pressure vessel insurance, rental insurance other than insurance guaranteeing against insolvency or inability of the Tenant to pay Rent and other insurance on the Project and all property and interest of Landlord in the Project with coverage and in amounts not less than those which are from time to time acceptable to a prudent owner in the area in which the Project is located. Notwithstanding such participation by Tenant, Tenant will have no insurable interest in insurance carried by Landlord and no right to receive any proceeds of any such insurance. Policies for such insurance will waive, to the extent available from Landlord's carrier(s), any right of subrogation against Tenant. The Landlord hereby confirms that a waiver of subrogation is currently available from its property insurer. Upon the written request of the Tenant to Landlord, Landlord will advise Tenant if the right of subrogation is covered.

9.02 **Tenant's Insurance** During the Term and any period Tenant is in possession of the Premises, Tenant will maintain at its own expense:

- (a) all risks (including flood and earthquake) property insurance and broad comprehensive boiler and machinery insurance in amounts sufficient to fully cover on a replacement cost basis Tenant's improvements and all property in the Premises which is not owned by Landlord or which Tenant is responsible to repair or maintain, or which is installed by or on behalf of Tenant; and
- (b) liability insurance, with Landlord and its mortgagee(s) as additional ~~named~~ insureds, against claims for death, personal injury and property damage in or about the Project and arising out of or connected with the business of Tenant carried on within the Project in amounts which are from time to time acceptable to a prudent tenant in the community in which the Project is located, but not less than \$2,000,000.00 in respect of any injury to or death of one or more persons and any loss or damage to the property of others, (including, without limiting the generality of the foregoing, Landlord's property) in respect of each occurrence and with provisions for severability of interest, cross-liability, owner's protective liability and blanket contractual liability; and
- (c) business interruption insurance in such amount as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against and other perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Project as a result of such perils; and
- (d) any other form of insurance as Landlord, acting reasonably, or any mortgagee requires from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.

All insurance required under this Article 9.02 will be in a form and with an insurer reasonably acceptable to Landlord and on terms and conditions satisfactory to Landlord and will waive any right of subrogation against Landlord and its mortgagee(s) and against those for whom any of them is responsible in law and will name Landlord and any persons, firms or corporations designated by Landlord as additional ~~named~~ insured as their interests may appear. All policies of such insurance will have deductibles not greater than three percent (3%) of the amount insured and will be primary and not call into contribution or be in excess of any other insurance available to Landlord or the additional named insured(s). Tenant agrees to deliver to Landlord, on request, proof of above required insurance in force at such date, such proof to be in the form of ~~copies of current policies or~~ certificates of insurance. Tenant also agrees to deliver to Landlord an endorsement or endorsements describing the above-noted insurance, wherein Tenant's insurer or insurers agrees to give 30 days prior written notice by prepaid, registered mail to Landlord of any material change in, cancellation of, or termination of such insurance, and Tenant further agrees to deliver to Landlord ~~copies of renewal policies or~~ certificates together with endorsements including the above-noted information, and if Tenant fails to insure or file satisfactory proof of insurance, Landlord may without notice to Tenant effect such insurance and recover any premiums paid therefor from Tenant on demand. Tenant will promptly pay all premiums due on the insurance required to be effected by it hereunder, will not carry any stock of goods or have or do anything upon the Premises which would impair or invalidate the obligation of any insurer, whether of Landlord or of Tenant. If the insurance premiums of Landlord will increase because of anything omitted by Tenant or anything done by Tenant outside its normal course of business on the Premises as permitted under this Lease the amount of increase will be paid by Tenant

as Rent to Landlord on demand. Landlord agrees to notify Tenant as soon as possible after Landlord becomes aware that insurance premiums are to be increased as a result of Tenant's activity. In determining whether increased premiums are caused by or result from the use or occupancy of the Premises, or the sale of any article therein or therefrom, a schedule issued by the organization computing the insurance rate on the Project showing the various components of such rate, will be conclusive evidence of the several items and charges which make up such rate. Tenant will comply promptly with all requirements of the insurer's advisory organization of any insurer now or hereafter in effect, pertaining to or affecting the Premises or the Project. If the breach or non-performance of any of the covenants or agreements herein contained on the part of Tenant will immediately endanger the Premises or any other of the buildings or property in or on the Project or result in the voiding, cancellation or threatened cancellation of any insurance policy affecting such buildings or property or part thereof Landlord may, either, at Landlord's sole discretion, terminate this Lease effective upon written notice to Tenant, or without terminating this Lease and after giving such notice, if any, as is reasonable in the circumstances, enter upon the Premises and take such action, including removing Tenant and any persons or property from the Project, as is reasonable to remove or abate the cause of the danger or voiding or cancellation of the policy, and Landlord will not be liable for any damages of any kind howsoever caused arising out of such termination or such action.

So long as the Tenant is Fairweather Ltd., the Tenant may obtain insurance by way of blanket insurance policy which covers Tenant's other locations in addition to the Premises provided such blanket insurance policy meets the requirements set out in this Article 9.02(a), (b), (c) and Tenant will otherwise obtain insurance which meets the requirements of Article 9.02(d) if required.

## ARTICLE 10.00 INJURY TO PERSON OR PROPERTY

- 10.01 ***Indemnity by Tenant*** Notwithstanding any other terms, covenants or conditions contained in this Lease, Tenant will indemnify Landlord, registered owners of the Land, and mortgagee(s) (collectively the "Indemnifieds") and save the Indemnifieds harmless from and against any and all claims, costs, actions, damages, expenses (including legal costs and expenses), and liability in connection with loss of life, personal injury, damage to property or any other loss or injury arising from any occurrence, in, on, about or upon the Premises or from or in connection with the use, occupancy, possession or control of the Premises or the business of Tenant carried on in the Project, or any part thereof, or occasioned wholly or in part by the act or omission of Tenant or its subtenants, licensees, concessionaires (collectively, the "Occupants") or Tenant's or Occupant(s)' servants, representatives, agents, employees, contractors, invitees or anyone permitted by Tenant or those for whom Tenant or Occupant(s) to be on the Premises may be responsible in law.

Tenant will not be required to indemnify a particular Indemnified or save it harmless where such claims, costs, actions, damages, expenses (including legal costs and expenses), and liability is caused by or arises from such Indemnified's negligence or the negligence of such Indemnified's servants, representatives, agents, employees or contractors.

## ARTICLE 11.00 TRANSFERS

### 11.01 Transfers

- (a) ~~Except to an Eligible Corporation (which for the purpose of this Article 11.00 is a corporation which controls or is controlled by or under common control with Tenant, where to control means to own beneficially either directly or indirectly more than fifty percent (50%) of the voting shares of a corporation)~~ Subject to Article 11.01(c), and subject to the provisions of Article 11.03, Tenant will not, and will not permit a subtenant to, assign this Lease in whole or in part or sublet all or part of the Premises, or mortgage or encumber this Lease or all or part of the Premises, or transfer this Lease in any other manner and will not permit the occupation or use of all or part of the Premises by others (any of which events are hereinafter referred to as a "Transfer"), without the prior written consent of Landlord in each case, which consent, ~~despite any statutory provision to the contrary, may not be arbitrarily or unreasonably withheld; or unduly delayed provided, however, that Tenant may Transfer this Lease or the Premises to an Eligible Corporation, with the prior written consent of Landlord which consent may not be arbitrarily or unreasonably withheld.~~ The consent by Landlord to a Transfer will not constitute a waiver of its consent to a subsequent Transfer. This prohibition against transferring includes a Transfer by operation of law. If this Lease is Transferred, or if all or part of the Premises is Transferred to or occupied by anybody other than Tenant without the consent of Landlord when required, Landlord may collect rent from the assignee, subtenant, mortgagee, encumbrancer, user or occupant as the case may be (hereinafter the "Transferee"), and apply the net amount collected to the rent herein reserved, but no such Transfer, occupancy or collection will be deemed a waiver of this covenant, or be deemed the acceptance by Landlord of Transferee as tenant hereunder notwithstanding any rule of law to the contrary. Despite a Transfer, Tenant remains fully liable under this Lease during the remainder of the Term and renewal of this Lease, if any. A permitted Transfer of all or part of this Lease or the Premises will be documented by Landlord or its solicitors, and all charges for its administration and documentation will be paid by Tenant as Rent. Notwithstanding anything contained in this Lease to the contrary, Landlord may immediately terminate this Lease if Tenant effects a Transfer without Landlord's prior written consent thereto (where consent is required), whether or not Tenant gives prior written notice thereof.
- (b) Notwithstanding the foregoing provisions of this Article 11.01(a), Landlord will consent to a sublease by the Tenant of the whole of the Premises to a bona fide franchisee of Tenant (the "Franchisee") provided that Tenant is not in default of any of its obligations or agreements in this Lease and, provided further, that such sublease will only become effective upon Tenant having provided to Landlord all of the following:
- (i) any outstanding documentation required by Landlord in respect of the Premises executed by Tenant in a form satisfactory to Landlord;
  - (ii) duly executed copy of such sublease in form satisfactory to Landlord;
  - (iii) the covenants of Franchisee directly with Landlord and in form satisfactory to Landlord that the Franchisee will use the Premises for the use set out in this Lease, will operate Tenant's business carried on at the Premises under the same name and style of Tenant as set out in Article 5.01 of this Lease under the supervision of Tenant, will perform each and every of the terms, conditions and covenants of this Lease to be performed on the part of Tenant and that any breach of this Lease by Franchisee will constitute a breach of the said franchise agreement;
  - (iv) such evidence of the franchise agreement, of the capability of Franchisee to properly operate Tenant's said business on the Premises and of the financial standing and credit worthiness of Franchisee as Landlord may reasonably require; and
  - (v) payment of Landlord's fee referred to below.

Upon the date of delivery to Landlord of all of the aforementioned documents, evidence and payment as specified above, but not earlier, such sublease will become effective; otherwise and until such delivery as noted above, any purported subletting by Tenant to Franchisee with respect to all or any part of the Premises herein will be void and of no

effect. Provided further, however, that such sublease will be deemed to have been revoked or rescinded upon the day immediately preceding the day upon which any such Franchisee ceases to retain such status to Tenant and, in that event, Tenant will resume possession of the Premises and will directly operate the business required to be carried on in the Premises in accordance with all of the provisions of the Lease.

Tenant acknowledges that it will be responsible for the payment of any reasonable fees (which as at September 2001 is \$750.00 plus applicable taxes) charged by Landlord for the preparation and/or execution of any documentation related to the foregoing.

- (c) Notwithstanding the foregoing, the Tenant will be entitled to assign the Lease or to sublet all or any part of the Premises or to suffer or permit the occupation of all or any part thereof by others or to change the effective voting control of the Tenant, upon first obtaining the Landlord's written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, the Tenant will have the right, without the consent of the Landlord (but on prior written notice to the Landlord) to assign the Lease or to sublet the whole of the Premises to:
- (i) a corporation (an "Eligible Corporation") which is a holding body corporate, a subsidiary body corporate or an affiliate of the Tenant (within the meaning of The Canada Business Corporations Act);
  - (ii) a corporation formed as a result of a merger or amalgamation (as those terms are defined in The Canada Business Corporations Act) of the Tenant with another corporation or corporations;
  - (iii) and provided there is no change in the use clause outlined in Article 5.01, a person or entity who is purchasing at least eighty-five percent (85%) or more of the leases for the Tenant's FAIRWEATHER stores in the Province and provided there is no change in the use clause outlined in Article 5.01; or
  - (iv) in connection with the bona fide financing of the Tenant's business operations in the Premises, provided the form of such assignment documentation will be subject to the prior approval of the Landlord acting reasonably.

The documentation for the above-mentioned will be approved and/or prepared by the Landlord at the Tenant's expense.

11.02 *Conditions* Any Transfer referred to in Article 11.01 or elsewhere in this Lease will be subject to the following conditions:

- (a) that the Annual Rent payable by Transferee, or Tenant in the case of a sublease or licence, will be increased to be equal to the greater of (i) the then fair market net rental for the Premises as determined by Landlord taking into account the then actual rental rates for comparable, improved retail premises within the Project and within similar types of shopping centres (if any) within a comparable trading area or (ii) the average of the aggregate of Annual Rent and Percentage Rent paid or payable by Tenant for the two (2) Lease Years immediately preceding the date of the Transfer (hereinafter called the "Transfer Date"), or, if less than two (2) Lease Years have elapsed from the Commencement Date to the Transfer Date, or there has been an abatement of rent during the said two (2) Lease Years, the Annual Rent payable by Transferee, or Tenant in the case of a sublease or licence will be increased to be equal to the product obtained by multiplying 365 by the average daily Annual Rent and Percentage Rent paid or payable during the period in question (excluding from such calculations, all rental and all days during which there has been an abatement of rent); provided that Tenant and Transferee will not be thereby relieved from paying any greater Annual Rent or Percentage Rent as may be otherwise specified in this Lease.

Notwithstanding the foregoing, the Landlord will not be entitled to increase the Annual Rent or Percentage Rent payable by the Tenant in relation to an assignment or sublease provided for in subparagraphs (c), (i), (ii) or (iv) above, however, for greater certainty this Article 11.02(a) will apply in relation to an assignment or sublease provided for above.

For the purpose of this Article 11.02(a), in no event will fair market net rent for the Premises exceed an amount equal to the greater of (i) ten percent (10%) above the current Annual Rent payable pursuant to the terms of this Lease or (ii) the average of the aggregate of Annual Rent and Percentage Rent paid or payable by Tenant.

- (b) that Tenant causes any Transferee to promptly execute an agreement in writing with Landlord agreeing to be bound by the terms, provisions and conditions contained in this Lease as if such Transferee had originally executed this Lease as Tenant (provided that such agreement will not in any way affect the rights of Landlord under this Lease);
  - (c) that the Percentage Rent payable by Transferee, or Tenant in the case of a sublease or licence during the balance of the Term from the Transfer Date will be the amount, if any, by which the percentage (as stipulated in Article 4.02 (a)) of Gross Revenue in each Lease Year exceeds the increased Annual Rent for each Lease Year during the balance of the Term;
  - (d) where the sublease or the grant of a right to occupy or use relates to a part only of the Premises, the references to Annual Rent and Gross Revenue will be adjusted proportionately on an area basis;
  - (e) that all charges payable by Tenant under Article 11.01 of this Lease have been paid; and
  - (f) that, if applicable, Tenant has established to the satisfaction of Landlord, acting reasonably, that Transferee is an Eligible Corporation.
- 11.03 **Notification to Landlord** If Tenant wishes to Transfer this Lease or the Premises in any manner, in whole or in part, or an estate or interest under this Lease, Tenant will give prior written notice to Landlord naming the proposed Transferee and will provide to Landlord such other information that Landlord may reasonably require. No Transfer will be effective unless this Article 11.03 is complied with and, if required, the written approval of Landlord is provided to Tenant.
- 11.04 **Corporate Ownership** If after the date of execution of this Lease shares not listed for sale on a recognized stock exchange in Canada or the United States either of Tenant ~~or of an Eligible Corporation which~~ or a corporation that controls Tenant are transferred by sale, assignment, bequest, inheritance, operation of law or other disposition, or issued by subscription or allotment or cancelled or redeemed, so as to result in a change in the effective voting or other control of Tenant ~~or of an Eligible Corporation which controls Tenant~~ by the person or persons holding control on the date of execution of this Lease or on the date when Tenant becomes a corporation, if later, or if other steps are taken to accomplish a change of the control, Tenant will promptly notify Landlord in writing of the change which will be considered to be a Transfer of this Lease to which Articles 11.01 and 11.02, and 11.03 apply; ~~and whether or not Tenant notifies Landlord, Landlord may terminate this Lease within sixty (60) days after Landlord learns of the change unless Landlord previously had consented to the change.~~ Tenant will make available to Landlord or its lawful representatives all corporate books and records of Tenant ~~and of any Eligible Corporation which controls Tenant~~ for inspection at all reasonable times, to ascertain to the extent possible whether there has been a change of control. Notwithstanding the above, the Landlord's consent will not be required in connection with a transfer of shares of the Tenant by or between the existing shareholders of the Tenant, nor for the issue of shares to the public (for the purpose of becoming a public corporation).
- 11.05 **Insolvency of Transferee** In the event Transferee becomes insolvent or commits an act of bankruptcy and the Lease is disclaimed or terminated, or Transferee repudiates the Lease pursuant to any bankruptcy or insolvency legislation, the original Tenant named in this Lease or any Transferee (except the bankrupt or insolvent Transferee) will be deemed, upon thirty (30) days' notice from Landlord, to have entered into a lease with Landlord for the remainder of the Term, on the terms and conditions of the Lease prevailing immediately prior to the date of such disclaimer, termination or repudiation (including, without limitation, future Rent escalations (if any)) effective upon the effective date of such disclaimer, termination or repudiation.

## ARTICLE 12.00 SURRENDER

- 12.01 **Possession** Upon the expiration of the Term or other termination of this Lease, in addition to the provisions of Article 20.09, Tenant will immediately quit and peaceably surrender possession of the Premises to Landlord in substantially the condition in which Tenant is required to maintain the Premises under Article 7.04 excepting only reasonable wear and tear and damage covered by Landlord's insurance under Article 9.01. Upon such surrender, all right, title and interest of Tenant in the Premises will cease. Upon expiry or other termination, as aforementioned, at the request of Landlord, Tenant will execute and deliver to Landlord a surrender of lease in registerable form and if Tenant has filed a caveat, caution or other document or instrument giving notice of this Lease against title to the Land, it will promptly cause the same to be discharged. The costs of preparing and/or registering a surrender of this Lease or a discharge of caveat, caution or other document or instrument will be paid by Tenant if Tenant has filed a caveat, caution or other document or instrument.
- 12.02 **Trade Fixtures, Personal Property and Improvements** Subject to Tenant's rights under Article 7.07, after the expiration of the Term or other termination of this Lease, all of Tenant's trade fixtures and personal property remaining in the Premises will be deemed conclusively to have been abandoned by Tenant and may be appropriated, sold, destroyed or otherwise disposed of by Landlord without notice or obligation to compensate Tenant or to account therefor, and Tenant will pay to Landlord on written demand all costs incurred by Landlord in connection therewith upon Landlord's request. At Tenant's sole expense, Tenant will remove its trade fixtures and personal property installed in the Premises upon the expiration of the Term or other termination of this Lease in which case Tenant will promptly repair, at Tenant's sole expense, any damage to the Premises resulting from such installation or removal. ~~Tenant will also remove from the Premises, at Tenant's sole expense, such other improvements and other items of work installed by Tenant as Landlord may request Tenant to remove, but in such event, Tenant will not be obligated to make good any damage with respect to such removal. Should Tenant fail to carry out any removal requested by Landlord under this Article 12.02 then Landlord, at its sole option, and without prejudice to other rights or remedies of Landlord, may claim compensation from Tenant for Landlord's costs of such removal and of repairing the Premises as aforesaid.~~
- 12.03 **Merger** The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord will not work a merger, and will, at Landlord's option, either terminate all or any subleases and subtenancies or operate as an assignment to Landlord of all or any subleases or subtenancies. Landlord's option hereunder will be exercised by notice to Tenant and all sublessees or subtenants in the Premises or any part thereof known to Landlord. If Landlord does not give notice within a reasonable period of time after such cancellation of this Lease, then all such subleases will be deemed to have been terminated on the date of such cancellation.
- 12.04 **Payments After Termination** No payment of money by Tenant to Landlord after the expiration of the Term or other termination of this Lease or after the giving of any notice by Landlord to Tenant, will reinstate, continue or extend the Term or make ineffective any notice given to Tenant prior to the payment of such money. After the service of notice or the commencement of a suit, or after final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums of Rent due under this Lease, and the payment thereof will not make ineffective any notice, or in any manner affect any pending suit or any judgment theretofore obtained.

## ARTICLE 13.00 HOLDING OVER

- 13.01 ***Month-to-Month Tenancy*** If with Landlord's written consent Tenant remains in possession of the Premises after the expiration of the Term or other termination of this Lease, Tenant will be deemed to be occupying the Premises on a month-to-month tenancy only, at a monthly rental equal to the Rent as determined in accordance with Articles 4.01, 4.02, 4.03 and 4.04 or such other rental as is stated in such written consent, and such month-to-month tenancy may be terminated by Landlord or Tenant on the last day of any calendar month by delivery of at least 30 days' advance written notice of termination to the other.
- 13.02 ***Tenancy at Sufferance*** If without Landlord's written consent Tenant remains in possession of the Premises after the expiration of the Term or other termination of this Lease, Tenant will be deemed to be occupying the Premises upon a tenancy at sufferance only, at a monthly rental equal to two times the Rent determined in accordance with Articles 4.01, 4.02, 4.03 and 4.04. Such tenancy at sufferance may be immediately terminated by Landlord at any time by notice of termination to Tenant, and by Tenant on the last day of any calendar month by at least 30 days' advance written notice of termination to Landlord.
- 13.03 ***General*** Any month-to-month tenancy or tenancy at sufferance hereunder will be subject to all other terms, provisions and conditions of this Lease except any right of renewal and nothing contained in Articles 13.01, 13.02 or 13.03 will be construed to limit or impair any of Landlord's rights of re-entry or eviction or constitute a waiver thereof.



#### ARTICLE 14.00 RULES AND REGULATIONS

- 14.01 **Purpose** The Rules and Regulations in Exhibit E have been adopted by Landlord for the safety, benefit and convenience of all tenants and other persons in the Project.
- 14.02 **Observance** Tenant will at all times comply with, and will cause its employees, servants, agents, and licensees ~~and invitees~~ to comply with the Rules and Regulations from time to time in effect.
- 14.03 **Modification** Landlord may from time to time, for the purposes set out in Article 14.01, amend, delete from, or add to the Rules and Regulations, provided that any such modification:
- (a) will not be repugnant to any other provision of this Lease;
  - (b) will be reasonable and have general application to tenants in the Project; and
  - (c) will be effective only upon delivery of a copy thereof to Tenant at the Premises.
- 14.04 **Non-Compliance** Landlord will use reasonable efforts to secure compliance by all tenants and other persons in the Project with the Rules and Regulations from time to time in effect, but will not be responsible to Tenant for failure of any person to comply with such Rules and Regulations.

## ARTICLE 15.00 EXPROPRIATION

- 15.01 ***Taking of Premises*** If during the Term all of the Premises will be taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, this Lease will automatically terminate on the date on which the condemning authority takes possession of the Premises.
- 15.02 ***Partial Taking of Project*** If during the Term only part of the Project is taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, then:
- (a) if in the reasonable opinion of Landlord substantial alteration or reconstruction of the Project is necessary or desirable as a result thereof, whether or not the Premises are or may be affected, Landlord will have the right to terminate this Lease by giving Tenant at least 30 days' written notice of such termination; and
  - (b) if more than one-third of the number of Square Feet of Space in the Premises is included in such taking or purchase, Landlord and Tenant will each have the right to terminate this Lease by giving the other at least 30 days' written notice thereof.

If either party exercises its right of termination hereunder, this Lease will terminate on the date stated in the notice, provided, however, that no termination pursuant to notice hereunder may occur later than 60 days after the date (hereinafter the "Date of Such Taking") on which the condemning authority takes possession of that part of the Project so taken or purchased.

- 15.03 ***Surrender*** On any such date of termination under Article 15.01 or 15.02, Tenant will immediately surrender to Landlord the Premises and all interests therein under this Lease. Landlord may re-enter and take possession of the Premises and remove Tenant therefrom, and the Rent will abate on the date of termination, except that if the Date of Such Taking differs from the date of termination, Rent will abate on the former date in respect of the portion taken. After such termination, and on notice from Landlord stating the Rent then owing, Tenant will immediately pay Landlord such Rent.
- 15.04 ***Partial Taking of Premises*** If any portion of the Premises (but less than the whole thereof) is so taken, and no rights of termination herein conferred are timely exercised, the Term of this Lease will expire with respect to the portion so taken on the Date of Such Taking. In such event the Rent payable hereunder with respect to such portion so taken will abate on such date, and the Rent thereafter payable with respect to the remainder not so taken will be adjusted pro rata by Landlord in order to account for the resulting reduction in the number of Square Feet of Space in the Premises.
- 15.05 ***Awards*** Upon any such taking or purchase, Landlord will be entitled to receive and retain the entire award or consideration for the affected lands and improvements, and Tenant will not have nor advance any claim against Landlord for the value of its property or its leasehold estate or the unexpired Term of this Lease, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein will give Landlord any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any award or compensation attributable to the taking or purchase of Tenant's improvements, chattels or trade fixtures, or the removal or relocation of its business and effects, or the interruption of its business. If any such award made or compensation paid to either party specifically includes an award or amount for the other, the party first receiving the same will promptly account therefor to the other.

## ARTICLE 16.00 DAMAGE BY FIRE OR OTHER CASUALTY

- 16.01 **Limited Damage to Premises** If all or part of the Premises are rendered untenable by damage from fire or other casualty which, in the reasonable opinion of the Architect, can be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), Landlord will immediately with all due diligence, acting reasonably at its own expense repair such damage other than damage to improvements, furniture, chattels or trade fixtures which do not belong to Landlord or which have been installed by or on behalf of Tenant, which instead will be repaired immediately by Tenant at Tenant's own expense.
- 16.02 **Major Damage to Premises** If all or part of the Premises are rendered untenable by damage from fire or other casualty which, in the reasonable opinion of the Architect, cannot be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), then Landlord may elect to terminate this Lease as of the date of such casualty by written notice delivered to Tenant not more than 20 days after receipt of the Architect's opinion, failing which Landlord will ~~forthwith~~ with all due diligence, acting reasonably at its own expense repair such damage other than damage to improvements, furniture, chattels or trade fixtures which do not belong to Landlord or which have been installed by or on behalf of Tenant, which instead will be repaired forthwith by Tenant at Tenant's own expense. If Landlord's repairs are not completed within one (1) year of damage, Tenant may terminate the Lease.
- 16.03 **Abatement** If Landlord is required to repair damage to all or part of the Premises under Article 16.01 or 16.02, provided such damage is caused by a peril Landlord is required to insure against pursuant to Article 9.01, the Rent (except Percentage Rent) payable by Tenant under this Lease will be proportionately reduced to the extent that the Premises are thereby rendered untenable by Tenant in its business, from the date of such casualty until five thirty (30) days after completion by Landlord of the repairs to the Premises (or the part thereof rendered untenable) or until Tenant again uses the Premises (or the part thereof rendered untenable) in its business, whichever first occurs. Percentage Rent will be calculated by applying the Annual Rent as abated pursuant to this Article 16.03.
- 16.04 **Major Damage to Project** If all or a substantial part (whether or not including the Premises) of the Project is rendered untenable by damage from fire or other casualty to such a material extent that in the reasonable opinion of Landlord the Project must be totally or partially demolished, whether or not to be reconstructed in whole or in part, Landlord, acting in a bona fide non-discriminatory manner, may elect to terminate this Lease as of the date of such casualty (or on the date of notice if the Premises are unaffected by such casualty) by written notice delivered to Tenant not more than 60 days after the date of such casualty.
- 16.05 **Limitation on Landlord's Liability** Except as specifically provided in Articles 16.01, 16.02, 16.03 or 16.04, there will be no reduction of Rent and Landlord will have no liability to Tenant by reason of any injury to or interference with Tenant's business or property arising from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom in or to any portion of the Project. Notwithstanding anything contained herein, Rent payable by Tenant under this Lease will not be abated if the damage is caused by any act or omission of Tenant, its agents, servants, employees or any other person entering upon the Premises under express or implied invitation of Tenant.

## ARTICLE 17.00 TRANSFERS AND MORTGAGES BY LANDLORD

- 17.01 **Sales, Conveyance and Assignment** Nothing in this Lease (which term for purpose of this Article 17.00 includes any extension, renewal or replacement of this Lease) will restrict the right of Landlord to sell, convey, assign or otherwise deal with all or any part of the Project, subject only to the rights of Tenant under this Lease.
- 17.02 **Effect of Sale, Conveyance or Assignment** A sale, conveyance or assignment of the Project will operate to release Landlord from liability from and after the date thereof upon all the covenants, terms and conditions of this Lease, express or implied, except as such may relate to the period prior to such effective date, and Tenant will thereafter look solely to Landlord's successor in interest in and to this Lease. This Lease will not be affected by any such sale, conveyance or assignment, and Tenant will attorn to Landlord's successor in interest thereunder.
- 17.03 **Definition of Mortgage, Mortgagee and Mortgagee's Interest** Each and every charge, mortgage, debenture or trust deed, now or hereafter registered against all or any part of the Project or the Land is hereafter called a "Mortgage" which term includes all amounts advanced or to be advanced thereunder and all renewals, modifications, consolidations, replacements and extensions thereof. "Mortgagee" means a chargee or mortgagee named in a Mortgage, or the holder of a debenture or the trustee under a trust deed constituting a Mortgage, as the case may be; and "Mortgagee's Interest" means the estate or interest of the Mortgagee secured by a Mortgage.
- 17.04 **Subordination of Mortgage to Lease** If this Lease or the estate or interest of the Tenant thereunder (the "Tenant's Leasehold Interest") is subordinate to a Mortgage or Mortgagee's Interest now or at any time hereafter, then on written request of the Mortgagee or of Landlord on Mortgagee's behalf, made concurrently with execution of this Lease or at any time thereafter, the Mortgage and the Mortgagee's Interest will be postponed and made subordinate to this Lease and the Tenant's Leasehold Interest as if such Mortgage had been executed, delivered, registered and fully advanced after the execution, delivery and registration of this Lease, by means of an instrument of postponement and subordination, which will be entered into between the Tenant and the Mortgagee. Such instrument will be in such form as the Mortgagee may reasonably require, consistent with this Article 17.04 and Article 17.07 (a), and will be effective between the Mortgagee and the Tenant when executed by them, without necessity for registration against title to the Project or Land; but if desired by Mortgagee or Tenant, either of them may register such agreement or notice thereof and for that purpose Mortgagee and Tenant will enter into any further document required to effect registration. ~~Tenant hereby irrevocably appoints Landlord as attorney of Tenant to execute and deliver the foregoing instrument and/or other documents referred to above on behalf of Tenant. Landlord will promptly provide tenant with a copy of any such instrument or document executed as attorney as aforesaid.~~
- 17.05 **Attornment** If the Lease and Tenant's Leasehold Interest now or at any time hereafter is subordinate to a Mortgage and Mortgagee's Interest and the Mortgagee does not require a postponement and subordination instrument under Article 17.04, Tenant shall on request of such Mortgagee or of Landlord on behalf of the Mortgagee, made concurrently with execution of this Lease or at any time thereafter, enter into an agreement with such Mortgagee in such form as the Mortgagee may reasonably require, whereby Tenant shall agree that if default occurs under the Mortgage and
- (a) the Mortgagee takes possession of the Premises, by obtaining and enforcing a court order to that effect or otherwise;
  - (b) the Mortgagee forecloses or otherwise acquires the interest of the Landlord in the Premises, but does not foreclose the Tenant's Leasehold Interest; or
  - (c) the Mortgagee sells, conveys or assigns the Premises to another party (hereinafter a "Purchaser") pursuant to a power of sale or a court order for sale which does not purport to sell the Premises free of the Tenant's Leasehold Interest;

Tenant will, on written demand of the Mortgagee or Purchaser as the case may be, attorn to and become the tenant of that person from and including the date the demand is received, for the balance of the term of the Lease (and with rights of renewal if any as provided in the Lease), at the rents and otherwise on the terms of the Lease, subject as hereinafter provided in Article 17.06. ~~Tenant hereby irrevocably appoints Landlord as attorney of Tenant to execute and deliver the foregoing instrument and/or other documents referred to above on behalf of Tenant. Landlord will promptly provide Tenant with a copy of any such instrument or document executed as attorney as aforesaid.~~

17.06 **Nondisturbance** No attornment by Tenant under Article 17.05 will be effective unless the Mortgagee or Purchaser, as the case may be, delivers or has delivered to the Tenant (at the expense of the Tenant) a written undertaking, binding upon the Mortgagee or Purchaser and enforceable by and for the benefit of the Tenant under applicable law, to be bound to the Tenant, upon the Tenant duly attorning as aforesaid, as landlord of the Premises for the balance of the Term (and with rights of renewal if any as provided in the Lease), on the terms and provisions of the Lease, subject as provided in this Article 17.00.

17.07 **Effect of Subordination or Attornment** No subordination effected under Article 17.04 and no attornment effected under Article 17.05 will render the Mortgagee or Purchaser, as the case may be:

- (a) liable for any act or omission of Landlord or a predecessor in title of Landlord;
- (b) subject to any offsets or defenses which Tenant might have against Landlord or a predecessor in title of Landlord; or
- (c) bound by any prepayment by Tenant of more than one month's installment of Rent, ~~or by any previous modification of this Lease~~, unless such prepayment ~~or modification~~ has been approved in writing by the Mortgagee or Purchaser or any predecessor in interest except Landlord.

Upon attornment occurring under Article 17.05, the relationship of landlord and tenant thereby created between the Mortgagee or Purchaser as the case may be, as landlord, and the Tenant as tenant, will supercede this Lease, but if the Mortgage is subsequently redeemed or put in good standing or the Mortgagee goes out of possession, the Mortgagee will be relieved of its obligations to the Tenant as if a sale, conveyance or assignment had occurred to which Article 17.02 applied.

Any attornment by the Tenant to a Mortgagee or Purchaser will be without prejudice to the right (when applicable) of any other mortgagee or purchaser that has priority to the Mortgagee or Purchaser to demand that the Tenant attorn to the other mortgagee or purchaser pursuant to the rights if any of the other mortgagee or purchaser in that regard under this Article. In case of such demand being lawfully made, and the Tenant attorning to such other mortgagee or purchaser the attornment previously made to the Mortgagee or Purchaser will cease to be effective.

17.08 **Tenant's Obligations May Be Assigned** Tenant acknowledges that its covenants and obligations under this Article are intended in whole or in part to operate for the benefit of any and all Mortgagees and Purchasers and that in obtaining such covenants and obligations Landlord is acting not only for itself, but also as trustee or agent for all such persons. Without limiting the foregoing, Landlord may assign the benefit of such covenants and obligations to any and all Mortgagees or Purchasers who request same, as security or otherwise, and Tenant agrees that any such Mortgagee or Purchaser will be entitled on receiving such assignment and giving due notice thereof to Tenant, to enforce such covenant or obligation against Tenant to the same extent as if it were a party to this Lease directly entitled to the benefit of such covenants and obligations.

17.09 **Execution of Instruments** Except as otherwise provided in this Article, the subordination and attornment provisions herein will be self-operating and no further instrument will be required. Nevertheless Tenant, on request by and without cost to Landlord, any Mortgagee, Purchaser or successor in interest, will execute and deliver any and all instruments further evidencing such subordination and/or attornment when applicable.

## ARTICLE 18.00 NOTICES, ACKNOWLEDGMENTS, AUTHORITIES FOR ACTION

18.01 **Notices** Any notice from one party to the other under this Lease will be in writing and will be deemed duly given, if delivered personally to the party being given such notice or to a responsible employee of the party being given such notice, ~~or if transmitted by telecopier~~, or if mailed in Canada by registered or certified mail addressed to Tenant at the Premises ~~(whether or not Tenant has departed from, vacated or abandoned the Premises)~~ the Tenant's head office address as set out on page 1-1 of this Lease or to Landlord at its head office, which as of the date of this Lease is located at Landlord's address shown on page 1-1 of this Lease. Any notice will be deemed to have been given at the time of personal delivery ~~or if transmitted during normal business hours by telecopier, at the time of transmission, otherwise the next business day~~, or if mailed, on the third postal delivery day after the date of mailing thereof. Either party will have the right to designate by notice, in the manner above set forth, a different address to which notices are to be given. If it is reasonably anticipated that, due to mail service being disrupted, such notice, if mailed, will not be received by the third postal delivery day following mailing, then such notice must be personally delivered as provided in this Article 18.01 or, in lieu of mailing, sent by the most reasonably expeditious means of delivery available to the address for mailing and will be deemed duly given upon such delivery.

18.02 **Acknowledgments** Each of the parties hereto will at any time and from time to time upon not less than ten days' prior notice from the other execute, acknowledge and deliver a written statement certifying that:

- (a) this Lease is in full force and effect, subject only to such modification (if any) as may be set out therein;
- (b) Tenant is in possession of the Premises and paying Rent as provided in this Lease;
- (c) the dates (if any) to which Rent is paid in advance; and
- (d) that there are not, to such party's knowledge, any uncured defaults on the part of the other party under this Lease, or specifying such defaults if any are claimed.

Any such statement may be relied upon by any prospective transferee or encumbrancer of all or any portion of the Project, or any assignee of any such persons. ~~If Tenant fails to timely deliver such statement, Tenant will be deemed to have acknowledged that this Lease is in full force and effect, without modification except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance.~~

18.03 **Authorities for Action** Landlord may act in any matter provided for herein by its property manager and any other person who will from time to time be designated by Landlord by notice to Tenant. Tenant will designate in writing one or more persons to act on its behalf in any matter provided for herein and may from time to time change, by notice to Landlord, such designation. In the absence of any such designation, the person or persons executing this Lease for Tenant will be deemed to be authorized to act on behalf of Tenant in any matter provided for in this Lease.

## ARTICLE 19.00 DEFAULT

- 19.01 **Interest and Costs** Tenant will pay to Landlord interest at a rate equal to the lesser of a floating rate per annum equal to ~~five percent (5%)~~ **two percent (2%)** per annum above the prime commercial lending rate per annum charged by Royal Bank of Canada at its main office in Toronto, Ontario, from time to time, on loans made in Canadian funds to its most favoured commercial borrowers, calculated and compounded monthly with any adjustment in such floating rate to be effective on the first day of the month next following such change in the said prime commercial lending rate, or the maximum rate permitted by applicable law, upon all Rent required to be paid under this Lease from the due date for payment thereof until the same is fully paid and satisfied. Tenant will indemnify Landlord against all costs and charges (including legal fees) lawfully and reasonably incurred in enforcing payment thereof, and in obtaining possession of the Premises after default of Tenant or upon expiration of the Term or earlier termination of this Lease, or in enforcing any covenant, proviso or agreement of Tenant contained in this Lease.
- 19.02 **Right of Landlord to Perform Covenants** All covenants and agreements to be performed by Tenant under any of the terms of this Lease will be performed by Tenant, at Tenant's sole cost and expense, and without any abatement of Rent. If Tenant fails to perform any act on its part to be performed under this Lease, and such failure continues for ten (10) days after notice thereof from Landlord, **unless Tenant commences and continues rectification within the ten (10) day period**, Landlord may (but will not be obligated so to do) perform such act without waiving or releasing Tenant from any of its obligations relative thereto. All sums paid or costs incurred by Landlord in so performing such acts under this Article 19.02, together with interest thereon at the rate set out in Article 19.01 from the date each such payment was made or each such cost was incurred by Landlord, will be payable by Tenant to Landlord on demand.
- 19.03 **Events of Default** If and whenever:
- (a) part or all of the Rent hereby reserved is not paid when due, whether lawfully demanded or not, and such default continues for ~~seven~~ **ten** days after ~~the due date thereof~~ **notice**; or
  - (b) the Term or any goods, chattels or equipment of Tenant **on the Premises** is taken or exigible in execution or in attachment or if a writ of execution is issued against Tenant **and such writ is not removed within ten days after notice from Landlord**; or
  - (c) Tenant becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary or involuntary winding-up or dissolution or liquidation proceedings **other than in connection with a bona fide and in good faith corporate reorganization or amalgamation**, or if a receiver will be appointed for the business, property, affairs or revenues of Tenant; or
  - (d) any person other than Tenant or a Transferee permitted under this Lease has or exercises the right to manage or control the Premises, any part thereof or any business carried on in the Premises, other than subject to the actual, direct and full supervision and control of Tenant; or
  - (e) Tenant makes a bulk sale of its goods **on the Premises** or moves or commences, attempts or threatens to move its goods, chattels or equipment out of the Premises (other than in the normal course of its business) **or to a Transferee** or Tenant ceases to conduct business from the Premises **(except as permitted under this Lease)** or the Premises are not open for business to the public on any three (3) consecutive days **(except as permitted under this Lease)** that Tenant is required to conduct its business in the Premises or on more than five (5) days that Tenant is required to conduct its business in the Premises in any twelve (12) month period **(except as permitted under this Lease)**; or
  - (f) Tenant fails to observe, perform and keep each and every of the covenants, agreements, provisions, stipulations and conditions herein contained to be observed, performed and kept by Tenant (other than payment of Rent) and persists in such failure after ten (10) days' notice by Landlord specifying with reasonable particularity the nature of such failure and requiring that Tenant remedy, correct, desist or comply (or if any such breach would reasonably require more than ten (10) days to rectify, unless Tenant commences rectification within the ten (10) day notice period and thereafter promptly, effectively and continuously proceeds with the rectification of the breach to completion of rectification); or

- (g) termination of this Lease by Landlord is permitted by reason of Tenant's default under any other part of this Lease or in Law,

then and in any of such cases, at the option of Landlord, the full amount of the current month's and the next ensuing three months installments of Rent will immediately become due and payable (in the case of bankruptcy only) together with the unamortized amount of all tenant allowance monies paid to Tenant or the value of other inducements given to Tenant (such as, but not limited to, rent-free periods) in accordance with the provisions of this Lease or any other agreement between Landlord and Tenant relating to the Premises (such allowances and inducements being amortized on a straight line basis over the initial Term of the Lease and determined as of the date of the event of default, and hereinafter referred to as "Unamortized Tenant Inducements") and Landlord may immediately take legal proceedings, including distraint, for the same, together with any arrears then unpaid; and Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the Premises or any part thereof in the name of the whole and remove and sell Tenant's goods, chattels and trade fixtures therefrom, any rule of law or equity to the contrary notwithstanding; and Landlord may seize and sell such goods, chattels and equipment of Tenant as are in the Premises and may apply the proceeds thereof to all Rent and other payments to which Landlord is then entitled under this Lease. Any such sale may be effected in the discretion of Landlord by public auction or otherwise, and either in bulk or by individual item, or partly by one means and partly by another, all as Landlord in its entire discretion may decide. If any of Tenant's property is disposed of as provided in this Article 19.03, ten days' prior notice to Tenant of disposition will be deemed to be commercially reasonable.

- 19.04 ***Waiver of Exemption and Redemption*** Notwithstanding anything contained in any statute now or hereafter in force limiting or abrogating the right of distress, none of Tenant's goods, chattels or trade fixtures on the Premises at any time during the continuance of the Term will be exempt from levy by distress for Rent in arrears and upon any claim being made for such exemption by Tenant or on distress being made by Landlord this agreement may be pleaded as an estoppel against Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in any such statute, Tenant hereby waiving all and every benefit that could or might have accrued to Tenant under and by virtue of any such statute but for this Lease. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the terms and conditions of this Lease or otherwise.
- 19.05 ***Surrender*** If and whenever Landlord is entitled to or does re-enter, Landlord may terminate this Lease by giving notice thereof, and in such event Tenant will forthwith vacate and surrender the Premises.
- 19.06 ***Payments*** If Landlord re-enters or if this Lease is terminated, Tenant will pay to Landlord on demand:
- (a) Rent up to the time of re-entry or termination, whichever will be the later, plus accelerated rent as herein provided; and
  - (b) all expenses incurred by Landlord in performing any of Tenant's obligations under this Lease, re-entering or terminating and re-letting, collecting sums due or payable by Tenant, realizing upon assets seized (including brokerage, legal fees and disbursements), and the expense of keeping the Premises in good order, repairing the same and preparing them for re-letting; and
  - (c) as damages for the loss of income of Landlord expected to be derived from the Premises, the amounts (if any) by which the Rent which would have been payable under this Lease exceeds the payments (if any) received by Landlord from other tenants in the Premises, payable on the first day of each month during the period which would have constituted the unexpired portion of the Term had it not been terminated, or if elected by Landlord by notice to Tenant at or after re-entry or termination, a lump sum amount equal to the Rent which would have been payable under this Lease from the date of such election during the period which would have constituted the unexpired portion of the Term, had it not been terminated, reduced by the rental value of the Premises for the same period, established by reference to the terms and conditions upon which Landlord re-lets them if such re-letting is accomplished within a reasonable period after termination, and otherwise established by reference to all market and other relevant circumstances; Rent and rental value being reduced to present worth at an assumed interest rate of 10% on the basis of Landlord's estimates and assumptions of fact which will govern unless shown to be erroneous; and



(d) all Unamortized Tenant Inducements given by Landlord to Tenant in respect of the Premises.

19.07 ***Remedies Cumulative*** No reference to nor exercise of any specific right or remedy by Landlord will prejudice or preclude Landlord from exercising or invoking any other remedy in respect thereof, whether allowed at law or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but Landlord may from time to time exercise any one or more of such remedies independently or in combination.

## ARTICLE 20.00 ENVIRONMENTAL PROVISIONS

### 20.01 *Compliance with Environmental Laws*

- (a) Notwithstanding any other provision of this Lease, Tenant will fully comply with all applicable Environmental Laws.
- (b) If Tenant is convicted of an offence contrary to an Environmental Law which relates to the Premises or the Project and which indicates that Tenant's operations are such to potentially pose a material environmental risk to the Premises or the Project, Landlord will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and Landlord will not be liable for any damages of any kind however caused arising out of such termination.

20.02 *Approvals* Tenant will obtain and comply with the terms of all licenses, certificates of approval, permits and other approvals necessary or appropriate under applicable Environmental Law for the safe and lawful conduct of its business at or from the Premises.

20.03 *Operations and Maintenance* Tenant will design, install, operate, repair, replace and maintain, or cause to be designed, installed, operated, repaired, replaced and maintained, all equipment located in the Premises, and will train all of its staff, so as to minimize the risk of spills and other accidents, particularly those accidents which might result in a Discharge of Contaminants. If Tenant uses pollution control equipment, or any pollution control equipment is located in the Premises, Tenant will conduct regular preventative maintenance of such equipment, and will keep it in good working order at all times.

20.04 *Pesticides* Tenant will not use pesticides in the Premises or the Project unless Tenant has first obtained written consent from Landlord to do so and all necessary permits under applicable Environmental Law.

### 20.05 *Waste Disposal*

- (a) Tenant will store and dispose of all of its waste in a lawful manner. In particular, Tenant will use the garbage collection service provided by Landlord only to dispose of solid waste (which is not Hazardous Waste) which can lawfully be transported to, and dumped at, the closest landfill site without requiring payment of surcharges or penalties, and will use the sewers only to dispose of liquid waste (which is not Hazardous Waste) which may be lawfully discharged into the municipal sewer. All other wastes will be disposed of by Tenant, at its expense, at least once every three months, using a properly licensed waste hauler retained by Landlord, subject to Landlord's right to require Tenant, by giving Tenant notice thereof, to retain a properly licensed waste hauler to take away all or part (as designated by Landlord) of Tenant's waste. Regardless of whether the waste hauler is retained by Landlord or Tenant, Tenant, and not Landlord, will be deemed to be the generator of Tenant's waste.
- (b) Where Landlord provides separate waste collection facilities for different types of waste, Tenant will separate its waste and will deliver each waste to the appropriate facility. If contamination of separated waste occurs as a result of Tenant's failure to comply with the foregoing sentence, Tenant will indemnify Landlord for all damages and costs incurred by Landlord with respect to such contamination, together with an administration fee equal to 20% of such costs.
- (c) If Tenant is required by Environmental Law to keep any waste at the Project for more than three months, the waste will be stored in a manner and location which complies with all Environmental Law, at Tenant's expense.
- (d) Tenant will permit Landlord to perform an audit of Tenant's waste, its operations and the Premises as may be required by Landlord from time to time upon 24 hours notice, at Tenant's cost, (only if Tenant has not complied with this Article 20.05, otherwise at Landlord's cost).
- (e) Tenant will comply with any waste reduction workplan prepared by Landlord from time to time (if any), at Tenant's cost.

- (f) Tenant will comply with all reasonable requirements imposed by Landlord with respect to the implementation of a system for the storage, disposal, and separation of waste at the Project as contemplated by this Article 20.05.

#### 20.06 *Discharges of Contaminants*

- (a) Tenant will not authorize, cause or permit a Discharge of Contaminants except in accordance with Environmental Law.
- (b) Where a Discharge referred to in Article 20.06(a) does occur, Tenant will immediately report the occurrence of the Discharge to all Authorities to whom notification is required under Environmental Law in the circumstances, and to Landlord. Tenant will then immediately clean up the Discharge and restore the natural environment affected by the Discharge to the satisfaction of Landlord and all Authorities, and will provide Landlord with a certificate from Tenant's duly qualified consulting engineer and/or the appropriate Authorities confirming such Authorities' satisfaction, it being agreed that restoration in compliance with Environmental Law will be sufficient compliance with this Article 20.06(b).
- (c) If Tenant fails or refuses to promptly clean up the Discharge and to restore the natural environment affected by the Discharge, or if, in Landlord's opinion, Tenant is not competent to do so, Landlord:
  - (i) may elect in writing to carry out the whole or any part of the clean up and restoration at Tenant's expense, and
  - (ii) will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and Landlord will not be liable for any damages of any kind however caused arising out of such termination.
- (d) Tenant will permit Landlord to perform an audit of Tenant's Discharges of Contaminants into the natural environment, at Tenant's cost, (only if Tenant has not complied with this Article 20.06(d), otherwise at Landlord's cost).
- (e) Tenant will comply with a Discharge reduction workplan prepared by Landlord (if any).

#### 20.07 *Used Refrigerant*

- (a) No refrigerant may be vented to the atmosphere at any time in violation of any Environmental Law. When it is necessary to remove refrigerants from equipment for servicing, or when equipment containing refrigerant is to be removed from service, Tenant will ensure that the refrigerants are recaptured into approved refrigerant recovery cylinders and drums.
- (b) Tenant will be responsible for complying with all Environmental Law relating to the recapture and transportation of recaptured refrigerants with respect to the Premises.

#### 20.08 *Orders of an Authority*

- (a) Tenant will fully comply with all orders of an Authority which may be directed to Tenant and which relate to the Premises or the Project, including orders to provide financial assurance, to perform studies, to improve pollution control, to remove waste, to conduct investigations or to prepare or perform an environmental cleanup of the Premises or the Project.
- (b) Should an order of an Authority be issued to Landlord, requiring Landlord to do anything in relation to an environmental problem caused by Tenant, Tenant will, upon receipt of written notice from Landlord, carry out the order at Tenant's expense.
- (c) If Tenant fails or refuses to promptly and fully carry out an order referred to in this Article 20.08, or if, in Landlord's opinion, Tenant is not competent to carry out the order, Landlord may elect in writing to carry out the whole or any part of the order at Tenant's expense.
- (d) If Tenant fails or refuses to promptly and fully carry out an order referred to in this Article 20.08 and where it is reasonably necessary to perform a cleanup or to carry out an order in order to prevent further environmental problems, Landlord will have the right to prevent Tenant from obtaining access to the Premises for a reasonable period of time (taking into

account the circumstances), but no such prevention from obtaining access will constitute an eviction or entitle Tenant to any abatement of Rent.

- (e) If after written notice from Landlord, Tenant fails or refuses to promptly and fully carry out an order referred to in this Article 20.08 Landlord will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and Landlord will not be liable for any damages of any kind however caused arising out of such termination.

20.09 ***Vacant Possession*** Upon the expiration of the Term or other termination of this Lease, Tenant will leave the Premises clean of Contaminants, Hazardous Waste and Toxic Substances and suitable for immediate reuse for any commercial or residential purpose. ~~Tenant will be obliged to continue to pay Rent until it has removed from Premises and lawfully disposed of all waste and other Contaminants~~ acknowledges that Landlord's claim against Tenant for loss or damages for failure to comply with the provisions of this Article may include a claim for loss of rental income from the Premises. Notwithstanding anything to the contrary, Tenant will not be obligated to remove from the Premises any Contaminants, Hazardous Waste or Toxic Substances that were in the Premises prior to the date Tenant took possession of the Premises.

20.10 ***Inspection***

- (a) Landlord may, at any time, inspect the Premises and Tenant's records to determine whether Tenant is fully complying with all Environmental Law and its environmental obligations under this Lease. Landlord may also, upon 24 hours' notice, at any time, inspect the Premises to evaluate the risk of Discharges referred to in Article 20.06.
- (b) Where Landlord reasonably considers it necessary, the inspection may be performed in whole or in part by experts, and may include sampling, monitoring, and other tests, all performed at Tenant's expense, (only if Tenant has not complied with this Article 20.10(b) otherwise at Landlord's cost).
- (c) If Landlord's inspection discloses a breach of an Environmental Law, or a fact situation which could reasonably be anticipated to result in a breach of an Environmental Law, and Tenant fails to take whatever steps as are immediately required to rectify such breach, or prevent such breach from occurring, Landlord will have the right to take whatever steps are reasonably required to rectify such breach, or prevent such breach from occurring, as the case may be.

20.11 ***Indemnification*** Where Landlord has carried out an order referred to in Article 20.08, or has cleaned up or restored a Discharge referred to in Article 20.06, or has otherwise incurred any expense or damage relating to an environmental problem caused by Tenant, Tenant will indemnify Landlord for all costs incurred by Landlord with respect to any of the foregoing, together with an administration fee equal to 20% of the total expense and damage.

20.12 ***No Merger*** The provisions of this Article 20.00 will survive and continue to apply following the expiry or earlier termination of this Lease.

20.13 ***Landlord's Environmental Responsibility*** Except as provided for to the contrary, the Landlord will fully comply with all applicable Environmental Laws and shall be responsible for investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Hazardous Waste, Toxic Substances and Contaminants, in, on, under, above or which affects the Premises or any part thereof and which the Landlord is ordered or directed to investigate, test, monitor, remove, enclose, encapsulate or abate, by an Authority (subject to the Landlord's rights at law to appeal any such order or direction). The Landlord agrees to promptly effect any reasonable repair, alteration, improvement, remediation or work to the Premises (but excluding the other Rentable Components of the Project) as required to comply with the Landlord's covenant as set out in this Lease. The Landlord will not be responsible under this Article if as of the Commencement Date, the Hazardous Waste, Contaminant or Toxic Substance is not considered to be an environmental hazard in the normal conduct of business, or to the extent the presence of the Hazardous Waste, Contaminant or Toxic Substance:

- (i) is caused or contributed to by the act or omission of the Tenant, its employees, agents, servants, contractors or those in law for whom the Tenant is responsible (including to the extent any materials as specified for the completion of the Landlord's Work (if any) in this Lease); or

- (ii) relates to those improvements, fixtures or property in the Premises not owned by Landlord or for which the Tenant is responsible to repair or maintain or which is installed by or on behalf of the Tenant; or
- (iii) is caused or contributed to by the act or omission of any other third party, their employees, agents, servants, contractors or those in law for which such other third party is responsible.

## ARTICLE 21.00 MISCELLANEOUS

- 21.01 ***Relationship of Parties*** Nothing contained in this Lease will create any relationship between the parties to this Lease other than that of landlord and tenant, and it is acknowledged and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or a joint venturer or a member of a joint or common enterprise with Tenant.
- 21.02 ***Consent Not Unreasonably Withheld*** Except as otherwise specifically provided, whenever consent or approval of Landlord or Tenant is required under the terms of this Lease, such consent or approval will not be unreasonably withheld or delayed. Tenant's sole remedy if Landlord unreasonably withholds or delays consent or approval will be an action for specific performance, and Landlord will not be liable for damages. If either party withholds any consent or approval, such party will on written request deliver to the other party a written statement giving the reasons therefor.
- 21.03 ***Name of Project*** Landlord will have the right, after 30 days' notice to Tenant, to change the name, number or designation of the Project or any part thereof, during the Term without liability to Tenant.
- 21.04 ***Applicable Law and Interpretation*** This Lease will be governed by and interpreted under the laws of the jurisdiction in which the Project is located, and its provisions will be interpreted as a whole according to their common meaning and not strictly for or against Landlord or Tenant. The words "Landlord" and "Tenant" will include the plural as well as the singular. If this Lease is executed by more than one party as Tenant, Tenant's obligations under this Lease will be joint and several obligations of such executing parties. Time is of the essence of this Lease and each of its provisions. The captions of the Articles and Sections are included for convenience only, and will have no effect upon the interpretation of this Lease.

Certain text in this Lease has been bolded and underlined and certain text has been deleted by way of a line through the applicable text. Such bolding and underlining and lines through the applicable text have been used to identify changes to the Landlord's standard form of lease for the Project. All bolded and underlined text will be read as if not bolded and underlined and all text deleted by way of a line will be deemed not to exist.

- 21.05 ***Entire Agreement*** This Lease contains the entire agreement between the parties hereto with respect to the subject matter of this Lease and except as otherwise expressly set forth in this Lease, this Lease supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures, agreements, representations, promises, warranties, understandings, and information conveyed, whether oral or in writing, between the parties hereto or their respective representatives or any other person purporting to represent Landlord or Tenant. Tenant acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as are expressly set out in this Lease.
- 21.06 ***Amendment or Modification*** Unless otherwise specifically provided in this Lease, no amendment, modification, or supplement to this Lease will be valid or binding unless set out in writing and executed by the parties hereto in the same manner as the execution of this Lease.
- 21.07 ***Construed Covenants and Severability*** All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Article hereof. If any term, proviso, covenant or condition of this Lease or the application thereof to any person or circumstance is to any extent held or rendered invalid, void, unenforceable or illegal it or its application will be considered separate and severable from this Lease to such extent and the remainder of this Lease or the application of such term, proviso, covenant or condition to persons or circumstances other than those with respect to which it is held invalid, void, unenforceable or illegal will not be affected thereby and will continue to be applicable and enforceable to the fullest extent permitted by law.
- 21.08 ***No Implied Surrender or Waiver*** No provisions of this Lease will be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord or Tenant, as the case may be. Landlord's or Tenant's waiver of a breach of any term or condition of this Lease will not prevent a subsequent act, which would have originally constituted a breach, from having all the force and effect of any original breach. Landlord's receipt of Rent with knowledge of a breach by Tenant of any term or condition of this Lease will not be deemed a waiver of such breach. Landlord's failure to enforce against Tenant or any other tenant in the Project any of the Rules and Regulations made under Article 14.00 will not be deemed a waiver of such Rules and Regulations. No act or thing done by Landlord, its agents or employees during the Term will be deemed an acceptance of a surrender of the Premises,

and no agreement to accept a surrender of the Premises will be valid, unless in writing signed by Landlord. The delivery of keys to any of Landlord's agents or employees will not operate as a termination of this Lease or a surrender of the Premises. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent due under this Lease will be deemed to be other than on account of the earliest stipulated Rent, nor will any endorsement or statement on any cheque or any letter accompanying any cheque, or payment as Rent, be deemed an accord and satisfaction, and Landlord may accept such cheque or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy available to Landlord.

21.09 **Changes and Additions** Landlord will have the right from time to time during the Term to:

- (i) change the area, level, location, arrangement, destination or use of the Project or any part thereof; and
- (ii) construct additional buildings, structures or improvements on the Land and make alterations thereof, additions thereto, subtractions therefrom, or re-arrangements thereof, build additional storeys on any building forming a part of the Project, and construct additional buildings or facilities adjoining or proximate to the Project.

Notwithstanding anything contained in this Lease, it is understood and agreed that if the Common Areas are diminished or altered in any manner whatsoever as a result of the exercise by Landlord of its rights set out in this Article, Landlord is not subject to any liability nor is Tenant entitled to any compensation or diminution or abatement of Rent, nor is any alteration or diminution of the Common Areas deemed to constitute constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease. Landlord and Tenant further agree that the exercise by Landlord of its rights under this Article 21.09 will not relieve Tenant of Tenant's obligations under Article 5.03 of this Lease, provided such alterations do not affect the pedestrian traffic flow or the visibility of the Premises from the common areas of the Project any more than is reasonably necessary in the case of a temporary alteration, and do not materially affect the pedestrian traffic flow in front of or in close proximity to the Premises or visibility of the Premises from the common areas of the Project in the case of any permanent alteration.

In connection with Landlord's rights under this Article 21.09 and Article 6.04 if an additional Anchor Store (defined as any space leased to a tenant having a total floor area in excess of 50,000 square feet) opens for business in the Project at any time after the Commencement Date, then effective upon the first day of the month next following such opening and for the balance of the Term, the per square foot rate of Annual Rent for the Premises will be increased from that shown in Article 4.01 by an amount equal to 5% of the aggregate of Annual Rent and Percentage Rent payable in the previous Lease Year, or if Tenant has occupied the Premises for less than one (1) Lease Year, then on a comparable basis for the elapsed period of time.

21.10 **Relocation** Tenant agrees to relocate to other premises within the Project in the event that Landlord, in good faith, requests Tenant to do so in order to facilitate Landlord's exercise of its rights under Article 21.09 of this Lease. Landlord in such event will indemnify Tenant, on an equitable basis, for capital costs incurred by Tenant for fixtures as a result of such relocation.

For the purpose of an expansion or major alteration of the Project, the Landlord will have the right, at any time during the Term, to relocate the Tenant from the Premises to other premises in the Project similar to the Premises in size and exposure to patrons of the Project (the "New Premises") upon giving the Tenant sixty (60) days written notice that the Landlord requires possession of same. The terms and conditions of the Lease for the New Premises will be the same as in the Lease for the Premises, except that the Rent will be proportionately adjusted to take into account any change in area, and the Landlord will pay to the Tenant the Tenant's reasonable capital costs for new trade fixtures and leasehold improvements directly resulting from such relocation. If the New Premises are unacceptable to the Tenant, Tenant will have the option of terminating this Lease upon sixty (60) days written notice to the Landlord, such notice to be delivered to Landlord not more than 15 days after the Tenant is requested by Landlord to relocate. Tenant's option to terminate this Lease will only apply in the case where the Landlord requests the Tenant to relocate and Tenant decides to terminate the Lease instead of relocating. Should the Tenant elect to terminate, the Landlord will reimburse the Tenant for the undepreciated capital cost of the Tenant's trade fixtures and leasehold improvements on the Premises, on a straight line basis. The Landlord agrees that it will not relocate Tenant during the months of October, November or December.

- 21.11 **Additional Costs** Tenant agrees to pay to Landlord as Rent, upon written request therefor, any and all **reasonable and incremental** costs, including without limitation, costs of additional security, cleaning and legal costs, incurred by Landlord as a result of picketing, demonstration or other activity within the Project which is initiated by members of any organization, including, without limitation, a trade union, and which is directed at Tenant, its contractors, subcontractors, suppliers or employees or at Tenant's operations in the Project, **provided, however, should such picketing, demonstration or other activity be directed at a number of tenants in the Project (including the Tenant), then such costs will be payable on a pro rata basis (based on square footage) of all such tenants.**
- 21.12 **Force Majeure** If during the Term either party to this Lease will be unable to perform any of the terms, obligations, or conditions contained in this Lease due to strikes, walkouts (except for strikes or walkouts directly involving employees of Tenant), civil commotion, warlike operations, governmental regulations or controls, acts of God, inability to procure materials or services, or otherwise beyond the reasonable control of such party, then such party will be deemed not to be in default under the Lease for the period of such delay and the time for the performance of any such term, obligation or condition will be extended for the period of such delay provided at all times that, notwithstanding anything contained in this Lease to the contrary, nothing in this Force Majeure provision will relieve Tenant from payment of Rent as required in this Lease and insolvency or lack of funds will not relieve any party to this Lease from fulfillment of any obligation arising from any part of this Lease.
- 21.13 **Successors Bound** Except as otherwise specifically provided, the covenants, terms and conditions contained in this Lease will apply to and bind the heirs, successors, executors, administrators and permitted assigns of the parties hereto.
- 21.14 **No Offer by Landlord** Landlord will not be deemed to have made an offer to Tenant by preparing this Lease. No agreement respecting the Premises will arise or exist between the parties hereto except through the due execution of this Lease by both Tenant and Landlord. Upon execution and delivery by Tenant to Landlord, this Lease will be irrevocable by Tenant and open for acceptance by Landlord until 5:00 P.M. on the 60th day thereafter, and if not accepted by Landlord by then, may be withdrawn by Tenant by notice to Landlord at any time prior to its later acceptance by Landlord.
- 21.15 **Security Deposit** A deposit of \$Nil (the "Security Deposit") payable to Landlord is delivered herewith to be held as security for the faithful performance by Tenant of all of Tenant's obligations under this Lease. In the event a default occurs in the payment of Rent, Landlord will have the right, without being obliged to do so, to appropriate the Security Deposit, or such part thereof as is necessary to compensate Landlord for any amount then owed by Tenant, and to apply such Security Deposit to the payment of such amounts, the whole without prejudice to any of Landlord's other rights and remedies. ~~Upon such appropriation, Tenant covenants to remit to Landlord within five days' of notice from Landlord, a sum equal to the amount of the Security Deposit so appropriated sufficient to restore the Security Deposit to the amount it would have been if no part of the Security Deposit had been so confiscated. If not in default at the expiry of the Term, Landlord will return the Security Deposit (or remainder thereof, as the case may be), without interest, to Tenant, its successor or permitted assign, as the case may be.~~
- 21.16 **Termination of Previous Premises**
1. **For the purposes of this Article,**
    - (a) **"Old Premises" means the 5,434 square feet of space known as Location EE9 of the Project.**
    - (b) **"Old Lease" means the lease dated September 12, 1989 between Regional Shopping Centres Limited, as landlord, and Dylex Limited, as tenant, and as assigned to Fairweather Stores Inc. by way of Assignment and Assumption of Leases dated June 1, 1994 and as renewed by way of Renewal of Lease dated November 14, 2000 and further assigned to Fairweather Ltd. by way of Assignment of Lease dated October 30, 2001, and having a term expiring on March 31, 2005.**
    - (c) **"Termination Date" means the day immediately preceding the Commencement Date as defined in Article 1.01.**
  2. **Tenant and Landlord hereby agree that the Old Lease is terminated effective on the Termination Date.**



3. The respective rights and obligations of Landlord and Tenant with respect to the Old Premises and the Old Lease will be preserved and will survive the Termination Date, as to all matters arising or accruing prior to the Termination Date, but no such rights or obligations will arise or accrue to either of them with respect to the Old Lease on or after the Termination Date. Any breach of the Old Lease which has not been cured will, after the Termination Date, be enforceable in accordance with all applicable provisions of the Old Lease.
4. Tenant covenants with Landlord that Tenant has in itself the absolute right, full power and authority to agree to the termination of the Old Lease as provided herein, and that Tenant has not taken any action whereby the Old Lease, the Old Premises or the unexpired portion of the term of the Old Lease is or may be charged, encumbered or assigned. Tenant hereby indemnifies and holds harmless Landlord against any costs and expenses incurred by Landlord as a result of any claim that Tenant does not have in itself the absolute right, power and authority to agree to the termination of the Old Lease as provided herein.

IN WITNESS WHEREOF the parties hereto have executed this indenture by their authorized officers in that behalf, or by Tenant's signature hereto if Tenant is not incorporated, as of the date first above written.

LANDLORD UPPER CANADA MALL LIMITED

by \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

George Fiddler  
Senior Vice President  
Central Region

by \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Fred J. Santini  
Assistant Secretary and Legal Counsel  
Law Department

We have the authority to bind the company.

TENANT FAIRWEATHER LTD.

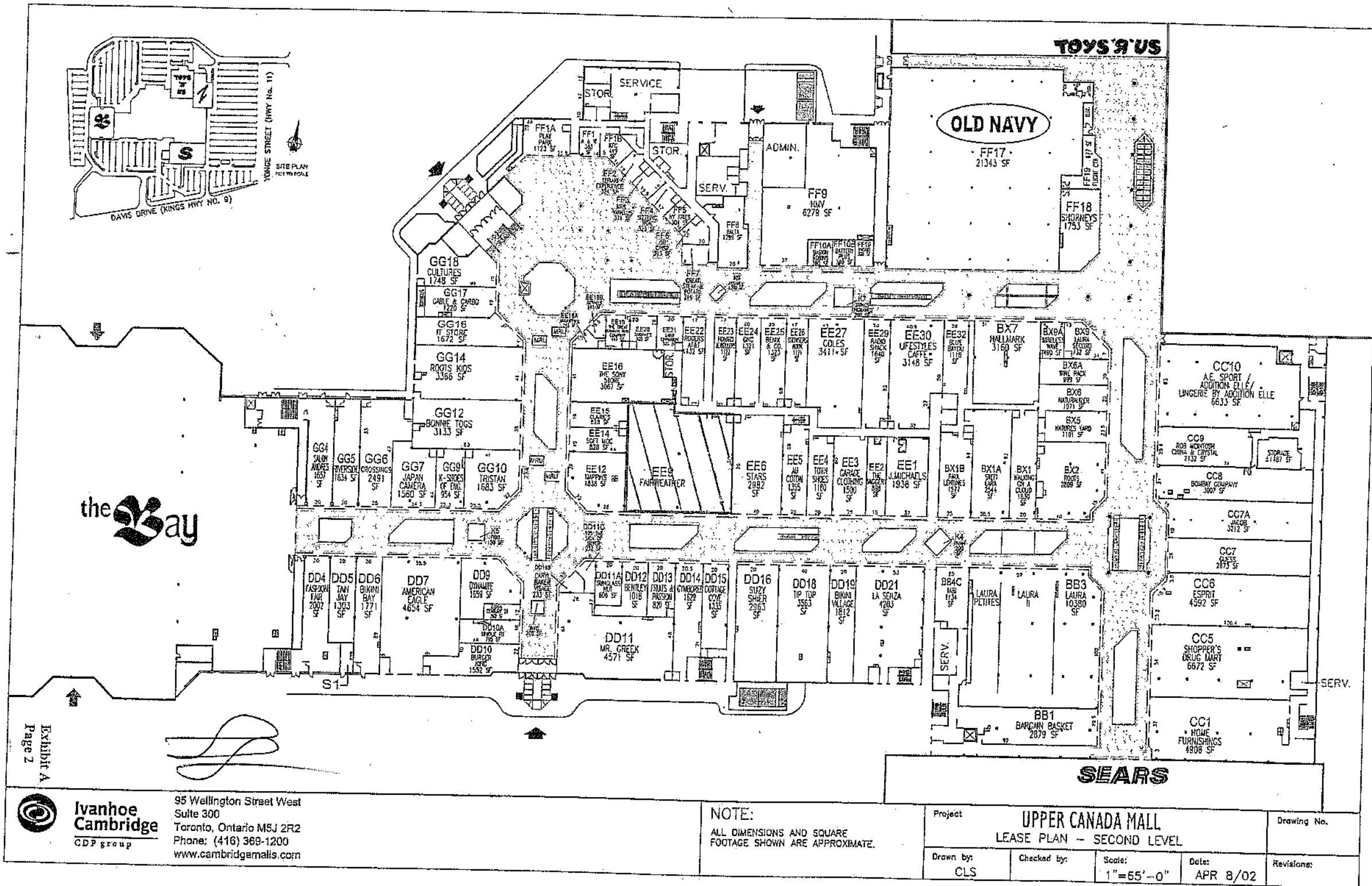
by \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have the authority to bind the company.

by \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have the authority to bind the company.

Tenant if a corporation must execute this Lease by signature of its duly authorized officer(s) under its corporate seal or if no corporate seal is affixed indicate the name(s) and capacity of such signing officers and if a partnership must execute the Lease by the signatures of the general partners under seal, and if an individual must execute the Lease by the individual's signature under seal. Except in the case of corporations all signatures must be witnessed.



NOTE:  
ALL DIMENSIONS AND SQUARE  
FOOTAGE SHOWN ARE APPROXIMATE.

Project		UPPER CANADA MALL LEASE PLAN - SECOND LEVEL		Drawing No.	
Drawn by:	CLS	Checked by:	Scale: 1"=65'-0"	Date: APR 8/02	Revisions:

**Zellers**

EXHIBIT A

**SEARS**

the Bay

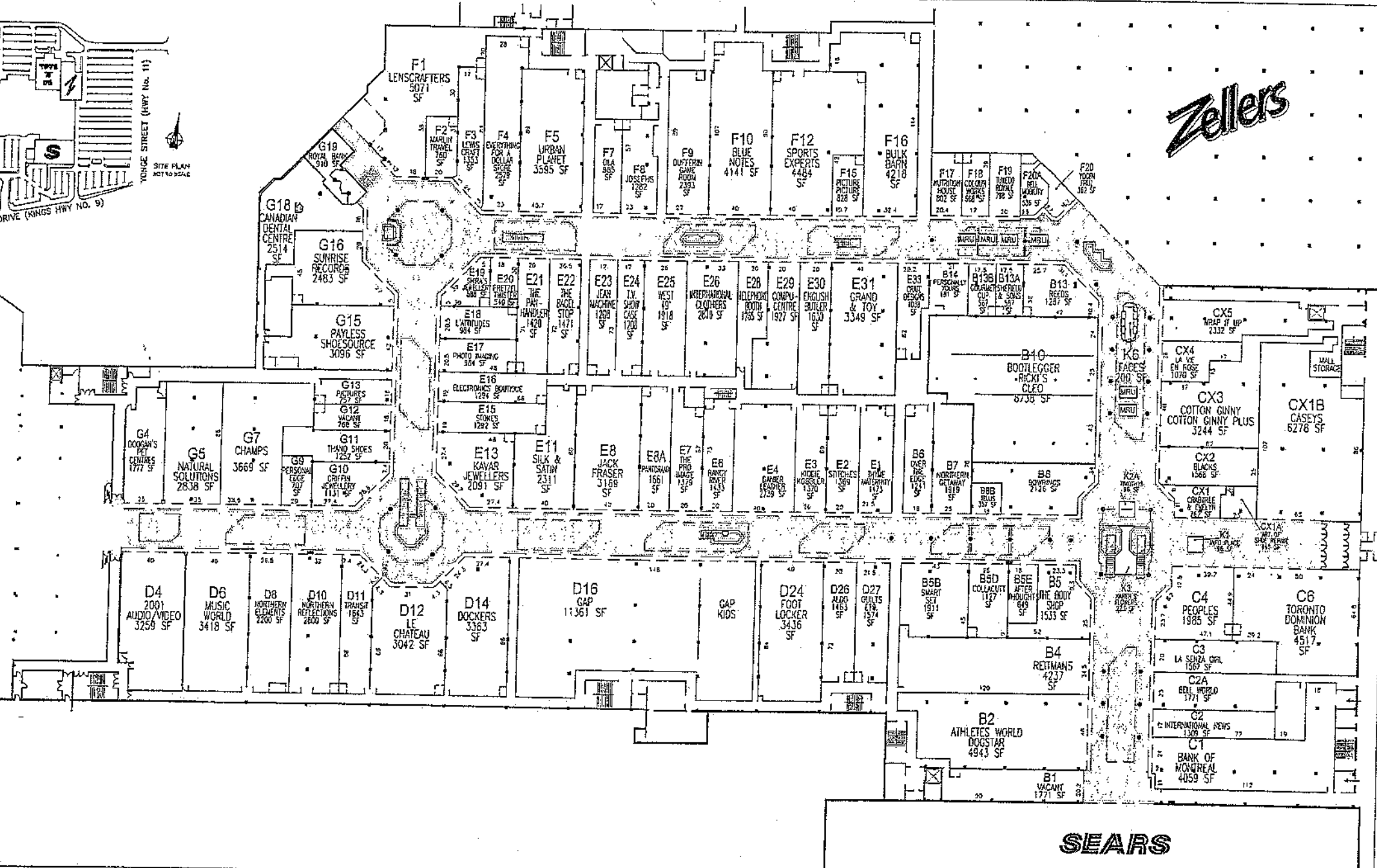
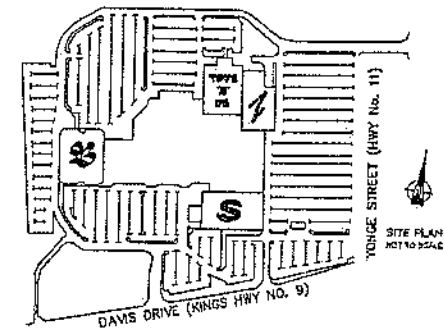
Exhibit A  
Page 1



95 Wellington Street West  
Suite 300  
Toronto, Ontario M5J 2R2  
Phone: (416) 369-1200  
www.cambridgemalls.com

**NOTE:**  
ALL DIMENSIONS AND SQUARE  
FOOTAGE SHOWN ARE APPROXIMATE.

Project <b>UPPER CANADA MALL</b> LEASE PLAN - FIRST LEVEL					Drawing No.
Drawn by: CLS	Checked by:	Scale: 1"=60'-0"	Date: APR 8/02	Revisions:	



## **EXHIBIT B**

### **Upper Canada Mall**

### **Newmarket, Ontario**

#### **SECTION 1.00 WORDS AND PHRASES**

##### **1.01 Definitions: In this Lease:**

- (a) "Architect" means the firm of professional architects or engineers as Landlord may, from time to time, engage for preparation of construction drawings for the Project or for general supervision of architectural and engineering aspects and operations of the Project and includes any consultant from time to time appointed by Landlord or the Architect whenever such consultant is acting within the scope of his appointment and specialty.
- (b) "Building" means those portions of the Project (excluding the Non-Retail Areas, Free-Standing Premises, any Major Tenant Premises, any premises not fronting on an interior mall of the Project and any premises on lands not owned or leased by Landlord but covered under an Operating Agreement), which are leased or designated for lease to tenants for retail or service stores, and in which the Premises is located.
- (c) "Common Areas" means those portions of the Land and Project (excluding both the Rentable Components of the Project and lands not owned or leased by Landlord but covered under an Operating Agreement), which are from time to time provided to be used in common by Landlord, Tenant, and other tenants of the Project (or by the respective agents, employees, customers, sublessees or licensees thereof), whether or not those areas are open to the general public, and are deemed to include any fixtures, chattels, systems, decor, signs, roofs, parking facilities, or landscaping contained in them or maintained or used in connection with them, and are deemed to include the city sidewalks adjacent to the Land, any access area to the Delivery Facilities, and any pedestrian walkway or vehicular access system, park or other facility in respect of which Landlord is from time to time subject to obligations in its capacity as owner or lessee of the Land or Project, or both.
- (d) "Consumer Price Index" means the Consumer Price Index for the City of **Toronto, Ontario** as issued by Statistics Canada or its successor, provided that if such Consumer Price Index is not available from Statistics Canada or its successor, Landlord may utilize for the purposes of this Lease any reasonable measure of changes in consumer price levels.
- (e) "Delivery Facilities" means those portions of the Common Areas which are, from time to time, designated by Landlord as facilities to be used in common by Landlord, tenants of the Project, and others, for purposes of loading, unloading, delivery, dispatch and holding of merchandise, goods and materials entering or leaving the Project, and those portions of the Project giving vehicular access to the said facilities.
- (f) "Free-Standing Premises" means any premises forming part of the Project which stand alone and are not attached for support to any other premises.
- (g) "General Project Expense" means all costs, charges and expenses which are directly attributable to the operation, management, repair and maintenance of the Project or incurred to reduce Operating Costs but which are not attributable solely to the operation, management, repair and maintenance of the Common Areas or any Rentable Components of the Project.
- (h) "HVAC Cost" means all the costs, charges and expenses in any Fiscal Year for the operation, repair, replacement and maintenance of the systems for heating, ventilating, and air conditioning the Project as established by Landlord, from time to time, on a fair and equitable basis which reflects load and hours of operation.
- (i) "Land" means all of the lands described in Exhibit D.
- (j) "Major Tenant" means any tenant or other occupant (retail or otherwise) of Major Tenant Premises.

- (k) "Major Tenant Premises" means any single premises in the Project (excluding Free Standing Premises) which have an area in excess of 15,000 square feet of space.
- (l) "Media Fund" means the fund described in Section 5.08.
- (m) "Merchants' Association" means the incorporated association of tenants of the Project, if any, referred to in Section 5.06.
- (n) "Non-Retail Areas" means those portions of the Project which are from time to time designated by Landlord for non-retail use, including, without limiting the generality of the foregoing, those areas:
  - (i) leased or designated by Landlord for lease for use, or operation as offices, or as hotel facilities (which may include such retail areas as are customarily part of such hotel facilities), or as residences, or as any combination thereof;
  - (ii) used or designated by Landlord for use as recreational or community service facilities (including without limiting the generality of the foregoing, police substation, child care facilities, senior citizen drop-in centre, auditorium, post office, public library, theatre, cinema or customer service centres); and
  - (iii) used or designated by Landlord for use as storage facilities.
- (o) "Operating Agreement(s)" means any agreement or agreements between Landlord and the owner(s) of lands neighbouring or contiguous to the Land, pursuant to which the developments and improvements on the Land and the developments and improvements on such neighbouring or contiguous lands are operated on a co-ordinated basis (if any).
- (p) "Prime Rate" means the annual rate of interest announced from time to time by Royal Bank of Canada at its main branch in Toronto, Ontario, as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada.
- (q) "Project" means the Land and those developments and improvements from time to time constructed on the Land and those developments and improvements from time to time constructed on adjoining or neighbouring lands designated by Landlord for use in connection with the Project known as Upper Canada Mall.
- (r) "Promotion Fund" means the fund for promotion of the Project, if any, described in Section 5.02.
- (s) "Rentable Components of the Project" means the Building, Free-Standing Premises, the Non-Retail Areas, the premises of Major Tenants and premises not fronting on an interior mall of the Project.
- (t) "Section" means a section of this Exhibit B.
- (u) "Square Feet of Space in the Premises" means the number of square feet set out in Article 1.01(u) of this Lease unless otherwise determined in accordance with Section 3.01.
- (v) "Tax Cost" means that portion of the Taxes accruing in respect of the calendar year in which the Fiscal Year begins. Tax Cost will be allocated by Landlord between Rentable Components of the Project and Common Areas in each case on such basis as Landlord in its sole reasonable opinion determines equitable, having regard, among other things, to the various uses of the Rentable Components of the Project, the cost of construction and the prevailing assessment principles.
- (w) "Taxes" means the aggregate of all taxes, surtaxes, rates, charges (including local improvement charges and commercial concentration taxes), levies, assessments, licence fees, excise and other charges, or any other taxes, surtaxes, rates or charges levied, charged or assessed in lieu thereof, imposed by any competent authority upon or in respect of the Land, upon or in respect of all adjoining or neighbouring lands from time to time owned or made available to Landlord and used in connection with the Project, or upon or in respect of both, and upon or in respect of all developments and improvements on the Land and on such adjoining or neighbouring lands, such taxes, surtaxes, rates, charges, levies and assessments being established by such competent authority based upon the Project, in its various stages of

development, assessed as a completed, fully occupied Project. Without limiting the generality of the foregoing, Taxes will include any tax imposed on the capital invested in the Land and the Project including, without limitation, Large Corporations Tax, or any replacement thereof.

Tax imposed on the capital invested in the Land and the Project will be determined on the basis of a calculation of the said tax based on the following considerations: i) as if the Project were the only property of Landlord/owner; and ii) based on a reasonable allocation of the capital that was required to acquire, and construct the Project, excluding any and all financing costs, including but not limited to, mortgage payments, carry costs and other financing or re-financing charges. Subject to the foregoing, in determining Taxes, any corporate income, profits, excess profits, and business tax imposed upon the income of Landlord and any other impost of a personal nature charged or levied against Landlord will be excluded, except to the extent that it is levied in lieu of taxes, rates, charges or assessments in respect of the Land or such adjoining or neighbouring lands or developments and improvements on the Land and/or such adjoining or neighbouring lands.

- 1.02 Normal Business Hours** Except as otherwise specifically provided in this Lease, normal business hours for the retail and service portion(s) of the Project will be determined in accordance with Article 5.02 of the Lease.

## **SECTION 2.00 DETERMINATION OF OCCUPANCY COSTS**

- 2.01 Occupancy Costs** "Occupancy Costs" for any Fiscal Year means an amount equal to Operating Cost in respect of such Fiscal Year multiplied by the Square Feet of Space in the Premises.

- 2.02 Determination of Operating Cost** "Operating Cost" means an amount per square foot without duplication in respect of a Fiscal Year (calculated to the nearest cent) established in accordance with generally accepted accounting principles and confirmed in a certificate of Landlord, and equal to the sum of the following costs, divided by the number of square feet in the Building (determined on the basis set out in Section 3.02):

- (a) all costs, expenses and charges which are directly attributable to the insuring, operation, repair, and maintenance of the Project including, without limiting the generality of the foregoing, Tax Cost, HVAC Cost, depreciation or amortization on equipment and fixtures, interest calculated at the rate of two percent (2%) per annum in excess of the Prime Rate upon the undepreciated or unamortized portion of the cost and expense of the facilities and capital replacement of the systems for heating, ventilating and air conditioning the Project, and repairs and replacement of the roofs and parking facilities of the Project, and
- (b) all expenses after the date any space in the Project was first occupied by any tenant and properly allocable to the Fiscal Year for any capital improvement or structural repair to the Project, or required by any change in the laws, rules, regulations, or orders of any governmental or quasi-governmental authority having jurisdiction, or incurred to reduce Operating Cost, which expenses will be amortized in accordance with generally accepted accounting principles, and interest calculated at the rate of two percent (2%) per annum in excess of the Prime Rate upon the unamortized portion of the total costs of the foregoing, and
- (c) General Project Expense in the Fiscal Year, and
- (d) a charge for off-site administration overhead equal to 15% of the total of the items set out in Sections 2.02 (a), (b) and (c), above, (excluding, however, ~~that portion of the depreciation, interest and Tax Cost allocated by Landlord to the Rentable Components of the Project, but including any goods and services taxes, or any similar tax, thereon~~) in the Fiscal Year.

Notwithstanding the foregoing, in the event that a separate assessment or assessments is or are issued in respect of the Premises and/or the Common Areas or in respect of Tenant's occupancy of the Premises, or both, then, if Landlord so elects, the portion of the Taxes in respect of the Premises and the Common Areas or in respect of Tenant's occupancy of the Premises, or both, will be excluded in determining Operating Cost but there will be added to Occupancy Costs an amount equal to the separate tax bills issued for the Premises and the Common Areas ~~plus an administration fee equal to 15% of the Common Areas tax bills or, if no separate tax bills are so issued, an amount equal to the separate assessment or assessments issued in respect of the Premises and the Common Areas or in respect of Tenant's occupancy of the Premises, or both, multiplied by the applicable mill rate or rates plus an administration fee equal to 15% in respect of the Common Areas tax bill(s).~~ The amount so added to Occupancy Costs will be deemed to form a part thereof.

- 2.03 Deduction for Contributions** In determining Operating Cost, there will be deducted from the total amounts set out in Section 2.02 the contributions payable to Landlord toward Operating Cost by Major Tenants, tenants of Free-Standing Premises or of Non-Retail Areas or of premises not fronting on an interior mall of the Project, and under the Operating Agreement(s) (if any) and any input tax credit received by Landlord on account of goods and services taxes to the extent such taxes have been included in Section 2.02.
- 2.04 Limitation on Operating Cost** In determining Operating Cost, the cost (if any) of the following will be excluded except as specifically provided in Section 2.02:
- (a) additions to the Project,
  - (b) repair and replacement resulting from inferior or deficient workmanship, materials, or equipment in the initial construction of the Project for which Landlord is actually reimbursed,
  - (c) ground rent (if any), depreciation on buildings or structures and permanent parts thereof, and interest on and capital retirement of debt,
  - (d) repair and replacement for which Landlord is reimbursed by insurers, and
  - (e) tenant improvements and leasing commissions,
  - (f) income taxes, corporate taxes, and other taxes personal to Landlord;
  - (g) payments of principal and interest on mortgages or other financing of the Project arranged by Landlord;
  - (h) costs of repairs or replacements to the Premises or Project caused as a result of structural defects or weaknesses, faulty construction or design, improper materials or workmanship;
  - (i) costs incurred by Landlord in enforcing the provisions of the respective leases of all other tenants of the Project, only if solely for the benefit of Landlord; and
  - (j) costs of performing Landlord's Work in connection with the original construction of the Project.
- 2.05 When Services are Not Provided** Notwithstanding Section 2.02, when and if any service which is normally provided by Landlord to tenants of the Building:
- (a) is not provided by Landlord in the Premises as required under the specific terms of this Lease, in determining Occupancy Costs for Tenant the cost of the service (except as it relates to the Common Areas) will be excluded,
  - (b) is not provided by Landlord in a significant portion of the Building, in determining Occupancy Costs for Tenant the cost of the service will be divided by the difference between the number of square feet in the Building and the number of square feet in the Building in which Landlord does not provide the service, both determined on the basis set out in Section 3.01.
- 2.06 Partial Fiscal Year** If the Term commences after the beginning of or terminates before the end of a Fiscal Year, the amount of Occupancy Costs payable by Tenant for such Fiscal Year will be adjusted proportionately.
- 2.07 Supply of Electricity** Notwithstanding Article 7.03 of this Lease, at Landlord's option, Landlord may, at any time or times during the Term, purchase in bulk from the utility supplier the aggregate electrical energy requirements of the Project or any portion thereof, in which event Landlord may arrange for the supply of electricity to the Premises for the general electrical purposes of Tenant. In such case, Tenant will pay to Landlord on a monthly basis, in advance, with annual adjustment at the end of each Fiscal Year, a charge for supplying electricity to the Premises as determined by Landlord on the basis of Tenant's consumption, provided that Tenant will pay no more for such electricity than if such electricity were supplied directly to Tenant by the utility supplier and Tenant's consumption of such electricity were separately metered by the utility supplier.

### SECTION 3.00 DETERMINATION OF SQUARE FEET OF SPACE

- 3.01 Floor Area of Premises** Notwithstanding anything provided elsewhere in this Lease, the number of Square Feet of Space in the Premises, whether above or below grade, will be calculated from dimensioned drawings of the Architect to extend to: (i) the lease line at any storefront of the Premises as designated by Landlord to include both the exterior face of and any recessed portions of any storefront, (ii) the centre line of every wall or division separating the Premises from rented or rentable space, and (iii) the exterior face of any other wall or division marking the boundaries thereof. The number of Square Feet of Space in the Premises will be measured to include all interior space whether or not occupied by interior projections, stairways, shafts, ventilation spaces, columns, pipes, conduits or other physical features.
- 3.02 Floor Area of Building** The "number of square feet in the Building" means the sum of the total square feet of those portions of the Building which are leased or designated for lease to tenants for retail or service stores, calculated on a similar basis as the number of Square Feet of Space in the Premises pursuant to Section 3.01.
- 3.03 Exhibit A Plan(s)** The purpose of the plan(s) attached as Exhibit A is to identify generally the approximate location of the Premises in the Project as of the Commencement Date, and each of Article 6.04, Article 21.09 and the provisions of this Section 3.00 will prevail over anything shown on such plan(s).
- 3.04 Certification by Architect** If, as the result of a certification or re-certification by the Architect of the number of Square Feet of Space in the Premises, there is to be a proportionate adjustment of Rent and of other Tenant charges which are based upon the number of Square feet of Space in the Premises, such adjustment will be made and become effective on: (a) the Commencement Date if certified in the first year of the Term; and (b) the first day of the month following the date of the certification or re-certification by the Architect if certified or re-certified after the end of the first year of the Term.

In the event that Tenant will require a certification or re-certification by the Architect of the number of Square Feet of Space in the Premises at any time prior to or during the Term, Tenant will pay for the cost of same. Prior to any such certification or re-certification Tenant will agree in writing on Landlord's form to the exact cost thereof.

### SECTION 4.00 LOADING AND DELIVERY

- 4.01** The delivery and shipping of merchandise, supplies, fixtures, and other materials or goods of whatsoever nature to or from the Premises and all loading, unloading, and handling of it will be done only at the times, in the areas, by the means, and through the elevators, entrances, malls, and corridors as are designated by Landlord. Without limiting the generality of the foregoing, Tenant will not use or permit any elevators, entrances, malls, corridors or other parts of the Common Areas to be used as temporary storage area or areas by Tenant, any of Tenant's employees or suppliers or others when making deliveries to or shipments from the Premises or any permitted storage area of Tenant.
- 4.02** Landlord accepts no liability and is hereby relieved and released by Tenant in respect of the operation of the Delivery Facilities, or the adequacy of them, or of the acts or omissions of any person or persons engaged in the operation of them, or in the acceptance, holding, handling, delivery or dispatch of any goods for or on behalf of Tenant, or for any claim of Tenant by reason of damage, loss, theft, or acceptance, holding, handling, delivery or dispatch, or failure of any acceptance, holding, handling or dispatch, or any error, negligence or delay unless due to the wilful acts or negligence of Landlord or those for whom it is in law responsible.
- 4.03** Landlord may, from time to time, make and amend regulations for the orderly and efficient operation of the Delivery Facilities, and may require the payment of reasonable and equitable charges for delivery services and demurrage provided by Landlord.

### SECTION 5.00 PROMOTION FUND/MERCHANTS' ASSOCIATION/MEDIA FUND

- 5.01 Tenant's Initial Assessment** Tenant agrees to pay to Landlord as Rent, when requested by Landlord, an initial assessment of \$Nil per square foot of the Premises, being Tenant's contribution to the cost of defraying promotional, advertising and public relations expenses to be incurred in connection with the opening of the portion of the Project in which the Premises are located.



**5.02 Promotion Fund** Landlord may establish and maintain a common Promotion Fund for the Project or continue to maintain any Promotion Fund in existence as of the Commencement Date of this Lease. Landlord will use the Promotion Fund for the promotion or benefit of the Project in such manner and as Landlord may, from time to time, decide and, without limiting the generality of the foregoing, Landlord may utilize the Promotion Fund for payment of a full-time or part-time marketing director, the employment of other promotional staff (provided that the cost of employing such director or other staff has not already been deducted from the contribution of Landlord pursuant to Section 5.04), the purchase of advertising space and time, materials or equipment for decorating and promotional events and activities similar to those undertaken by other shopping centres. Any surplus in the Promotion Fund at the end of a fiscal year of the Promotion Fund will be carried forward for like purposes in the next year, without any reduction in the amount payable by Tenant pursuant to Section 5.03. Landlord may, at its sole discretion, establish a Promotion Fund Advisory Committee comprised of representatives of the tenants of the Project chosen by Landlord to advise Landlord on the application of the Promotion Fund.

**5.03 Tenant's Annual Contributions to Promotion Fund** If there is a Promotion Fund for the Project Tenant will pay to Landlord in ~~annual~~ monthly installments, as Rent, in advance, the following contributions toward maintenance of the Promotion Fund and for the promotion of the Project:

- (a) in respect of the period from the Commencement Date to the end of the current fiscal year of the Promotion Fund in progress as of the Commencement Date, an annual contribution payable on the Commencement Date equal to \$1.24 per square foot of the Premises; and
- (b) in respect of each subsequent fiscal year of the Promotion Fund, an annual contribution payable in equal monthly installments on the first day of the ~~applicable fiscal year~~ each month of the Promotion Fund equal to the contribution set out in paragraph (a) above (as increased pursuant to this paragraph (b), from time to time), adjusted annually on the first day of each fiscal year of the Promotion Fund in that proportion which the Consumer Price Index for the last month of the immediately preceding calendar year is of the Consumer Price Index for the last month of the second immediately preceding calendar year (provided that the said annual contribution will be no less than the annual contribution set out in paragraph (a) above); and
- (c) an amount equal to \$Nil per annum per square foot of the Premises (as adjusted by the Consumer Price Index pursuant to subparagraph (b) above) as a special charge for the purchase, maintenance and replacement of Christmas decorations in the Project. Such payment will be made annually in advance on the first day of January throughout the Term of this Lease.

Landlord will have the right at its discretion to change the fiscal year of the Promotion Fund as it may deem appropriate, from time to time. In the event of any such change, Tenant's required contributions to the Promotion Fund for any fiscal year thereof, which is either greater or lesser than twelve (12) calendar months, will be adjusted by Landlord ~~in a reasonable manner~~ proportionately.

**5.04 Landlord's Contributions to Promotion Fund** If there is a Promotion Fund for the Project Landlord will contribute in each fiscal year of the Promotion Fund during the Term to the promotion of the Project no less than the amount required to be contributed by Landlord under Major Tenant leases or Operating Agreements. Landlord or Landlord's manager of the Project may make available for the promotion of the Project part of or all of the services of any promotional staff of Landlord or such manager, in which case the salary (including benefits) and out-of-pocket costs to Landlord with respect to such staff, or an appropriate portion of such salary (including benefits) and costs determined in proportion to the time spent in rendering services for promotion of the Project to the exclusion of any other duties, will be deducted from the financial contribution to the Promotion Fund otherwise required by Landlord.

**5.05 Promotion Fund Statements** Within ninety (90) days of the end of each fiscal year of the Promotion Fund during the Term, Landlord or Landlord's manager will provide Tenant with a statement in reasonable detail of all payments to and from the Promotion Fund, it being understood that the cost of accounting and any auditing is to be borne from the Promotion Fund.

**5.06 Merchants' Association** In the event a Merchants' Association has been formed, comprised of those tenants in the Project who are required to contribute to the promotion of the Project in their respective leases, and is in existence at the Commencement Date of this Lease, then the following provisions will govern:

- (a) if Landlord so requires, Tenant will become a member of the Merchants' Association and will abide by the rules, regulations and by-laws generally applicable to the members thereof;
- (b) Landlord will be a member of the Merchants' Association;
- (c) if there is no Promotion Fund for the Project, Tenant will pay annual dues to the Merchants' Association in equal monthly installments. The amount of such annual dues will not exceed the amount of Tenant's annual contributions Tenant would be required to make to the Promotion Fund pursuant to Section 5.03 if a Promotion Fund were in existence; and
- (d) in addition to any other rights of Landlord or the Merchants' Association, Landlord may, on behalf of the Merchants' Association, demand payment from Tenant of the annual dues or any other amounts owing by Tenant to the Merchants' Association, in which event such dues and amounts will be payable by Tenant to the Promotion Fund and collectable by Landlord as Rent.

Notwithstanding the foregoing provisions of this Section 5.06, Landlord may at any time cause any Merchants' Association so formed or in existence to be discontinued, in which event any funds in the possession of the Merchants' Association which are not spent or required to discharge indebtedness will be turned over and transferred either to the Promotion Fund or the Media Fund, if any, as Landlord may in its sole discretion, direct.

**5.07 Transfer of Sums to Promotion Fund from Merchants' Association** Notwithstanding anything to the contrary contained in this Section 5.00, if during the Term a Promotion Fund is established at the Project, the Merchants' Association may, at its sole option, pay or cause to be transferred to the Promotion Fund all or part of the money paid as dues to the Merchants' Association during any fiscal year thereof, pursuant to this Lease. Provided, however, that as a condition of such payment or transfer of money, the Promotion Fund will use the money for the same purposes and in the same manner as required of Landlord in Section 5.02.

**5.08 Media Fund and Tenant's Annual Contributions** Landlord may establish or continue a common fund (the "Media Fund") to be used for print or other media advertising for the purpose of promoting the Project. In the event of the establishment of a Media Fund, or if one is in existence as of the Commencement Date, Tenant will pay to Landlord in annual monthly installments, as Rent, in advance, the following contributions towards the maintenance of the Media Fund:

- (a) in respect of the period from the Commencement Date to the end of the fiscal year of the Media Fund then ensuing, an annual contribution payable in equal monthly installments on the Commencement Date equal to the greater of \$1.48 per square foot of the Premises or \$2,105.28; and
- (b) in respect of each subsequent fiscal year of the Media Fund, an annual contribution payable in equal monthly installments on the first day of the ~~applicable fiscal year~~ each month of the Media Fund equal to the annual contribution set out in paragraph (a), above (as increased pursuant to this paragraph (b), from time to time), adjusted annually on the first day of each fiscal year of the Media Fund in that proportion which the Consumer Price Index for the last month of the immediately preceding calendar year is of the Consumer Price Index for the last month of the second immediately preceding calendar year (provided that the said annual contribution will be no less than the annual contribution set out in paragraph (a), above).

Tenant's obligations to contribute to the Media Fund pursuant to this Section 5.08 will be in addition to Tenant's obligations for payment of (i) its initial assessment pursuant to Sections 5.01, and (ii) either its annual contributions to the Promotion Fund pursuant to Section 5.03 or its annual dues to the Merchants' Association, if any, pursuant to Section 5.06(c).

Landlord will have the right at its discretion to change the fiscal year of the Media Fund as it may deem appropriate, from time to time. In the event of any such change, Tenant's required contributions to the Media Fund for any fiscal year thereof, which is either greater or lesser than twelve (12) calendar months, will be adjusted by Landlord in a reasonable manner.

**5.09 Tenant's Support** Tenant will support all promotional events, functions and activities sponsored or participated in by either the Promotion Fund or the Merchants' Association, if any. In order to comply with this obligation, however, Tenant will not be required to make any additional financial

contributions toward the promotion of the Project other than those set out in this Section 5.00 and, if applicable, in Article 5.10 of this Lease.

- 5.10 Enforcement** Landlord may, but will not be obligated to, take any legal proceedings reasonably necessary in connection with the promotion of the Project in which case Landlord will be entitled to reimbursement of legal fees and disbursements from the Promotion Fund or the Merchants' Association, as the case may be, so long as any sums recovered, settled or awarded to Landlord are paid in to the Promotion Fund or the Merchants' Association, as the case may be.

## **SECTION 6.00 LIMITATION OF LANDLORD'S LIABILITY**

- 6.01 Limitation of Landlord's Liability** Tenant will look solely to the interest of Landlord in the Project for the collection or satisfaction of any money or judgment which Tenant may recover against Landlord, and Tenant will not look for the collection or satisfaction of any such money or judgment to the personal assets of any person who is at any time a partner, joint venturer or co-tenant in the Project.

## **SECTION 7.00 REGISTRATION**

- 7.01 Prohibition against Registration** Tenant will not register this Lease or any other instrument concerning this Lease against title to the Land or the Project.
- 7.02 Notice of Lease** Notwithstanding Section 7.01, Tenant may register at its sole cost and expense (including, without limitation, payment of all registration fees, land transfer and similar taxes or charges, costs of plan preparation and registration and all legal fees and disbursements related to such registration) a notice, caveat or short form of this Lease (the "Registration Document") to give notice of Tenant's interest created by this Lease, provided and subject to the following:
- (a) the Registration Document will be prepared by Tenant at its sole cost in a form acceptable to Landlord, and same will be approved in writing by Landlord prior to its registration;
  - (b) the Registration Document will only disclose the names of the parties to this Lease, the Premises, and the Commencement Date and the expiry date of the Term, and any right of renewal. The Registration Document will not disclose any information concerning the rent or rental rates to be paid, nor any other financial provisions of this Lease;
  - (c) the Registration Document will only indicate and be registered against title to that portion or those parcels of the Land or Project as Landlord may designate in its sole discretion. Further, in the event any portion of the Land ceases to form part of the Project, Tenant will, forthwith upon request from Landlord, cause its registration to be discharged, vacated or otherwise removed from the title to such portion all at its own expense;
  - (d) in the event that, in order to effect registration, the Registration Document must be executed by any party other than Landlord and Tenant, Landlord will request such consent or execution of that party, but the sole cost of obtaining same will be borne by Tenant; and Landlord will not be liable to Tenant in the event that such consent or execution is not obtained;
  - (e) Tenant will provide Landlord with a copy of the Registration Document and registration particulars thereof, once registration has been effected; and
  - (f) upon the expiry or early termination of this Lease, Tenant will, at its sole expense, cause the Registration Document to be discharged, vacated or otherwise removed from title to the Land and Project and to provide proof of such action to Landlord, within thirty (30) days of such expiry or early termination.
- 7.03 Tenant to Execute Documents** Subject to Article 17.05 of this Lease, Tenant will, at Landlord's request, execute promptly any certificate, priority agreement, postponement agreement or other instrument which, from time to time, may be requested by Landlord to ensure that this Lease (and any Registration Document respecting this Lease) either has priority to or is subordinate to any mortgage, debenture, deed of trust or Operating Agreement which may now or hereafter affect all or any part of the Land or the Project, all as Landlord may require.

## SECTION 8.00 LIMITATION ON LENGTH OF TERM

- 8.01 Limitation on Length of Term** This Lease is entered into subject to the express condition that it is to be effective to create any interest in land only if the provisions of any statute relating to the severance of land or interests in land by conveyance or otherwise (as it may from time to time be amended) are complied with. Landlord and Tenant agree, as a separate and distinct agreement, that if pursuant to any statute consent is requisite to the validity of this Lease, either party may apply for such consent and until unconditional consent has been obtained, the Term of this Lease or any renewal thereof will not extend beyond the period permitted without consent pursuant to any such statute, with no further right on the part of Tenant to extend the term, notwithstanding any other provision of this Lease.

## SECTION 9.00 TERMINATION OF AGREEMENTS

- 9.01 Termination of Agreements** If and whenever by any cause the buildings or improvements in the Project are destroyed or damaged (whether or not the Premises are damaged) to such an extent that any one of Landlord or a Major Tenant (including Major Tenant's under Operating Agreements (if any), is entitled to terminate a lease for such Major Tenant's premises in the Project, and has elected to terminate such lease, then Landlord may at its option terminate this Lease upon not less than thirty (30) days' written notice to Tenant given within ninety (90) days after the happening of such destruction or damage, in which event Tenant will surrender the Premises to Landlord upon the expiration of the period stipulated in such notice, and this Lease will terminate accordingly. The Landlord will exercise its rights set out in this Section 9.01 acting bona fide and not so as to act in a manner discriminating against the Tenant and solely for the purpose of depriving the Tenant of its rights under this Lease.

## SECTION 10.00 EASEMENTS AND RIGHTS-OF-WAY

- 10.01 Easements and Rights-of-Way** Tenant acknowledges and agrees that Landlord has granted or otherwise created and may in the future grant or otherwise create licence(s), easement(s), statutory right(s) of way and restrictive covenant(s) over, through, upon or otherwise affecting portions of the Common Areas provided that the Landlord's obligations to the Tenant hereunder with respect to access and visibility are not materially affected. Tenant hereby consents to the granting or other creation of such licence(s), easement(s), statutory right(s) of way and restrictive covenant(s). Upon Landlord's request, Tenant will forthwith execute all such further consents, releases, waivers, discharges, priority agreements, postponement agreements, plans and any other documentation as may be reasonably required by Landlord, in registrable form or otherwise, for the purpose of granting, creating, amending or otherwise dealing with any such license(s), easement(s), statutory right(s) of way or restrictive covenant(s) provided such documents do not result in the Tenant's use and occupation of the Premises being materially interfered with.

## SECTION 11.00 SEVERANCE OF LAND

- 11.01 Severance of Land** In addition to and upon the same basis, mutatis mutandis, as set out in Article 21.09, Landlord will have the right from time to time to subdivide and to transfer, lease or otherwise dispose of any portion or portions of the Land in order to facilitate future development. Any such subdivision may be accomplished by any means Landlord may consider desirable and the description of the Land will be changed accordingly. Upon Landlord's request, Tenant will forthwith execute all consents, releases, waivers, discharges, priority agreements, postponement agreements, plans and any other documentation as may be reasonably required by Landlord, in registrable form or otherwise, for the purpose of carrying out any such subdivision, transfer, lease or other disposition.

## **EXHIBIT C**

### **GENERAL PROVISIONS**

#### **OUTLINE DRAWINGS & DESIGN CRITERIA BY LANDLORD**

- G1. Within a reasonable time after execution of this Lease, Landlord will supply, if available, a set of "as built" drawings of the Premises showing dimensions, cross sections, location of rear door, mechanical, electrical, sprinkler, heating, ventilation and air-conditioning systems as built. The storefront sign requirements, local work regulations and Landlord's design criteria for the Project (the "Design Criteria"), if available, will also be provided.

It is recommended that Tenant or Tenant's designer or both visit the Premises to review its "as built" condition prior to the commencement of any work.

#### **COMPLETE DRAWINGS BY TENANT**

- G2. Tenant will submit complete drawings and specifications for the finishing of the Premises to Landlord, to the extent required to properly indicate all changes, installations and additions to the Premises and its components, prepared by qualified designers and conforming to each of good engineering practice, the Design Criteria if available, and the provisions of this Exhibit C. All Tenant drawings must be submitted in triplicate.

Such complete drawings and specifications will provide for the following as a minimum requirement:

- (a) changes or additions to under floor electrical or plumbing (if any),
- (b) floor plan,
- (c) reflected ceiling plan (including sprinkler head layout),
- (d) electrical wiring and total load requirement of Tenant,
- (e) sprinkler head layout (as built or revised to suit Tenant's requirements),
- (f) storefront, including emergency exits, and signs, in compliance with Landlord's then current requirements and the Design Criteria,
- (g) interior finishing schedules,
- (h) any other special facilities or installations in respect of Tenant's Work or which affect Landlord's facilities,
- (i) construction startup and completion schedule,
- (j) changes or additions to the duct work and diffuser layout for the heating, ventilation and air conditioning system(s) of the Premises and the location of the room thermostat,
- (k) elevations and sections as required to fully document the design.

All required drawings and specifications will be submitted in writing to Landlord by Tenant within 20 days after the receipt by Tenant of the package containing drawings of the existing Premises and the Design Criteria if available. No Tenant's Work may proceed prior to Landlord's written approval of said drawings and specifications, which approval will not be unreasonably withheld nor unduly delayed.

Landlord will notify Tenant either of Landlord's approval thereof or of all the specific changes reasonably required by Landlord, and Tenant will then prepare and submit to Landlord within 7 days next following, complete drawings and specifications so amended. If Tenant fails to submit complete drawings and specifications within the times herein before provided, Landlord, at its option, exercised by notice in writing, may terminate this Lease and all of Tenant's rights hereunder without necessity of any legal proceedings. Such termination will be without prejudice to any of Landlord's rights to damages and all monies paid hereunder by Tenant will thereby be forfeited.

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**FINISHING PERIOD**

(less any delay speed paid to store opening on commencement of lease)

- G3. Tenant will have 45 days to complete Tenant's Work in the expansion area of the Premises only (the "Expansion Finishing Period") which Expansion Finishing Period will commence on the 28th day of October, 2002. During the Expansion Finishing Period, Tenant may occupy the Premises in accordance with the provisions of this Exhibit C for the purpose of completing Tenant's Work as set out herein.

(prior to March 1, 2003)

During the Expansion Finishing Period, until the earlier of:

- (a) the date on which the Premises are first opened for business to the public, or
- (b) the expiry of the Expansion Finishing Period,

Tenant will not be responsible for Annual Rent, Percentage Rent, Occupancy Costs and other tenant's expenses, or Promotion Fund/Merchants' Association/Media Fund contributions in the expansion area of the Premises only, but will be responsible for utility costs as referred to in this Exhibit C and will be bound by all other terms of this Lease from the date of first occupancy of the Premises by Tenant for the purpose of finishing the Premises.

For the purposes of this Lease only, the expansion area is deemed to be 760 square feet of the Premises.

**COMPLETION OF THE PREMISES**

- G4. All work for which Tenant is responsible will be designed, performed and completed in strict compliance with the provisions of this Exhibit C, it being agreed that such work will be completed within the Finishing Period provided under Section G3 hereof or, if Tenant has not been granted a Finishing Period, then on or before the \_\_\_\_\_ day of \_\_\_\_\_.

**COMMENCEMENT OF CONSTRUCTION BY TENANT**

- G5. Notwithstanding the dates identified under G3 or G4 of this Exhibit C (as the case may be), Tenant and/or Tenant's contractor will be on site to commence work immediately upon:
- (a) receipt of Landlord's review of the submitted design drawings and specifications;
  - (b) receipt of a building permit and all other necessary permits as required and after satisfying the requirements of all applicable laws, by-laws, codes and regulations; and
  - (c) receipt of the approval of Landlord's onsite representative responsible for the supervision of the Project (the "Shopping Centre Manager") of the construction schedule including working hours and the opening date or re-opening date, as the case may be.

If Tenant fails to start construction within the times hereinbefore provided, Landlord, at its option, exercised by notice in writing, may terminate this Lease and all of Tenant's rights hereunder without necessity of any legal proceedings. Such termination will be without prejudice to any of Landlord's rights to damages and all monies paid hereunder by Tenant will be forfeited.

**DESIGNERS AND QUALIFIED CONTRACTORS**

- G6. Tenant's Work will be carried out by or under the supervision of designers or contractors, or both, who are, in Landlord's reasonable opinion, suitably qualified and competent with respect to the work to be undertaken.

**ACCESS TO PREMISES**

- G7. Subject to Landlord's approval, each of Landlord and public utility companies, as the case may be, will have the right to install utility lines, roof drainage and other pipes, conduits, wires, or ductwork where necessary through Tenant's ceiling space, column space or other parts of the Premises and to maintain, inspect and repair same. Tenant will provide Landlord with free and uninterrupted access for such purposes for so long as reasonably required by Landlord.

## **INSURANCE & INDEMNITY**

G8. Tenant and their contractor(s) will be required to maintain at their sole cost, throughout the period of the Tenant's Work, the following insurance:

- (a) "Comprehensive General Liability" insurance with respect to the construction, in an amount of not less than \$5,000,000 for any one injury to or death of one or more persons and loss or damage to the property of others in or about the Premises. Such insurance will show Landlord, Landlord's mortgagees, and any persons, firms or corporations designated by Landlord, if any, as additional named insureds. Such policy will contain a severability of interest and a cross liability clause and will be primary and not call into contribution any other insurance available to Landlord.
- (b) "Builder's Risk" property insurance covering all permanent construction and temporary work against "all risks" of physical loss or damage, for not less than the total contract price of the Tenant's Work.

All insurance required under this Section G8 will be on terms and conditions satisfactory to Landlord including an undertaking by the insurers to give thirty (30) days' prior written notice to Landlord of any material change in, cancellation of, or termination of such insurance. Tenant will deliver to Landlord, prior to commencement of the Tenant's Work, proof of the above required insurance in force at such date, such proof to be in the form of Certificates of insurance or if requested by Landlord a certified copy of the actual policy.

Provided that if the breach or nonperformance of any of the covenants or agreements herein contained on the part of Tenant will immediately endanger the Premises or any other of the buildings or property in or on the Project, or result in the voiding, cancellation or threatened cancellation of any insurance policy affecting such buildings or property or part thereof; Landlord may, without terminating the Lease and after giving such notice, if any, as is reasonable in the circumstances, enter the Premises and take such action including removing Tenant and any persons or property from the Project, as is reasonably required to remove or abate the cause of the danger of voiding or cancellation of the policy, and Landlord will not be liable for any damages of any kind arising out of such action.

Tenant and their contractor(s) will indemnify, defend and hold harmless Landlord, mortgagee, and any persons, firms or corporations designated by Landlord, if any, from all costs, liability, claims, damages or expenses due to or arising out of any work done by, or act, neglect or omission of Tenant or its servants, employees, agents, contractors, invitees, or other persons for whom Tenant is in law responsible in and about the Project, or due to or arising out of any breach by Tenant of any provision of the Exhibit "C" and hereby assumes all risk of damage to property or injury to persons about the premises from any cause arising from Tenant's construction.

## **"LANDLORD'S WORK"**

### **BUILDING SHELL**

- L1. Tenant will accept the Premises in an "as is" condition. Any changes to the building shell will be at Tenant's expense. When Landlord is required to do work upon or affecting the Premises the "as is" condition of the Premises will be the condition of the Premises after Landlord's Work has been completed.

### **SUBDIVIDING**

- L2. Subdividing work will include, but not be limited to, drywall demising walls; heating and air conditioning adjustments, electrical service, telephone conduit adjustments and sprinkler adjustments. An Administration Fee of 15% of the cost of such work will be payable to Landlord by the tenant involved upon invoice. Subdividing work will be completed in accordance with the subdivide addendum (if any) attached which outlines the responsibilities between Landlord and Tenant.

### **ELECTRICAL**

- L3. The existing electrical service and its capacity are accepted by Tenant in an "as is" condition.

#### ***OTHER SERVICES***

- L4. (a) Other services such as telephone conduit and jacks, water, sewage, and sprinklers are accepted in an "as is" condition and location. The moving of any of these services will be solely at Tenant's expense.
- (b) The existing sprinklers are designed to F.M. Standards.

#### ***HEATING, VENTILATION AND AIR-CONDITIONING EQUIPMENT***

- L5. All heating, ventilation and air-conditioning systems, if any, are provided to Tenant in an "as is" condition. Tenant agrees to have the heating, ventilation and air-conditioning equipment for the Premises maintained in good condition and repair by a contractor designated and approved by Landlord, subject to the provisions of Article 7.04(c) of the Lease.

#### ***WASHROOM***

- L6. (a) Tenant accepts the washroom, if any, in an "as is" condition. New washroom(s), if required by Tenant or governing authorities, will be built and paid for by Tenant.
- (b) Notwithstanding the foregoing, all tenants with a floor area greater than 500 square feet will be required to install a two-piece washroom.

#### ***SPRINKLERS & FIRE PROTECTION***

- L7. Sprinkler mains, branch lines and sprinkler heads are accepted in an "as is" condition and location. Relocation of these to suit Tenant's design will be at Tenant's expense including drainage of the sprinkler system as required.

#### ***TENANT AUTHORIZED WORK***

- L8. Tenant will sign a Tenant Authorization Form on Landlord's standard form prior to any work being commenced by Landlord on behalf of Tenant.

### **"TENANT'S WORK"**

Tenant agrees to comply with and to provide and/or modify at its sole expense the items enumerated below in accordance with the procedures set forth below and will complete all other work required for the finishing of the Premises for their intended use (all in accordance with approved Tenant's drawings and specifications);

#### ***STOREFRONT AND SIGN***

- T1. The storefront (including emergency exit, if not already installed) and signs in accordance with Landlord's current design requirements and Design Criteria manual, if available.

#### ***ELECTRICAL***

- T2. (a) Splitter, disconnect switch, primary wiring to transformer, and a transformer and all fuses as per Section L3 of Landlord's Work;
- (b) Connection to transformer secondary terminals, distribution panels, lighting panels, under-floor conduits (if any), branch wiring, outlets and receptacles;
- (c) Lighting fixtures, lamps and related equipment (exposed fluorescent light tubes are not permitted);
- (d) Wiring for all washroom equipment as required by Tenant including hot water heater, baseboard heater, and lighting;
- (e) Emergency lighting and exit lights;
- (f) Fire alarm bells and/or pull stations if required by the local fire department(s) or any other authorities having jurisdiction;



- (g) Immediately upon taking occupancy of the Premises for the purpose of finishing the Premises, Tenant, in conjunction with the Shopping Center Manager, will arrange to have the electrical meter read and will sign the required documentation with the appropriate utility company for on-going power supply. Tenants utilizing Landlord's electrical power for the purposes of finishing their premises will be charged and invoiced for the cost of such electrical power as reasonably determined by Landlord.

#### **CEILING**

- T3. The ceiling membrane, fire rated as required, may be constructed of acoustical tile, drywall, plaster, or other approved materials. There may be no combustible materials in the ceiling space. Ceiling design will incorporate, if required, suitable access to ceiling-mounted equipment requiring inspection and maintenance. The required access points will be determined by Landlord.

#### **DUCTWORK AND DIFFUSERS**

- T4. (a) Supply air and return air distribution duct work, completion of fresh air supply duct from Landlord's point of termination and including connection to Tenant's return air duct, also ceiling diffusers, registers and grills within the Premises for the heating and air conditioning system. All existing duct work and all new duct work installed in the ceiling space will be insulated with minimum 1/2" thick fiberglass duct insulation with vapour barrier. The ceiling spaces will not be used as a return air plenum, except for those buildings where the base building mechanical system is designed as a central plant and ceiling spaces are designed to be used as return air plenums.
- (b) Food court tenants and restaurant tenants must provide for proper cooking exhaust ventilation and heated make up air to suit their particular requirements and all governing laws, by-laws, codes and regulations. Existing equipment must be reviewed as to its suitability and must be thoroughly cleaned and proper inspections carried out by governing authorities before being reused by Tenant.

#### **SPRINKLERS AND FIRE PROTECTION**

- T5. (a) Any change to the existing sprinkler drops and heads or mains and branches will be at Tenant's expense and must be reviewed and approved in writing by Landlord and the local fire department, prior to commencing any work on site. This work must be performed **ONLY** by qualified sprinkler contractors as designated by Landlord and at such time or times and length of time(s) approved in writing by Landlord prior to any such work being commenced.
- (b) Food court tenants and restaurant tenants will provide the necessary high temperature and/or freezeproof sprinkler heads where required.
- (c) Fire extinguishers and other devices or equipment as required by local fire department(s) and any other authorities having jurisdiction.
- (d) Shut down of the existing sprinkler system must be coordinated through the Shopping Centre Manager.

#### **PLUMBING**

- T6. (a) Distribution of supply and waste plumbing lines and fixtures required by Tenant to serve the Premises. Tenant will provide access to all plumbing cleanouts within the Premises.
- (b) Tenant will arrange and pay for installation of its water meter (as may be requested) and its hot water heater.
- (c) Tenant will arrange and pay for natural gas lines, if required beyond Landlord's provision for the existing base building mechanical system.
- (d) Tenants with drainage load other than the typical tenant washroom will be required to install grease and/or hair traps. All grease and/or hair traps will be floor mounted to prevent such substances from entering the sanitary drain lines as required by the local authorities. The grease and hair traps will meet local authorities standards. Landlord will maintain these grease and/or hair traps at Tenant's expense.

### ***INTERIOR FINISHES***

- T7. Tenant will arrange and pay for painting and decorating, partitions, floor coverings, store fixtures, finishes and furnishings. Common Area floor finishes will be extended to Tenant closure line.

### ***ADDITIONAL REQUIREMENTS***

- T8. Any requirements of Tenant in addition to those specified in this Exhibit C as Landlord's Work.

### ***TENANT'S EXTRA REQUIREMENTS***

- T9. If Tenant's requirements for electrical service capacity and/or heating, ventilation and air-conditioning capacity and gas capacity exceed the existing conditions and/or standards outlined in Sections T2 and T4 of Tenant's Work herein, Tenant will submit the new requirements to Landlord for approval by Landlord. The costs associated with the implementation of these new requirements will be totally at Tenant's expense including Landlord's consultant cost for reviewing these changes.

### ***TENANT COORDINATION FEE***

- T10. Upon the execution of this Lease by Landlord, Tenant will pay to Landlord or its agent a tenant coordination fee equal to the greater amount of either the product of \$0.60 times the number of Square Feet of Space of the Premises or \$350.00 (the "Tenant Coordination Fee"). This Tenant Coordination Fee represents a fixed charge for services which Landlord or its agent may provide, including the activities of Landlord's or its agent's tenant coordinator for the Project and the provision of Landlord's or its agent's tenant design package.

Landlord's or its agent's head office disbursements (such as printing costs, courier costs, outside consulting costs (if required), and long distance telephone costs) will be charged to and paid by Tenant to Landlord or its agent, in addition to this Tenant Coordination Fee, upon invoice.

### ***PERFORMANCE OF TENANT'S WORK***

- T11. The following provisions are in addition to, and do not waive, the construction provisions, if any, contained in the Lease:
- (a) Before doing any items of Tenant's Work,
    - (i) Tenant will secure, and demonstrate to Landlord on demand, all necessary permits and satisfy the requirements of all applicable laws, by-laws, codes and regulations;
    - (ii) Tenant will provide Landlord with satisfactory proof of insurance in effect throughout the Finishing Period. Notwithstanding the commencement of the Finishing Period, Tenant will not be permitted to enter the Premises to commence construction until such proof of insurance has been provided to Landlord.
  - (b) All items of work undertaken by Tenant will be performed by competent workmen who will not breach any obligation by Landlord in its contracts for the Project.
  - (c) All work by Tenant within the Premises will be completed with new materials. Materials and workmanship will be of a uniformly high quality and used or performed in accordance with the very best standards of practice and will not be in contravention of any applicable governing laws, by-laws, codes, or regulations and will be subject to the approval of Landlord or its Architect or both. Any damage to the Premises or the Project caused by Tenant or any of its employees, contractors or workmen will be repaired forthwith by and at the expense of Tenant.
  - (d) Under no circumstances will Tenant, its employees, its contractors or its contractor's employees enter onto any roof of the Project or make any opening in any roof of the Project without the prior written approval of Landlord. No roof-mounted antenna is permitted unless approved in writing with respect to location and detail by Landlord.
  - (e) Tenant and its contractor(s) will not impose a greater load on any concrete floor than the design live load of 100 lbs. per square foot uniformly distributed. No unusual loads may be suspended from the underside of the roof structure or roof metal deck. Under no circumstances will Tenant or its contractors at any time be permitted to drill or cut conduit or

pipe-sleeves or chases or duct equipment openings in the floor, columns, walls or roof of the structure without the prior written approval of Landlord.

- (f) Tenant will arrange for and pay for all costs related to the removal from the Project of all excess materials, trash and cartons caused by renovation and initial stocking of the Premises. Where required by local authorities, Tenant will separate the garbage as it relates to gypsum base products, cardboard products and others and dispose of them as directed by the authorities. Violations of this requirement will initiate garbage removal by Landlord, the cost of which will be backcharged to and payable by Tenant to Landlord upon invoice.
- (g) Any new under-floor electrical wiring must be in rigid conduit.
- (h) Tenant and its contractor(s) will erect a temporary hoarding prior to the start of construction to be approved by Landlord, to prevent any dust and debris from entering the interior Common Areas of the Project or adjacent areas.
- (i) Noisy types of work, such as concrete slab cutting and removal, will be carried out after normal Project hours of operation.
- (j) If the Premises are adjacent to the premises of existing food tenants, Tenant will be restricted in its application of materials which generate unpleasant odours. This work will be carried out after normal Project hours of operation. The application of paints and varnish will be included in this category.

#### ***EXHAUST AND ODOURS***

- T12. (a) Objectionable odours within the Premises will be exhausted in such a manner so as to prevent their release into the interior Common Areas or rental areas, or short-circuiting into any fresh-air vents. Where deemed necessary by Landlord, such exhaust systems will incorporate activated charcoal filter(s) fully and properly maintained at Tenant's expense.
- (b) Where exhaust fans are to be provided by Tenant, the capacity of such fans will not exceed the amount of fresh air supplied by Landlord to the Premises; otherwise, a separate heated make-up air system will be provided by Tenant at Tenant's expense.
- (c) Air handling equipment may not under any circumstances draw air from the interior Common Areas or exhaust into it.
- (d) Garbage compaction or refrigeration equipment must be installed in the Premises by Tenant if perishable items are handled or if required by applicable governing laws, by-laws, codes or regulations.
- (e) Food kiosks and restaurants will utilize Garland GEF Series or Paterson Aire Type RJ vertical upblast grease exhaust roof fans. No other types of exhaust fans will be accepted.

#### ***FIRE-PROOFING STANDARDS***

- T13. Where Tenant's occupancy requires fire rated constructions, Tenant must satisfy the applicable governing laws, by-laws, codes and regulations. Damage to the existing fireproofing of the base building will be repaired by Tenant or Tenant's contractor before finishing of the Premises.

#### ***SECURITY***

- T14. Security of the Premises after Tenant takes possession is the responsibility of Tenant who will take all necessary steps to secure the Premises. Landlord will have no liability for any loss or damage, including theft of building materials, equipment or supplies, or of Tenant's fixtures, inventory or personal property.

#### ***NOISE CONTROL***

- T15. (a) All locations and output directions of loudspeakers within the Premises will be shown on Tenant's drawings. All speakers will be mounted in acoustically-baffled housings to prevent transmission to neighbouring stores, including stores above or below.

- (b) Tenants whose business generates loud noises, such as from animals or operating machinery will, at their expense, provide suitable acoustic insulation in demising partitions shared with adjoining tenants.

***SCOPE OF WORK***

T16. In the refurbishment of the Premises, Tenant must remove, replace or otherwise alter the items checked below, to the standards contained in Landlord's current Design Criteria Manual, as a minimum requirement for acceptance of Tenant's Work by Landlord:

Storefront:

- ☒ Projecting store front
- ☒ Closure (door, grille, glazed panels, etc.)
- ☒ Sign(s)
- ☒ Materials or finishes
- ☐ Other \_\_\_\_\_

Sales Area:

- ☒ Floor Coverings
- ☒ Wall finishes
- ☒ Suspended ceiling
- ☒ Lighting
- ☒ Furniture or sales fixtures
- ☒ H.V.A.C. system
- ☐ Other \_\_\_\_\_

Notes:

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## UPPER CANADA MALL LAND DESCRIPTIONS

### LANDLORD'S LANDS

ALL AND SINGULAR that certain parcel of land and premises situate, lying and being in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York);

And being firstly composed of Part of Lot 96 in the First Concession West of Yonge Street and being more particularly described as all of Parts 1 and 2 according to a Plan of Survey registered in the Land Registry Office for the Registry Division of York Region on the first day of August, 1973, as Plan Number 65R-899;

And being secondly composed of Part of the South half of Lot Number 97, in the First Concession, West of Yonge Street, and designated as Part 1 on a Reference Plan of Survey deposited in the Land Registry Office for the Registry Division of York Region as Number 65R-7420.

### SEARS' LANDS

ALL AND SINGULAR that certain parcel of land and premises situate, lying and being in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York);

And being composed of Part of Lot 96 in the First Concession West of Yonge Street and being more particularly described as all of Parts 3 and 4 according to a Plan of Survey registered in the Land Registry Office for the registry Division of York Region on the first day of August, 1973, as Plan Number 65R-899.

## EXHIBIT E

### RULES AND REGULATIONS

Tenant will not be required to comply with any rule or regulation unless the rule or regulation applies to all tenants in the Project.

1. **Security** Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Project, any persons occupying, using or entering the same, or any equipment, finishings or contents thereof, and Tenant will comply with Landlord's reasonable requirements relative thereto.
2. **Return of Keys** At the end of the Term Tenant will promptly return to Landlords all keys for the Building and Premises which are in the possession of Tenant.
3. **Repair, Maintenance, Alterations and Improvements** Tenant will carry out Tenant's repair, maintenance, alterations and improvements in the Premises only during times agreed to in advance by Landlord and in a manner which will not interfere with the rights of other tenants in the Project.
4. **Water Fixtures** Tenant will not use water fixtures for any purpose for which they are not intended, nor will water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Tenant will be paid for by Tenant.
5. **Personal Use of Premises** The Premises will not be used or permitted to be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes.
6. **Heavy Articles and Overloading Services** Tenant will not place in or move about the Premises, without Landlord's prior written consent, any safe or other heavy article which in Landlord's reasonable opinion may damage the Project, and Landlord may designate the location of any heavy articles in the Premises. Tenant will not overload any utility or service in or serving the Premises or any part of the Project.
7. **Animals, Bicycles** Tenant will not bring any animals or birds into the Project, and will not permit bicycles or other vehicles inside or on the sidewalks outside the Project except in areas designated from time to time by Landlord for such purposes.
8. **Deliveries** Tenant will ensure that deliveries or shipments of supplies, fixtures, equipment, furnishings, wares and merchandise to or from the Premises are made only through such delivery facilities, entrances, elevators and corridors and at such times as may from time to time be designated by Landlord, and will promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Project caused by any person making such deliveries or shipments.
9. **Solicitations** Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Project.
10. **Food, Beverages and Entertainment** Only persons approved from time to time by Landlord may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Project, or use the elevators, corridors or Common Areas for any such purpose. Except with Landlord's prior written consent and in accordance with arrangements approved in writing by Landlord, Tenant will not permit on the Premises the use of equipment for dispensing food or beverages or for the preparation, solicitation of orders for, sale, serving or distribution of food or beverages or for the selling or providing of any form of entertainment, including vending machines or other machines operated by coins or other devices.
11. **Refuse** Tenant will place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Project, and will keep sidewalks and driveways outside the Project, and lobbies, corridors, stairwells, ducts and shafts of the Building, free of all refuse created by Tenant.
12. **Obstructions** Tenant will not obstruct or place anything in or on the sidewalks or driveways outside the Project or in the lobbies, corridors, stairwells or other Common areas of the Project, or use such locations for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing (unauthorized by Landlord) without notice or obligation to Tenant.

13. ***Dangerous, Immoral or Hazardous Activities*** Tenant will not make any use of the Premises which involves the danger of injury to any person, nor will the same be used for any immoral purpose or to commit any act of waste or damage to any part of the Premises or to use any part of the Premises so as to constitute a hazard.
14. ***Proper Conduct*** Tenant will not conduct itself in any manner which is inconsistent with the character of the Project as being of first quality or which will impair the comfort and convenience of other tenants in the Project. Such prohibited conduct will include the playing of loud music and the placing of merchandise racks in the Common Areas.
15. ***Employees, Agents and Invitees*** In these Rules and Regulations, Tenant includes the employees, agents, invitees and licensees of Tenant and others ~~permitted by~~ **for whom Tenant is in law responsible.** ~~Tenant to use or occupy the Premises.~~
16. ***Parking*** Landlord, from time to time, may prohibit Tenant, Tenant's employees and Tenant's suppliers and other making deliveries to or receiving shipments from the Premises from parking anywhere within the Project. If Landlord designates Tenant parking areas in the Project, Tenant will park its vehicles and will cause its employees to park their vehicles only in such designated parking areas. Tenant will furnish Landlord, upon request, with the current license numbers of all vehicles owned or used by Tenant or its employees and Tenant thereafter will notify Landlord of any changes in such numbers within five (5) days after the occurrence thereof. In the event of failure of Tenant or its employees to park their vehicles in such designated parking areas, Tenant will forthwith on demand pay to Landlord, as additional rent, the sum of Twenty Dollars (\$20.00) per day per each car so parked. Landlord reserves the right to impose reasonable charges upon any person (including the general public) for the use of any parking facilities which may from time to time form a part of the Project.

This is **Exhibit “K”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



## LEASE EXTENSION AND AMENDING AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is dated **December 16, 2024**

BETWEEN:

**OXFORD PROPERTIES RETAIL HOLDINGS II INC.  
and CPPIB UPPER CANADA MALL INC.  
(the “Landlord”)**

OF THE FIRST PART

- and -

**FAIRWEATHER LTD.  
(the “Tenant”)**

OF THE SECOND PART

### WHEREAS:

A. By a lease dated November 11, 2002 (the “**Original Lease**”), Upper Canada Mall Limited, as landlord, leased to the Tenant for an initial term commencing on November 18, 2002 and expiring on January 31, 2013 (the “**Term**”), certain premises designated as premise no. EE9, containing a certified area of 6,246 square feet (the “**Original Premises**”), located in Upper Canada Mall (the “**Project**”), in Newmarket, Ontario;

B. By an agreement dated January 9, 2007 (the “**Amendment of Lease**”), Upper Canada Mall Limited, as landlord, and Tenant agreed to relocate the premises from the Original Premises to premises no. EE9A (the “**Prior Premises**”) containing an area of approximately 4,218 square feet and to extend the Term as to expire on January 31, 2017 and to amend certain other provisions as contained therein;

C. By an agreement dated November 29, 2012 (the “**Relocation and Lease Amending Agreement**”), Upper Canada Mall Limited, as landlord and Tenant agreed to: (i) to relocate Tenant’s business from the Prior Premises to premise no. E30 and E31 (the “**Existing Premises**”) containing an area of approximately 5,010 square feet all on the terms and conditions more particularly set forth herein; (ii) that the Tenant shall remain and operate its business in both the Prior Premises and the Existing Premises; and (iii) to amend certain other provisions as contained therein;

D. The Landlord of the Project is now Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.;

E. By an agreement dated October 1, 2013 (the “**Second Lease Amending Agreement**”), Landlord and Tenant agreed to amend the lease by reducing the Term, with respect to the Prior Premises only, which expired on January 8, 2014, upon the terms and conditions set forth therein;

F. The Existing Premises is hereinafter referred to as the “**Premises**”;

G. By an agreement dated January 18, 2021 (the “**Rent Relief Agreement**”) Landlord and Tenant agreed to amend the lease, amongst other things, to temporarily modify certain provisions therein and to extend the Term for a period of 6 months commencing on August 1, 2023 and expiring on January 31, 2024, upon the terms and conditions more particularly set out therein;

H. By an agreement dated January 29, 2024 the “**Lease Extension Agreement**”), the Landlord and the Tenant agreed to extend Term of the Lease for a period of 1 year commencing on February 1, 2024 and expiring on January 31, 2025, on the terms and conditions set forth therein;

I. The Original Lease, the Amendment of Lease, the Relocation and Lease Amending Agreement, the Second Lease Amending Agreement, the Rent Relief Agreement and the Lease Extension Agreement are hereinafter referred to as the “**Lease**”; and

J. The parties have agreed to extend the Term of the Lease for a further period of 1 year commencing on **February 1, 2025** upon the terms and conditions contained in the Lease as amended by this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that, in consideration of the mutual covenants and agreements between the parties and the sum of One Dollar (\$1.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The foregoing recitals are true in substance and in fact.
2. The Term of the Lease is hereby extended for a further period of **1** year commencing on **February 1, 2025** (the "**Effective Date**") and ending on **January 31, 2026** (the "**Extended Term**"), (unless terminated earlier pursuant to the terms of the Lease), upon the same terms, covenants and conditions as are contained in the Lease, except as otherwise specifically set out in the Lease, and also except that:
  - (a) the Tenant will accept the Premises in an "as is" condition and the Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Premises;
  - (b) any renovations, alterations or improvements in or to the Premises are the sole responsibility of the Tenant and shall be undertaken and completed at the Tenant's expense and strictly in accordance with the provisions of the Lease;
  - (c) there shall be no fixturing period, rent free period, or requirement on Landlord's part to do any Landlord's Work or pay to Tenant any construction allowance, inducement, loan or other amount in connection with the Lease or improvements installed in the Premises;
  - (d) there shall be no further right to extend the Term or renew the Lease;
  - (e) during the Extended Term, in lieu of Annual Rent, Percentage Rent, Occupancy Costs, Tax Cost, Tenant's contribution to the Promotion Fund and Tenant's contribution to the Media Fund, payable by Tenant pursuant to the Lease, the Tenant shall pay to the Landlord, without any deduction, abatement or set-off whatsoever, the annual amount equal to \$120,000.00, plus applicable taxes thereon, payable in equal monthly installments of \$10,000.00 plus applicable taxes thereon, payable on the first day of each month during the Extended Term.

In addition to Section 2(e) above, Tenant shall pay all charges for utilities consumed in respect of the Premises, together with applicable taxes thereon.

- (f) at any time during the Extended Term:
  - (i) Landlord shall have the right to terminate the Lease by providing written notice to Tenant (the "**Landlord's Termination Notice**") stipulating the effective date of such termination (the "**Early Termination Date**"), which shall be at least 60 days following the date Landlord's Termination Notice is delivered to Tenant, provided that in no event shall the Early Termination Date occur during the months of November or December;
  - (ii) If Landlord, has exercised its right to terminate the Lease in accordance with this Section 2(f), the Term shall be deemed to expire on the Early Termination Date, and Tenant covenants and agrees as follows:
    - (A) to unconditionally surrender and deliver up vacant possession of the Premises to Landlord upon the Early Termination Date in accordance with the provisions of the Lease relating thereto;
    - (B) if Tenant fails to deliver vacant possession of the Premises to Landlord on or before the Early Termination Date, then Tenant shall indemnify and hold harmless Landlord from any and all claims, expenses, costs, losses, damage and liabilities whatsoever incurred as a result thereof (including, without limitation, any loss of rentals), and if legal action is brought for the recovery of possession of the Premises, Tenant shall pay to Landlord, forthwith upon demand, any and all costs and expenses (including legal fees, on a substantial indemnity basis, and expenses) incurred on account thereof, together with all damages for which Landlord may be liable;

- (C) that such surrender of the Premises and termination of this Lease shall not prejudice or affect the obligations and liabilities of Tenant or the rights of any party under this Lease with respect to any act, event or omission which occurs up to and including the Early Termination Date;
- (D) all outstanding Rent, including Minimum Rent, Percentage Rent and Additional Rent, up to and including the Early Termination Date shall be paid in full by Tenant prior to the Early Termination Date, and Tenant shall be responsible for all adjustments to such amounts subsequently billed or adjusted after the Early Termination Date in accordance with the terms of this Lease;
- (E) to promptly execute and return Landlord's standard form of surrender of lease agreement upon request by Landlord;
- (F) Tenant shall have no recourse against Landlord, or those for whom it is in law responsible, for damages or otherwise as a result of the termination of the Lease pursuant to this Section 2(f); and,
- (G) Tenant's obligations set forth in this Section 2(f)(ii) shall survive the Early Termination Date.

4. The Tenant represents and warrants that it has the right, full power and authority to agree to the amendments to the Lease set out in this Agreement and the other provisions contained in this Agreement.

5. In all other respects the Lease as amended by this Agreement is hereby ratified and confirmed, and this Agreement and the Lease shall be read as one instrument. All terms and expressions when used in this Agreement have the same meaning as they have in the Lease unless a contrary intention is expressed herein. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement. The Tenant acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except as set out in this Agreement.

6. The parties agree that this Agreement may be executed in one or more counterparts and delivered by electronic transmission, and each counterpart when so executed and delivered shall be deemed to be an original, shall have the same effect as if all parties had executed the same copy of this Agreement, and all counterparts when taken together shall constitute one and the same document. Upon request by Landlord, Tenant shall deliver to Landlord executed originals of this Agreement in accordance with the electronic copy bearing original signatures of the parties to this Agreement.

The parties hereto consent and agree that this Agreement may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The parties further consent and agree that: (a) to the extent a party signs this Agreement using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically; and (b) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability, and admissibility, the same as hand-written signatures.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, permitted successors and permitted assigns, as the case may be.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**OXFORD PROPERTIES RETAIL HOLDINGS II INC.  
and CPPIB UPPER CANADA MALL INC.,  
by their manager (without personal liability),  
OPGI MANAGEMENT GP INC., as general partner of the  
OPGI MANAGEMENT LIMITED PARTNERSHIP**

(Landlord)

Signed by:

*Greg Schmidt*

Per: \_\_\_\_\_

Name: *Greg Schmidt*

Title: *Vice President, Retail Leasing*

DocuSigned by:

*David Holmes*

Per: \_\_\_\_\_

Name: *David Holmes*

Title: *Vice-President*

We have authority to bind the corporation.

**FAIRWEATHER LTD.**

(Tenant)

Per: \_\_\_\_\_

Name: *Isaac Benich*

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the corporation.

## Certificate Of Completion

Envelope Id: 4DC0A91B-8FFB-4E51-8F91-89FC57B1F2E5

Status: Completed

Subject: Fairweather UCM Lease Extension

Source Envelope:

Document Pages: 4

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Mariia Klochai

AutoNav: Enabled

900-100 Adelaide St W.

Envelopeld Stamping: Enabled

Toronto, ON M5H 0E2

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

MKlochai@oxfordproperties.com

IP Address: 142.188.187.68

## Record Tracking

Status: Original

Holder: Mariia Klochai

Location: DocuSign

2/13/2025 3:13:37 PM

MKlochai@oxfordproperties.com

## Signer Events

David Holmes

DHolmes@oxfordproperties.com

Vice-President

Security Level: Email, Account Authentication (None)

## Signature

DocuSigned by:  
*David Holmes*  
360F1B1CFAD549E...

Signature Adoption: Pre-selected Style  
Using IP Address: 99.249.32.59

## Timestamp

Sent: 2/13/2025 3:16:00 PM

Viewed: 2/13/2025 6:59:41 PM

Signed: 2/13/2025 7:01:19 PM

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Greg Schmidt

GSchmidt@oxfordproperties.com

Vice President, Retail Leasing

Security Level: Email, Account Authentication (None)

Signed by:  
*Greg Schmidt*  
1ADA065E6C25421...

Signature Adoption: Pre-selected Style  
Using IP Address: 99.249.118.236  
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Sent: 2/13/2025 7:01:20 PM

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ID: 70c7b6d1-00a7-410b-b51e-ba5dffbed6a8

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

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Oxford Properties Group Inc

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Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/13/2025 3:15:59 PM
Certified Delivered	Security Checked	2/14/2025 7:41:09 AM
Signing Complete	Security Checked	2/14/2025 7:42:25 AM
Completed	Security Checked	2/14/2025 7:42:25 AM
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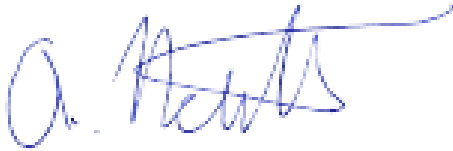
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This is **Exhibit “L”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

**RETAIL SPACE LEASE**

**SCARBOROUGH TOWN CENTRE HOLDINGS INC.**

Landlord

- and -

**FAIRWEATHER LTD.**

Tenant

Store No.: 288

Scarborough Town Centre

Toronto, Ontario

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#### **APPENDICES AND SCHEDULES**

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## APPENDIX 1

### KEY DATA

The following is key data which is part of and may be referred to in this lease:

1. **PROJECT:** Scarborough Town Centre
2. **STORE NO:** 288
3. **STORE AREA:** 7,724 approximate square feet
4. **TRADE NAME:** Fairweather
5. **USE:** The retail sale of ladies', men's, young ladies' and young men's wearing apparel and as ancillary to such principal use, the sale, at retail of directly related fashion accessories, such as by way of example, hats, scarves, belts, purses, fashion jewellery and, in not more than five percent (5%) of the Gross Leaseable Area of the Store, footwear.
6. **TERM:** 15 years 4 months and 16 days
7. **TERM START DATE:** September 15, 1997
8. **TERM EXPIRY DATE:** January 31, 2013
9. **RENEWAL PERIOD:** none
10. **BASIC RENT:** lease years 1 through 5: \$35.00,  
lease years 6 through 16: \$45.00  
per square foot per annum of the EXACT Gross Leaseable Area of the Store.
11. **PERCENTAGE RENT:** 5% of Gross Revenue, less Basic Rent.
12. **PREPAID RENT:** nil
13. **SECURITY DEPOSIT:** nil
14. .1 **INITIAL MARKETING FUND CONTRIBUTION:** nil
- .2 **REGULAR MARKETING FUND CONTRIBUTION:** lease years 1 through 5: \$1.75,  
lease years 6 through 16: \$2.25  
per square foot per annum of the EXACT Gross Leaseable Area of the Store.
- .3 **REGULAR CUSTOMER SERVICE CONTRIBUTION:** nil

15. **FIXTURING PERIOD:** 60 days from July 17, 1997 to September 14, 1997
16. **PLAN REVIEW CHARGE:** nil
17. **COMPETING BUSINESS RADIUS:** Not applicable
18. **LANDLORD NAME AND ADDRESS:** **SCARBOROUGH TOWN CENTRE HOLDINGS INC.**  
c/o OMERS Realty Management Corporation  
Oxford Retail Group  
130 Adelaide Street West, Suite 1100  
Toronto, ON M5H 3P5
- Phone No: (416) 865-8300  
Fax (416) 868-3751
19. **TENANT NAME AND ADDRESS:** **FAIRWEATHER LTD.**  
1185 Caledonia Road  
Toronto, ON M6A 2X1
- Phone No: (416) 422-7577  
Fax: (416) 785-7751
20. **INDEMNIFIER NAME AND ADDRESS:** Not applicable
21. **MANAGER:** OMERS Realty Management Corporation
22. **DATE OF THIS STORE LEASING CONTRACT:** February 22, 2006



## STORE LEASING CONTRACT

This leasing contract is made as of the date set out in key data item 22 between the person named in key data item 18 as Landlord and the person named in key data item 19 as Tenant.

In consideration of the rents to be paid and the covenants contained in this leasing contract, Landlord leases the Store to Tenant and Tenant leases and accepts the Store from Landlord, to have and to hold the Store during the Term, at the rent, subject to the conditions and limitations and in accordance with the covenants contained in this leasing contract.

### ***PART 1***

#### ***DEFINED TERMS, APPENDICES AND SCHEDULES***

1.1 Each reference in this lease to any portion of the key data in Appendix I shall incorporate the specific information described in Appendix I. Certain words and phrases recurring throughout this lease have defined meanings as set out in Schedule 1. All appendices and schedules to this lease form part of this lease.

#### ***BASIC PRINCIPLES OF THE CONTRACT***

1.2 This is a lease as well as a business contract. It is intended that this lease be an absolutely net and carefree lease for Landlord and that rent be received by Landlord free of any cost or obligation concerning the Store or the Project unless specified in this lease. Each provision of this agreement applicable to each party although not expressed as a covenant, shall be construed to be a covenant of such party for all purposes.

### ***PART 2***

#### ***OPENING AND USE OF STORE***

##### ***FIXTURING AND OPENING***

##### **2.1 Intentionally Deleted**

##### ***USE OF STORE***

##### **2.2 Tenant agrees:**

.1 intentionally deleted

.2 ~~that subject to Section 2.2.1,~~ the Store shall be continuously occupied and used from and after the Commencement Date to the expiry of the Term and in compliance with the Operating Standards, solely for the use specified in key data item 5. No merchandise or service, except that which is specifically authorized in this lease to be offered for sale or use at the Store, shall be permitted to be displayed, sold or used.

.3 to conduct such use in the whole of the Store and to operate only under the trade name specified in key data item 4 or such other name as the Tenant uses for all its other stores in the Province of Ontario operating under the same trade name as the Store.

.4 to keep the Store open during the Retail Hours and not otherwise. Tenant shall not be required to open for business at times when it is not permitted to do so by law.

.5 intentionally deleted

.6 intentionally deleted

.7 that if Tenant fails to take possession of or to open or to re-open the Store for business, fully fixtured, stocked and staffed, or to carry on business during the Term during the whole of the Retail Hours strictly in accordance with the provisions of this lease, Landlord **after giving Tenant 48 hours notice requiring Tenant to open** shall be entitled on demand, in addition to any other remedies available to it, to collect a charge (in addition to all other charges payable hereunder) calculated at **\$300.00** for each and every day, or part thereof, that Tenant fails to carry on business as required. Such amount is a liquidated sum which the parties specifically agree represents the minimum amount of damage which Landlord shall be deemed to have suffered for loss of percentage rentals which otherwise might reasonably have been payable by tenants in the Project and for loss of the benefit of the advertising and promotional expenses incurred by Landlord for the Project and is without prejudice to Landlord's right to claim and prove a greater sum of damages or to avail itself of any other remedies for breach of this lease.

.8 intentionally deleted

#### *OPERATING STANDARDS*

2.3 Tenant shall comply with the Operating Standards. Landlord may from time to time make other rules and regulations to amend and supplement the Operating Standards and which relate to the operation, use, reputation, safety, care or cleanliness of the Project and the Store, the operation and maintenance of buildings and equipment, the use of Common Facilities, and any other matters affecting the operation and use of the Project and conduct of business in the Store and which may differentiate between different types of businesses.

#### *ALTERATIONS TO STORE*

2.4 Tenant shall not make any alteration, installation, repair, addition or improvement to the Store or make, construct, erect, alter or install any sign or Leasehold Improvements in or to the Store, except with the prior written approval of Landlord and in accordance with the procedures and provisions set out in this lease and the Construction Schedule. **Notwithstanding the foregoing, any decoration, lettering or advertising matter on the glass or windows of the Store or otherwise in the interior of the Store in respect of the day to day advertising of the Tenant's business operations shall not require the Landlord's consent and shall not be objected to by the Landlord provided that Tenant does not place any lettering on the glass storefront of the Store and provided that all such decoration, lettering and advertising matter shall be in good taste so as not to detract from the general appearance and reputation of the Store or the Project.**

#### *LIENS*

2.5 Tenant shall at its own expense immediately discharge or vacate all construction, mechanics' or other liens or executions that may be filed during the Term against this lease, the Store or the Project with respect to any work or services performed or goods or material furnished at the request or for or on behalf of Tenant.

#### *TRANSFER OF STORE*

2.6 .1 Tenant covenants that no Transfer affecting Tenant, this lease, the Store or the business of Tenant at the Store shall be permitted or effective unless and until Landlord's written consent to the Transfer is delivered to Tenant. Tenant shall deliver to Landlord its written request for consent to such Transfer together with copies of the proposed Transfer documents and shall provide Landlord with full particulars of the proposed Transfer and the business and financial responsibility and standing of the proposed transferee and Tenant shall cause the transferee to deliver to Landlord a copy of the transferee's detailed business plan for operation of the Store during the remainder of the Term, which plan must be satisfactory to Landlord. If Tenant requests Landlord's consent to any Transfer, Landlord may, within 20 days after receipt of such request and receipt of all required documents and information, either:

- (a) refuse its consent (which refusal may be without any reasons being given or for reasons which are arbitrary or unreasonable, and such refusal shall not be subject to any review or any contestation by anyone) where the request is made at any time during the initial two lease years of the Term; or

- (b) withhold its consent to a proposed Transfer on any reasonable basis or on the basis provided in this clause (b) and, in this connection, the parties acknowledge that Landlord agreed to enter into this lease with the original Tenant named in key data item 19 after the exercise of Landlord's own judgment and expertise in determining that such original Tenant was a suitable tenant for the Project having regard to the size and nature of the Project, the substantial investment in the Project by Landlord or any Taxpayer and the business and personal characteristics of such original Tenant. Accordingly, if a Transfer is proposed, Landlord will similarly be entitled to exercise its own judgment and expertise in determining whether the proposed transferee is suitable to Landlord and for the Project;~~or~~
- (c) intentionally deleted
- (d) intentionally deleted

2.6 .2 If Landlord agrees to grant its consent to any Transfer under Section 2.6.1:

- (a) Tenant shall not permit or cause such Transfer to be completed except upon terms consistent with the terms of Tenant's request and information under Section 2.6.1 and not otherwise inconsistent with the Terms of this lease;
- (b) the Tenant shall cause to be executed and delivered by any party to the Transfer (including Tenant) such documentation as may be required by Landlord in connection with such Transfer including the requirement that any party to the Transfer covenants directly with Landlord in writing and on a joint and several basis with Tenant to perform and observe such of the covenants, obligations and agreements of Tenant under this lease as Landlord requires;
- (c) if Tenant shall receive or be entitled to receive from any transferee either directly or indirectly, any consideration for the Transfer or the use of the whole or any portion of the Store, either in the form of money or monies worth, goods, or services, Tenant shall forthwith pay an amount equivalent in value to such consideration to Landlord and such amount shall be deemed to be Additional Rent due;
- (d) in the event of any subletting or other Transfer by Tenant under which Tenant receives a rent or other payment of any kind related to any sublease or other right to use the Store or conduct the business of Tenant therein, in the form of money or monies worth, goods or services from the subtenant or any other person, which is more than the rent payable hereunder to Landlord, Tenant shall pay such excess to Landlord in addition to all rent, including Additional Rent, and other charges payable under this lease, and such excess amounts shall be deemed to be further Additional Rent due, but this provision shall not require Tenant to pay to Landlord the normal and usual franchise fees and royalties payable by any approved and permitted franchisee or sub-lessee operating the business in the Store so long as the amounts of such payments are the same as those payable by all of Tenant's franchisees, and
- (e) then upon the effective date of such Transfer, Basic Rent shall be increased to equal the annual average of the aggregate of Basic Rent and Percentage Rent payable by Tenant during the 2 years preceding the Transfer, or if less than 2 years have then elapsed, the aggregate of the Basic Rent and Percentage Rent payable by Tenant during such period adjusted to represent an annual amount, provided that this Section 2.6.2(e) shall not apply to a Transfer described in Sections 2.6.6 or 2.6.7
- (e)(f) if such Transfer shall not be completed within 60 days after Landlord's consent is given, such consent shall expire and become null and void and Tenant shall not then allow or cause such Transfer to be completed without again complying with all the requirements of this Section 2.6;

and such consent shall not be effective unless and until Tenant shall have complied with Sections 2.6.2(a), (b), (c), (d) and (e).

2.6 .3 No Transfer or other disposition by Tenant of this lease or of any interest under this lease shall release Tenant from the performance of any of its covenants under this lease and Tenant shall continue to be bound by and liable under this lease. Tenant's liability under the lease will continue notwithstanding the bankruptcy, insolvency, dissolution, restructuring or liquidation of any transferee of this lease or the termination of this lease for default or the termination, disclaimer, surrender or repudiation of this lease or the abandonment of the Store pursuant to any statute, rule of law or court order. Furthermore, if this lease is terminated for default or abandonment or is terminated, disclaimed, surrendered or repudiated pursuant to any statute, rule of law, or court order then, in addition to and without limiting Tenant's liability under this lease, Tenant, upon notice from Landlord given within 90 days after any such termination, disclaimer, surrender or repudiation, shall enter into a new lease with Landlord for a term commencing on the effective date of such termination, disclaimer, surrender or repudiation and expiring on the date this lease would have expired but for such termination, disclaimer, surrender or repudiation and otherwise upon the same terms and conditions as are contained in this lease with respect to the period after such termination, disclaimer, surrender or repudiation.

2.6 .4 Prior to Landlord considering any requested consent, Tenant shall pay to Landlord a non-refundable fee of \$500.00 for the review and consideration of any requested consent and prior to Landlord delivering any requested consent Tenant shall pay any further costs incurred by Landlord in processing each request by Tenant for consent to Transfer including all internal and external legal costs incurred.

2.6 .5 Tenant will not print, publish, post, display or broadcast any notice or advertisement or otherwise advertise that all or part of the Store is available for lease or sublease or is otherwise available for the purpose of effecting a Transfer, and it will not permit any broker or other person to do any of the foregoing, unless the complete text and format of any such notice or advertisement is first approved in writing by Landlord. Without restricting or limiting Landlord's rights to refuse any text or format on the other grounds, no text or format proposed by Tenant may contain a reference to the rental rate for the Store and in no event shall Tenant display any sign that is visible from outside the Store.

2.6 .6 So long as the Tenant is Fairweather Ltd., or a Permitted Transferee, and is not in default under the terms of this Lease, Sections 2.6.1(a) and (b) shall not apply to and the Tenant shall not require the Landlord's consent (but shall provide the Landlord with prior notice of the sublease) for a sublease by the Tenant of the whole of the Store to a bona fide duly qualified franchisee of the Tenant (the "Franchisee"), so long as:

- (a) the Franchisee has covenanted directly with the Landlord: (1) to perform and observe all of the covenants, obligations and agreements of the Tenant under this Lease under the supervision of the Tenant including but not limited to the provisions of Section 2.2. hereof, and (2) that any breach by the Franchisee of the executed franchise agreement between the Tenant and the Franchisee (the "Franchise Agreement") shall constitute a breach by the Tenant of this Lease and that any breach of this Lease by the Franchisee shall constitute a breach by the Franchisee of the Franchise Agreement;
- (b) the Tenant and the Franchisee have executed any document or instrument which the Landlord reasonably requires under this Section 2.6.6, including but not limited to the Landlord's form of sublease of the Store prepared by the Landlord at the Tenant's reasonable expense;
- (c) the Tenant has delivered to the Landlord such evidence of the Franchise Agreement, of the capability of the Franchisee to properly operate the business to be conducted in the Store and of the financial standing and credit worthiness of the Franchisee as the Landlord may reasonable require;

- (d) such sublease shall be void and of no effect until, and shall become effective only upon, the date of delivery to the Landlord of all of the aforementioned documents and evidence in form and substance satisfactory to the Landlord;
- (e) notwithstanding such sublease, the Tenant shall remain liable under this Lease for the performance and observance of all of the covenants, obligations and agreements of the Tenant under this Lease;
- (f) all of the provisions of Section 2.6.2 shall apply (except for Section 2.6.2(e)); and
- (g) such sublease shall cease to be effective on the day before the date the Franchisee ceases to be a franchisee of the Tenant and in such event the Tenant shall resume possession of the Store and shall directly operate the business required to be carried on in the Store.

**2.6 .7** So long as the Tenant is Fairweather Ltd. or a Permitted Transferee and is not in default under the terms of this Lease, Sections 2.6.1(a) and (b) shall not apply to and the Tenant shall not require the Landlord's consent (but in each case shall provide the Landlord with notice of the assignment or sublease at the time thereof or as soon as reasonably possible thereafter) for any assignment of this Lease or sublease of the whole of the Store to:

- (i) any corporation which is an affiliate (within the meaning of the Canada Business Corporations Act) of the Tenant ("Affiliate") but only so long as such company remains an Affiliate;
- (ii) a corporation formed as a result of a merger or amalgamation (within the meaning of the Canada Business Corporations Act) of the Tenant with another corporation or corporations; or
- (iii) the purchaser of at least seventy-five per cent (75%) of the leases for the Tenant's stores in Canada operating under the trade name the Tenant is using in the Store;

in each case so long as:

- (1) the Transferee shall carry on in the Store only the use permitted under this Lease;
- (2) there is a continuity of business practices and policies and mode and style of operation notwithstanding the Transfer; and
- (3) all of the provisions of Section 2.6.2 shall apply (except for Section 2.6.2 (e)).

Each assignee and subtenant referred to in paragraphs (i), (ii) and (iii) above is referred to in this Lease as a "Permitted Transferee".

**2.6 .8** Notwithstanding anything in this Lease, the Tenant shall not be deemed to be in default under the terms of this Lease by reason of any lien, mortgage, debenture, charge or encumbrance which may attach to the Tenant's goods, trade fixtures, furnishings or equipment, but excluding Leasehold Improvements (individually and collectively the "Equipment") located in the Store, so long as:

- (A) any such lien, mortgage, debenture, charge or encumbrance arises through any bona fide financing done by the Tenant in accordance with the Tenant's normal business practice with respect to the Equipment, or by reason of any sale and leaseback agreement entered into by the Tenant for financing purposes with respect to the Equipment;
- (B) the Tenant is not in default under any such lien, mortgage, debenture, charge or encumbrance, or any such sale and leaseback agreement;

- (C) neither the Lease nor the Store nor the leasehold improvements nor the Tenant's interest in any of them shall be mortgaged, charged, encumbered, assigned, sublet or otherwise disposed of pursuant to such financing or sale and leaseback; and
- (D) the foregoing shall in no way prejudice or affect the priority of the Landlord's rights or the obligations of the Tenant with respect to:
  - (aa) such Equipment under all other terms of the Lease; and
  - (bb) all laws relating to bankruptcy or distress.

2.6 .9 For greater certainty, it is understood that Landlord's consent shall not be required to a transaction which results in the issuance or tender of Tenant's shares listed upon a recognized stock exchange, or for a transfer of shares of Tenant between the existing shareholders of Tenant, provided in each case Tenant must provide Landlord with prior written notice of such issuance, tender or transfer of shares.

#### *NO EXCLUSION*

2.7 Nothing in this lease shall prohibit, restrict or limit or be deemed to prohibit, restrict or limit the conduct by Landlord or any person other than Tenant of any business in the Project whether or not in competition with the business of the Tenant.

### *PART 3*

#### *RENT*

##### *BASIC RENT*

3.1 From and after the Commencement Date, Tenant shall pay to Landlord an annual rent calculated at the rate specified in key data item 10. Basic Rent so calculated shall be payable by equal monthly instalments in advance on the first day of each month, and if the Commencement Date is not the first day of a month, then the first instalment of Basic Rent shall be payable on the Commencement Date for the broken portion of the month at the beginning of the Term and shall be calculated at a per diem rate of 1/365th of the annual Basic Rent.

##### *PERCENTAGE RENT*

3.2 Tenant shall pay to Landlord in each lease year, further rent equal to the amount, if any, by which the percentage specified in key data item 11 of Gross Revenue in such lease year exceeds Basic Rent for such lease year. Percentage Rent shall be payable by quarterly instalments in arrears, within 15 days after the last day of each quarter in each lease year. The amount of each instalment shall be calculated on a cumulative basis in each lease year by computing the aggregate Gross Revenue for such lease year up to and including the quarter preceding the month in which such instalment is due, applying the percentage referred to above for such lease year, and deducting the aggregate of instalments payable on account of Basic Rent for such lease year up to and including the instalments payable for such preceding quarter, and the aggregate of previous instalments of Percentage Rent payable for such lease year, all based upon the monthly statements of Gross Revenue referred to in Section 3.6.1, and subject to subsequent adjustment under Section 3.6.2. Notwithstanding anything to the contrary, for the purpose of this Section 3.2 "quarter" means a period of three (3) consecutive calendar months; the first quarter shall commence on the Commencement Date if that date occurs on the first day of a calendar month; but if it does not so occur, the first quarter shall commence on the first day of the calendar month next following the Commencement Date and each successive quarter shall commence on the first day of the calendar month following the previous quarter, and "quarterly" shall have a corresponding meaning.

### *ADDITIONAL RENT*

3.3 From and after the Commencement Date, or such earlier date specified in this lease, Tenant shall pay to Landlord, or to others if any sums are required by the terms of this lease to be paid to anyone other than Landlord, further annual rent for the Store equal to the aggregate of the following amounts:

- .1 Tenant's Service Cost.
- .2 The cost, as determined by Landlord, of refuse and waste collection, removal, disposal or recycling for the Store.
- .3 An administrative fee equal to 15% of the total amounts payable by Tenant under Sections 3.3.1 and 3.3.2.
- .4 Tenant's Share of Operating Cost.
- .5 Tenant's Share of each Realty Tax allocated to the Common Facilities pursuant to Part 5 of this lease.
- .6 Each Realty Tax imposed upon or in respect of the Store and each Realty Tax allocated to the Store under Part 5 of this lease other than the Tenant's Share of any Realty Tax for the Common Facilities if paid by Tenant under Section 3.3.5.
- .7 All amounts payable by Tenant pursuant to the Construction Schedule.
- .8 Tenant's contributions under Part 4 of this lease.
- .9 All charges for heat, water, gas, electricity or any other Utilities used or consumed in the Store which are not supplied to Tenant by or through Landlord. If so required by any Utility company or, by Landlord or Tenant with the Utility company's agreement, separate meters shall be installed in or for the Store at Tenant's expense.
- .10 intentionally deleted

### *PAYMENT OF ADDITIONAL RENT*

3.4 The amount of Additional Rent which Tenant is to pay may be estimated by Landlord for such period, not in excess of 12 months, as Landlord may determine. Tenant agrees to pay to Landlord such amount in monthly instalments in advance during such period on the dates and at the times for payment of Basic Rent provided for in this lease. Tenant agrees to deliver to Landlord at the time and for the period requested from time to time by Landlord monthly post-dated cheques in amounts conforming with the monthly Basic Rent payments, plus any Additional Rent payments estimated by Landlord in advance, or at Landlord's option, all payments by Tenant to Landlord required or contemplated by this lease shall be made, if and to the extent Landlord so requires and designates, by way of an automated debiting system whereby payments are deducted from Tenant's bank account and credited to Landlord's bank account on the dates due hereunder, or by direct electronic deposit to Landlord's bank account. **So long as the Tenant is Fairweather Ltd., or a Permitted Transferee, in occupation of and conducting business in the whole of the Store, the foregoing requirement to provide post-dated cheques or to participate in an automatic debiting system shall be suspended.**

### *STATEMENTS*

3.5 As soon as practicable after the end of each Fiscal Period, Landlord shall give to Tenant an audited statement of the actual amount of Operating Cost for such Fiscal Period, and Landlord's statement of Tenant's Share thereof and from time to time Landlord shall provide statements of the actual amounts payable by Tenant for the relevant Fiscal Period for other items of Additional Rent, in each case showing in reasonable detail the information

relevant and necessary to the calculation of the amounts shown to be payable by Tenant. If any such amounts are greater or less than the estimated amounts paid by Tenant on account, appropriate adjustments will be made between Landlord and Tenant within 30 days after any such statement is given. Landlord's audited statement shall be based upon the Landlord's unamended definition of Operating Cost in its standard lease form for Mall tenants in the Project from time to time.

#### **REPORTING GROSS REVENUE**

3.6 .1 Within 15 days after the last day of each month of every lease year, Tenant shall deliver to Landlord a statement in writing certified by Tenant and accurately setting forth Gross Revenue for such month. Within 180 days after the last day of each lease year, Tenant shall deliver to Landlord a statement in writing, signed by a senior financial officer of Tenant, accurately setting forth and with reasonable detail and particulars, Gross Revenue for each month in such lease year. The statement shall include a certification by such officer that Gross Revenue has been calculated in accordance with the definition of that term in this lease. However, it is understood and agreed that so long as the Tenant is Fairweather Ltd. or a Permitted Transferee and without limiting or diminishing the Tenant's obligations to calculate and report Gross Revenue and to pay Percentage Rent as elsewhere set out in this Lease, the certification by the Tenant shall be deemed sufficient for the purposes of this Section 3.6.1 if such certification shall be given in the same form and substance as such similar certifications are given with respect to all of the Tenant's other stores in Canada with leases pursuant to which the Tenant is obligated to report gross revenue.

.2 If the aggregate amount of the quarterly instalments of Percentage Rent paid for any lease year is less than Percentage Rent payable for such lease year, Tenant shall, contemporaneously with the delivery of such annual statement, pay to Landlord the amount of the deficiency. If such aggregate amount exceeds Percentage Rent payable for such lease year, Landlord shall issue a credit to Tenant for the amount of the excess within 60 days of receipt of such annual statement.

#### **RECORDS**

3.7 For the purpose of ascertaining the Percentage Rent, Tenant shall prepare and keep at Tenant's head office in Canada for a period of not less than 18 months following each lease year, adequate records for such lease year which shall show inventories and receipts of merchandise at the Store and ~~any Competing Business~~ and daily receipts from all sales and other transactions, the proceeds of which are to be included in Gross Revenue. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a computerized or electronic cash register or in cash registers of a type generally used by the Tenant in all of its other stores in Canada featuring such safeguards as will prevent the deletion of a cumulative total and with such features as will permit an independent chartered accountant pursuant to accepted auditing standards to perform an audit of the Tenant's sales. Such records shall include such sales and inventory records which would normally be examined by a licensed independent public accountant pursuant to generally accepted auditing standards in performing an audit of the entire business affairs and sales by any person at, in, upon, through or from the Store and ~~any Competing Business~~.

#### **REVIEW**

3.8 At any reasonable time after the delivery or failure to deliver to Landlord any statement referred to in Section 3.6.1, Landlord upon at least 2 business days notice shall have the right by its authorized representatives to cause a complete audit to be made of Tenant's entire business affairs and records relating to the Store and ~~any Competing Business~~ and to examine such business affairs and records to confirm or establish the amount of the Percentage Rent for the period to which such statement relates. In performing any such examination or review under this Section 3.8, the Landlord shall not allow or cause the Tenant's business operations in the Store to be unreasonably disrupted or disturbed. If the records maintained by Tenant for the period under review are not made available to Landlord or are inadequate to permit the determination of Gross Revenue for such period, Landlord may estimate the Gross Revenue for such period and such estimate shall be deemed to be the Gross Revenue for such period. The cost of each such audit and examination shall be borne by Landlord unless Tenant fails to deliver any statement or such audit and examination discloses a variation in excess of 3% of the amount of the statement with respect to which such examination is conducted in either of which events such cost shall be borne



by Tenant. Any additional Percentage Rent found to be due and owing to Landlord as a result of an audit or examination shall be paid immediately. **Any audit to be undertaken by the Landlord may only be undertaken within three (3) years after the delivery of any statement herein referred to and must be with reference to such statement.**

#### *TENANT TO PAY RENT*

3.9 Tenant covenants to pay rent without any deduction, abatement or set off except as specified in this Section. All rent in arrears shall bear interest at the Interest Rate from the date on which the same became due until the date of payment. If Tenant shall fail to pay to Landlord any rent when due hereunder or if any cheque tendered by Tenant for payment of rent is returned due to insufficient funds, Tenant, in addition to the interest charge payable under the preceding sentence, shall pay to Landlord upon demand as further rent due, a late payment charge to cover the extra administrative and collection expenses of Landlord in the amount of **\$200.00** for each and every day or partial day that any such rent is not fully paid **provided such charge shall only apply when the third or any further instalment of rent in any one lease year is paid more than 5 days after the due date.** Such charge is a liquidated sum which the parties specifically agree represents the minimum amount of damages which the Landlord shall be deemed to have suffered on account of Landlord's extra administrative and collection expenses resulting from the Tenant's failure to pay rent when due and is without prejudice to the Landlord's right to claim and prove greater damages or to avail itself of any other rights or remedies under this lease as a result of such breach. In the event of the occurrence of any injury to the Project or the Store which renders the Store unusable in whole or in part, then Basic Rent and Additional Rent shall abate, but only for the period and to the extent that proceeds of rental insurance for the Store are actually received by Landlord. Except as otherwise expressly provided in the preceding sentence or by reason of a decision by Landlord or Tenant to terminate this lease pursuant to Section 7.1, damage to or destruction of all or any portion of the Store or the Project shall not terminate this lease nor entitle Tenant to surrender the Store, nor in any way affect Tenant's obligation to pay rent.

#### *EXACT AREA OF STORE*

3.10 The Gross Leaseable Area of the Store shall be determined by Landlord as of the Commencement Date and from time to time as the area of the Store is changed, and if the Gross Leaseable Area so determined varies from the area set out in key data item 3, Basic Rent shall be adjusted accordingly, and Additional Rent, where applicable, shall be adjusted accordingly, each as of the Commencement Date or the date of a change in area as appropriate, and such area shall, upon delivery of the certificate setting out such area, be the Gross Leaseable Area of the Store.

#### *ALLOCATIONS*

3.11 Where any amount, cost or expense is to be determined, allocated, apportioned or attributed under any provision of this lease, Landlord shall do so and shall act reasonably in determining and applying criteria which are relevant to doing so and Landlord may retain engineering, accounting, legal and other professional consultants to assist and advise in doing so. If the Project contains a combination of office, retail, residential or other commercial use components then Landlord may if it thinks it is appropriate to do so allocate Operating Costs between the various components depending upon Landlord's determination of the amounts attributable to each component.

#### *PAYMENT*

3.12 All rent shall be paid by Tenant to the Manager at the office of Landlord in the Project or to such other person or at such other place in Canada as Landlord or the Manager may designate in writing from time to time, without any prior demand therefore unless otherwise expressly provided in this lease.

#### *LANDLORD'S OPTION*

3.13 **Intentionally Deleted**

## *FINANCIAL REPORTING*

3.14 As a material inducement to Landlord's execution of the lease, Tenant covenants and agrees to keep and maintain adequate books and records of account of its entire business affairs and information in accordance with generally accepted accounting principles, consistently applied, or in accordance with other methods acceptable to Landlord. Tenant shall furnish to Landlord upon request annual financial statements and its most recent quarterly statements, including a balance sheet and profit and loss statement of Tenant and of any guarantor or indemnifier of the lease, certified to be accurate and complete by the most senior officer of Tenant and the guarantor or indemnifier as to the applicable statement, and, such annual statements, if required by Landlord, shall be audited financial statements prepared and certified by an independent chartered accountant acceptable to Landlord. All annual statements required by Landlord shall be delivered to Landlord within 60 days after the close of each fiscal year of Tenant and guarantor or indemnifier. Such information shall be received and maintained by Landlord in confidence except as required to be disclosed by law or in connection with enforcement of the lease.

## *SECURITY DEPOSIT*

3.15 **Intentionally Deleted**

## *LIMITATION*

3.16 In addition to and without limiting the effect of Section 12.3, neither Landlord or Tenant may claim a re-adjustment or re-calculation in respect of any statement of, or, demand for payment of any item of Additional Rent for any reason whatsoever except by notice delivered to the other party within twenty-four months after the date of delivery of the statement or demand.

## **PART 4**

## **MARKETING**

### *INITIAL MARKETING CONTRIBUTION*

4.1 **Intentionally Deleted**

### *MARKETING FUND*

4.2 Tenant shall pay to Landlord in equal monthly instalments in advance in each Fiscal Period adopted by Landlord for the marketing of the Project the amount set out in key data item 14.2. ~~The marketing fund contribution for each subsequent Fiscal Period shall be 105% of the contribution payable for the previous Fiscal Period.~~ These amounts may be used by Landlord for promotion, marketing and customer service for the Project.

### *CUSTOMER SERVICE CONTRIBUTION*

4.3 **Intentionally Deleted**

### *MERCHANTS' ASSOCIATION*

4.4 If formed and while in existence, Tenant shall become and remain a member in good standing of, participate in and support the activities of a merchants' association for the Project approved by Landlord and no other. Landlord may pay (or direct Tenant to pay) all or part of the marketing fund contribution to the merchants' association in discharge of Landlord's obligation under Part 4 to the extent of such payment. Except for the payments required under Section 4.2, no further amount or any other financial support shall be payable by Tenant to the merchants' association unless otherwise agreed by the parties.

## **PART 5**

### **TAXES AND UTILITIES**

#### **BUSINESS TAX**

5.1 Tenant shall pay to the taxing authority having jurisdiction on or before the date when the same or the instalments for the same shall become due and payable, each Business Tax levied, assessed or charged to Tenant or in respect of the Store .

#### **ALLOCATION OF REALTY TAXES TO STORE**

5.2 There may be more than one Realty Tax for the Project, each such Realty Tax being separately assessed, charged or imposed upon or in respect of the Project. Subject to Section 5.3 and the last paragraph of this Section 5.2, each Realty Tax for the Project shall be allocated to the Store under either Section 5.2.1 or Section 5.2.2 as Landlord, from time to time, determines, such that:

.1 if there is a separate assessment or charge (or in lieu thereof, any information available to Landlord from which a separate assessment or charge may be determined by Landlord) for the Store, such Realty Tax for the Project may be allocated to the Store by Landlord on the basis of such separate assessment or charge; or

.2 Tenant's Share of such Realty Tax for the Project may be allocated to the Store by Landlord. For the purpose of this Section 5.2.2, if any rentable premises in the Project are vacant, any lower tax rate or other reduction in such Realty Tax due to such vacancy shall be deemed not to exist and such Realty Tax for the Project shall be adjusted to be the amount that would be applicable if the Project was fully occupied and the benefit of any lower tax rate or other reduction in such Realty Tax due to vacancies shall accrue solely to Landlord. Prior to calculating Tenant's Share of such Realty Tax for the Project, Landlord shall deduct from such Realty Tax, amounts payable for such Realty Tax pursuant to Landlord's leases with Major Tenants and contributions to such Realty Tax receivable by Landlord in respect of those parts of other rentable premises in the Project which have been excluded in the calculation of Tenant's Share.

If the Project is assessed or charged any amount which can reasonably be determined as attributable to the Leasehold Improvements, Tenant shall pay the amount by which any Realty Tax is increased by reason of such assessment or charge. If the Store is assessed or charged in whole or in part for the support of separate schools, Tenant shall also pay the amount by which any Realty Tax assessed or charged exceeds that which would have been payable for the support of public schools.

#### **ALLOCATION OF REALTY TAXES TO COMMON FACILITIES**

5.3 Landlord may allocate to the Common Facilities a portion of any Realty Tax for the Project and such allocated portion may include, without limitation, any amount of such Realty Tax related to assessments for portions of the Common Facilities identified in the assessments of Retail Premises, Major Stores and Free Standing Stores. Prior to calculating Tenant's Share of any Realty Tax allocated to the Common Facilities, Landlord shall add an administrative fee equal to 15% of such allocated portion and shall then deduct from the resulting total, amounts payable for such allocated portion of such Realty Tax pursuant to Landlord's leases with Major Tenants, and contributions to such allocated portion of such Realty Tax receivable by Landlord in respect of those parts of other rentable premises in the Project which have been excluded in the calculation of Tenant's Share.

#### **OTHER TAXES**

5.4 Tenant shall pay upon demand, any goods and services, sales, business transfer, multi-stage sales, use, consumption, value-added or other similar taxes imposed by the government of Canada, or by any provincial or local government, upon Landlord or Tenant on or in respect of this lease, the payments made by Tenant hereunder or the goods and services provided by Landlord, including but not limited to the rental of the Store and provision of administrative services to Tenant or to others.

## *UTILITIES*

5.5 All Utility Costs incurred with respect to the Store shall be paid by Tenant, whether such Utilities are provided by or through Landlord and charged to Tenant under Section 3.3.1 or are supplied directly to Tenant by the Utility provider and charged to Tenant under Section 3.3.9 or otherwise.

Tenant shall not be permitted to make separate arrangements and shall not enter into any such arrangements, nor enter into any competitive supply contract or similar arrangement for the supply of any Utility for the Store directly from any Utility supplier, retailer or distributor unless such arrangements receive Landlord's prior written approval.

Landlord shall be entitled from time to time to require that any particular Utility be provided for the Project and to Tenant and other Landlord designated Utility consumers in the Project, only by such supplier, distributor or retailer who has been designated and approved by Landlord. Landlord shall be entitled to make such arrangements for the supply of any Utility to the Project as Landlord considers to be in the best interest from time to time of the Project and the Utility consumers therein including Landlord. Landlord may from time to time negotiate modifications and revisions to its supply agreements with Utility providers and may enter into new arrangements for the supply of any particular Utility and Landlord may from time to time authorize Tenant and other Utility consumers in the Project to make direct arrangements with Utility suppliers for the provision and supply of any particular Utility to the Store. The presence or absence of any separate metering devices to record consumption of any Utility in relation to the Store shall not affect the foregoing agreement of the parties.

## *PART 6*

### *OPERATION OF PROJECT*

#### *PROJECT*

6.1 Landlord shall operate the Project during the Term to an appropriate standard having regard to the size, age, type and location of the Project. The Project shall at all times be under the exclusive control and management of Landlord.

#### *LANDLORD'S ALTERATIONS*

6.2 .1 Landlord may from time to time alter, expand, improve, diminish, maintain, operate, renovate, re-merchandise and supervise the Project including the Common Facilities, and may change the area, location and arrangement thereof and do and perform such other acts and things with respect thereto as Landlord determines to be advisable. Landlord may also from time to time alter or expand the buildings in which the Store is contained, alter or construct other buildings or improvements in or about the Store and the Project and build adjoining the same and make additions or subtractions. Tenant acknowledges that the depiction of the Project on Schedule 5 does not constitute a representation, covenant or warranty of any kind by Landlord and Landlord reserves the right to change the size and dimensions of the buildings, the number and locations of buildings, the size, location and layout of Common Facilities including parking areas and Malls and to change the store dimensions, identities, types and tenancies. In the course of exercising its rights under this Section, Landlord may take such action with respect to the Store as it considers necessary, including but not limited to making structural or other alterations to the Store and making reductions in the Gross Leaseable Area of the Store.

6.2 .2 In addition to and without limiting the foregoing rights of Landlord under Section 6.2.1 and elsewhere in this lease, Landlord may relocate the Store. The Landlord's right to relocate the Store shall apply only in the event of a major expansion or redevelopment of the Project and will not be exercised for the purpose of depriving the Tenant of the use and enjoyment of the Store in order to relet the Store to another Person. If at any time during the Term the Landlord requires possession of the Store in order to carry out any work that is a major expansion or redevelopment of the Project, the Landlord on not less than sixty (60) days notice to the Tenant, may require the Tenant to vacate the Store on the date specified in such notice. In

the exercise of the Landlord's right to relocate the Store as aforesaid, the Landlord shall use its reasonable efforts to ensure that the following conditions apply to the new location (the "Relocated Premises"):

- (a) the Landlord shall ensure that the Relocated Premises are comparable to the Store in size, frontage, traffic-flow and location with respect to the locations of the entrances and exits of the Project and the location of a department store tenant;
- (b) the Landlord shall pay the Tenant's reasonable cost of moving its furnishings and trade fixtures and inventory from the Store to the Relocated Premises as substantiated to the Landlord by reasonable evidence;
- (c) the term of the Lease for the Relocated Premises shall be equal to the balance of the Term remaining under the Lease for the Store and all other terms and conditions shall be substantially the same as in this Lease including the Basic Rent (on a square foot basis) for the period following the date of relocation;
- (d) the Landlord shall construct and fixture the Relocated Premises to the then existing standard of the Store, and in so doing, may use any of the existing trade fixtures and Leasehold Improvements in the Store to the extent reasonable and practicable; and
- (e) if available, the Landlord agrees to provide the Tenant with temporary premises in a mutually agreeable location, both parties acting reasonably. All costs with respect to the temporary location shall be borne by the Tenant.

Notwithstanding the foregoing, in no event shall the Tenant be required to relocate during the months of September, October, November or December.

If within ten (10) days after the Tenant's receipt of the Landlord's notice requiring the Tenant to relocate the Store, the Tenant notifies the Landlord that the Tenant does not wish to relocate its business or that the Tenant does not accept the Relocated Premises, then in either case the Lease shall be deemed at an end sixty (60) days after the Tenant's receipt of the Landlord's notice referred to above (the "Surrender Date") and the Tenant shall vacate the Store in accordance with the terms of this Lease on the Surrender Date. If the Tenant vacates the Store in accordance with the provisions herein, then the Landlord will pay to the Tenant the undepreciated net capital costs to the Tenant of the improvements installed by the Tenant in the Store.

In performing any of its rights under this Section 6.2.2 and under Sections 7.6 and 7.7, the Landlord shall take all reasonable steps to avoid or minimize interference with customer access from the enclosed mall to the Store during the regular business hours of the Project.

#### *USE OF COMMON FACILITIES*

6.3 During the Retail Hours, Tenant shall have a non-exclusive right to use, in compliance with the Operating Standards and in common with all other persons entitled thereto, the part of the Common Facilities appropriate, intended and designated from time to time by Landlord for such use. Landlord has no obligation to open the parking areas or Malls or permit customer access to the Project at any time other than during the Retail Hours. Tenant's right of use shall not extend to parts of the Common Facilities from time to time allocated by Landlord for other uses, whether temporary or permanent, nor to parts inappropriate for such use, such as roofs, service rooms, structures and exterior areas and surfaces. Landlord may from time to time create rentable areas and erect kiosks or other merchandising facilities in any part of the Project in such locations as may be designated by Landlord on a temporary or permanent basis and which do not result in any material adverse interference with access to the Store. Landlord shall also be entitled to use or permit the use of any part of the Common Facilities for displays, special features and promotional, merchandising, entertainment and other activities if such uses do not result in any material adverse interference with access to the Store. Notwithstanding the foregoing so long as the Tenant in occupation

of the whole of the Store is Fairweather Ltd. or a Permitted Transferee and is not in default under this Lease beyond any applicable cure period, the Landlord shall not allow or cause to be constructed, placed or erected, any permanent kiosk, selling facility or similar retail structure anywhere within ten (10) feet directly in front of the storefront width of the Store; however, this shall not apply to nor prohibit the Landlord from constructing, placing or erecting any planters, mall furniture or other similar installations in the Mall, nor from constructing, placing or erecting temporary promotional or advertising displays in the Mall, nor shall this apply to any existing kiosks which the Landlord shall be permitted to re-design or re-construct if applicable. Landlord shall use reasonable efforts to ensure that such installations and temporary displays do not permanently affect: (i) Tenant's business operations in or from the Store, (ii) the visibility of Tenant's storefront signage located on the bulkhead of the Store as can be seen from directly across the Mall, and (iii) reasonable access to and from the Store.

#### *PUBLIC POLICIES*

6.4 Landlord shall be deemed to have observed and performed the terms and conditions to be performed by Landlord under this lease, including those relating to the provision of Utilities, if in so doing it acts in accordance with a directive, policy or request of a governmental or quasi-governmental authority acting in the fields of energy, conservation, waste management and disposal, security or other area of public interest.

### *PART 7*

#### *REPAIRS AND MAINTENANCE*

##### *MAJOR DAMAGE*

7.1 If 50% or more of the Gross Leaseable Area of rentable premises in the Project is destroyed or damaged by any cause so as not to be capable of being used for its intended purposes and Landlord elects, by written notice to Tenant given within 120 days after the occurrence of such destruction or damage, not to repair, then within 60 days after such notice is given (notwithstanding that the Store may be unaffected) either Landlord or Tenant may terminate this lease upon not less than 30 days nor more than 60 days written notice to the other. Except as provided in this Section 7.1 and subject to Section 3.9, destruction or damage to the Store or the Project by any cause shall not frustrate or terminate this lease nor affect the covenants under this lease.

##### *LANDLORD REPAIRS*

7.2 Landlord shall, in the same manner and to the same extent as would a prudent owner of the Project, keep the Common Facilities clean and in good repair, order and condition. The obligations of Landlord in this Section and Section 6.1 are subject to an exception for any damage or injury which is not covered by insurance which Landlord maintains or is required to maintain under this lease, or the cost of repair or restoration of which exceeds the proceeds of such insurance actually received by Landlord and for this purpose deductible amounts shall be deemed received.

##### *TENANT REPAIRS*

7.3 Tenant is responsible to keep and maintain the Store and Tenant Property in first class appearance and in good repair, order and condition and in a clean and tidy state at all times to the same extent as would a prudent owner. Landlord may supervise repairs and maintenance to the Store. Tenant shall promptly notify Landlord of any defect or deficiency in, malfunction of, or damage to, the Store or any equipment or Utilities therein of which Tenant becomes aware at any time during the Term.

Tenant understands and agrees that it is solely responsible for the cleaning and maintenance of the Store, including but not limited to grease traps, ducting, and canopy, on a regular basis to ensure that each part of the Store meets all health and sanitation requirements, and to ensure that each part of the Store is clean and presentable during the hours of operation. Landlord reserves the right from time to time to enter the Store to determine if the required cleaning and maintenance program is being fully carried out by Tenant. If Landlord determines that Tenant is not

cleaning and maintaining each part of the Store to a standard consistent with a first class enclosed mall shopping centre, Landlord shall have the right to have such work carried out immediately and all charges incurred by Landlord in doing so will be paid by Tenant as additional rent on demand.

Tenant has no authority over and shall not interfere with the cleaning or supervising staff employed by Landlord in the fast food service areas. Landlord will be responsible for cleaning, maintenance and supervision of the fast food service seating and common areas and at all times such services will be carried out in a manner consistent with the operation of a first class enclosed mall shopping centre.

#### *STORE HVAC*

7.4 Tenant is responsible to regulate and operate all HVAC Facilities exclusively serving the Store in order to maintain reasonable conditions of temperature and humidity within the Store and to avoid appropriation of HVAC from the Common Facilities. Landlord may enter the Store at any time in order to inspect, control or regulate the operation of any HVAC Facilities. Landlord may, upon written notice to Tenant and until further written notice, elect to perform on Tenant's behalf Tenant's obligations to operate, repair, renovate, replace, alter or maintain any HVAC Facilities exclusively serving the Store. The costs incurred by Landlord in so doing shall form part of Tenant's Service Cost.

#### *COMPLIANCE WITH CODES*

7.5 Tenant is responsible at all times to comply with and to keep the Store, the Leasehold Improvements and all Tenant Property in compliance and in accordance with the requirements of all applicable laws, directions, rules, regulations or codes of Landlord and every Authority having jurisdiction and of any insurer by which Landlord or Tenant is insured and affecting the construction, operation, condition, maintenance, use or occupation of the Store or the making of any repair or alteration, including, without limitation, strict compliance with each Environmental Law. Tenant shall not allow or cause any act or omission to occur in or about the Store or the Project which may result in an illegal use or causes any breach of or non-compliance with such laws, directions, rules, regulations and codes. From time to time when Landlord determines it to be necessary Tenant shall provide to Landlord a Hazardous Substance Audit. If, due to Tenant's acts, omissions or use of the Store, repairs, remediation, alterations or improvements to the Store or the Project are necessary to comply with any of the foregoing or with the requirements of insurance carriers, Tenant will pay the entire cost thereof.

#### *ENTRY BY LANDLORD*

7.6 Landlord and those authorized on its behalf shall on reasonable notice be entitled to enter the Store for the purpose of making any repair, alteration, improvement or renovation required or permitted to be made by Landlord, for the purpose of making any repair which Tenant fails to make when required, for the purpose of calculating the area of the Store and obtaining information for plans and for any other purpose permitted or contemplated by this lease. Landlord in entering the Store or doing any work in the Store shall minimize interference with the conduct of the business of Tenant to the extent reasonably possible to do so in the circumstances.

#### *MAINTENANCE OF SERVICES*

7.7 Landlord shall have the right to use, install, maintain, repair and replace conduits, columns and pipes, wires, ducts and other installations in, under or through the Store and the walls, ceilings and floors of the building containing the Store for or in connection with Landlord carrying out repairs, alterations, improvements or renovations to the Project and for the supply of any services, support or Utilities to the Store or to any part of the Project and the right to do such work in the Store as may be necessary in connection with the foregoing right, or to preserve, protect or make repairs, alterations, improvements or renovations to the Store or the Project and for such purposes shall be entitled to enter or authorize any other person to enter the Store.

## *MAINTENANCE AGREEMENTS*

7.8 Tenant shall enter into maintenance contracts as necessary and prudent to ensure the proper maintenance and repair of the electrical facilities, the plumbing and drainage systems, any mechanical systems and the HVAC Facilities exclusively serving the Store and Tenant shall promptly deliver copies of all maintenance agreements and service records to Landlord as they are entered into and updated respectively, from time to time. The maintenance agreements and service records shall include, but not be limited to those relating to the HVAC Facilities, electrical facilities and plumbing and drainage systems.

## *PART 8*

### *INSURANCE*

#### *LANDLORD'S INSURANCE*

8.1 Landlord shall take out and maintain with respect to the Project:

.1 Commercial general liability insurance against personal and bodily injury, including death, and property damage.

.2 Insurance with coverage against such perils as Landlord determines to be necessary and commercially reasonable, which may include fire and extended coverage endorsement perils selected by Landlord and, against water damage however caused and against loss by such other insurable hazards as Landlord determines to be appropriate in the circumstances.

.3 Boiler and machinery insurance.

.4 Loss of rental income insurance, including loss of all rentals receivable from tenants of rentable premises in the Project, including basic rentals, percentage rentals and all other amounts payable thereunder.

Landlord, acting reasonably, shall determine all policy terms including deductibles and may take out and maintain other insurance as it considers advisable, but Landlord shall not be required to take out or maintain any insurance with respect to any loss, injury or damage required to be insured against by Tenant or with respect to Tenant Property. All proceeds of Landlord's insurance shall belong to Landlord although some portions are to be applied to reduce Operating Cost as provided in this lease.

#### *TENANT'S INSURANCE*

8.2 Tenant shall take out and maintain:

.1 Commercial general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, liability with respect to Environmental Claims, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Store and the Common Facilities, which coverage shall include the business operations conducted by Tenant and any other person in the Store and all those for whom Tenant is responsible including those performing work for or on behalf of Tenant. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than \$5,000,000.00 or such higher limits as Landlord or the Mortgagee may require from time to time;

.2 Insurance with coverage against the perils of fire and standard extended coverage endorsement perils, against water damage however caused and against loss by such other insurable hazards as prudent tenants would insure fully covering the Store (including all Leasehold Improvements), all Tenant Property and any other property owned by Tenant or for which it is legally liable and which is located within the Project.

.3 Business interruption insurance including loss of profits.



.4 Such other forms of insurance, including boiler and machinery insurance, as Tenant or Landlord or any mortgagee of the Project, acting reasonably, requires from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.

Insurance to be effected by Tenant shall be in amounts and upon terms which Landlord shall from time to time, acting reasonably, determine to be sufficient. Such insurance shall provide that Landlord is to be immediately notified in writing by the insurer of any threatened cancellation. Such insurance shall include Landlord and the Manager and any others designated by Landlord (including any beneficial owner or other person having an insurable interest) as additional named insureds (but only to that portion of such insurance which covers Leasehold Improvements) and contain cross-liability and severability of interest provisions, as applicable. Insurance under Section 8.2.2 shall be on a full replacement cost basis without deduction for depreciation and for amounts sufficient to prevent Tenant from being a co-insurer and shall be subject only to deductibles and exclusions as Landlord, acting reasonably, may approve. Tenant's insurance shall be primary and shall not call into contribution any other insurance available to Landlord. Tenant shall provide Landlord with certificates or other proofs to establish Tenant's insurance coverage in effect from time to time. If Tenant fails to insure, to file proof thereof, or if Landlord receives notice of any cancellation of Tenant's insurance, Landlord may, upon not less than 24 hours written notice to Tenant, effect such insurance and Tenant shall pay to Landlord on demand the amount of any premiums paid therefore. If this lease expires or is terminated at a time when the Store or Leasehold Improvements are damaged or destroyed as a result of a peril required to be insured against by Tenant, Tenant shall pay or assign to Landlord free of any encumbrance, an amount equal to the greater of the actual proceeds or the amount of insurance required to be maintained by Tenant with respect to such damage or destruction of the Store and Leasehold Improvements but Tenant may retain the amount of proceeds of insurance referable to Tenant Property. In the event of any damage to or destruction of the Store and/or the Project as a result of which insurance proceeds are payable to the Landlord under the Tenant's insurance policies, the Landlord agrees that it shall release and assign its interest in such proceeds which relate to repairs which the Tenant is required to make, as soon as and to the extent such proceeds are paid to the Landlord, so long as all such repairs have been completed by the Tenant and so long as the Tenant is not otherwise in default under this Lease. Notwithstanding the foregoing provisions of this Section 8.2, so long as Tenant is Fairweather Ltd. or a Permitted Transferee, Tenant shall not be required to take out a greater or different insurance coverage than Tenant takes out for its other stores in regional shopping centres in Canada and all such insurance may be taken out by Tenant under its blanket insurance policy from time to time in force. Notwithstanding the foregoing sentence, Tenant covenants to take out commercial general liability insurance coverage in accordance with Section 8.2.1. To the extent Tenant's actual insurance coverage is less than the insurance coverage provided under any of Sections 8.2.2, 8.2.3 or 8.2.4, Tenant will have self-insured against the attendant risk. Furthermore and notwithstanding anything else contained in this amendment to Section 8.2, Tenant shall, for the purposes of Section 8.3, be deemed to have taken out and maintained the insurance coverage required under Sections 8.2.2, 8.2.3 and 8.2.4 and to have received all insurance proceeds payable thereunder.

#### *MUTUAL RELEASE*

8.3 .1 Subject to Sections 8.3.2 and 8.3.3, each of Landlord and Tenant hereby releases the other and waives all claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such claims arise as a result of the negligence or otherwise of the other or those for whom such other is in law responsible.

.2 Such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party and proceeds which would have been received if the releasing party obtained all insurance required to be obtained by it under this lease and for this purpose deductible amounts shall be deemed to be proceeds of insurance received.

.3 Notwithstanding anything to the contrary in this Section 8.3, Landlord and Tenant shall each be liable to any third person (being any person other than Landlord or Tenant) to the extent of their respective fault or negligence and each shall be entitled to full indemnity and contribution from the other to the extent of the other's fault or negligence.

.4 For the purposes of Sections 8.3 and 8.7 only, Landlord shall include the Manager.

### *MUTUAL INDEMNITY*

8.4 To the extent not released under Section 8.3, each party shall indemnify and save harmless the other from all liabilities, damages, losses or expenses growing out of:

- .1 any breach by the indemnifying party of any covenant or condition in this lease,
- .2 any contract, lien or mortgage on the Project or the Store and any loss, cost or expense arising from or occasioned by the act, default or negligence of the indemnifying party, its officers, agents, servants, employees, or licensees, and
- .3 any obligation of the indemnifying party arising or outstanding upon the expiration or earlier termination of this lease.

Such indemnity shall survive the termination of this lease, anything in this lease to the contrary notwithstanding.

### *INCREASE IN INSURANCE PREMIUMS*

8.5 Tenant shall not do or refrain from doing, nor permit anything to be done, in the Store or at any other place in the Project, which would impair or invalidate any policy of insurance on the Store or the Project or any part thereof or which would result in the premium for any such policy being increased. If Tenant is responsible for any such impairment, invalidation or increase, it will promptly after the receipt of notice from Landlord together with reasonable evidence specifying the condition giving rise to such situation, take such steps as are necessary to remedy the situation and shall pay the full amount of any such increase. In the event of the cancellation or a threatened cancellation of any such policy, Landlord shall have the right to immediately enter upon the Store and take reasonable steps to remedy the situation and recover the cost thereof from Tenant.

### *CANCELLATION OF INSURANCE*

8.6 If the situation causing or threatening cancellation of insurance referred to in Section 8.5 cannot be remedied in time to prevent the non-renewal or cancellation of insurance then Landlord shall be entitled to terminate this lease effective upon written notice unless Tenant arranges replacement coverage which is satisfactory to Landlord, acting reasonably.

### *EXTENSION OF RIGHTS AND REMEDIES*

8.7 Every right, exemption from liability, release, defence, immunity and waiver of whatsoever nature applicable to Landlord under this lease shall also be available and shall extend to benefit and to protect Manager and all other companies owned, operated or controlled by or affiliated with Landlord and Manager and to protect their respective officers, directors, managers, consultants and employees and for such purposes each of Landlord and Manager is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such companies and persons.

## **PART 9**

### **DEFAULTS**

#### *LANDLORD MAY PERFORM TENANT'S COVENANTS*

9.1 If Tenant is in default under this lease (other than under Section 2.2.5 or under its covenant to pay rent), and such default continues for 10 days or such longer period as may be reasonably required in the circumstances to cure such default after notice by Landlord to Tenant specifying reasonable details of the default and requiring it to be remedied, or without notice in an emergency, Landlord may remedy such default, without prejudice to or limitation of any other right or remedy it may have with respect to such default. The cost to Landlord of doing so together with interest thereon at the Interest Rate from the date of default shall be added to the rent due on the next

succeeding date on which Basic Rent is payable and such amount shall thereupon become due and payable as rent in addition to the regular payment of Basic Rent then due.

**RE-ENTRY**

9.2 It is a condition of leasing the Store to Tenant that when:

.1 Tenant is in default in the payment of any rent, and such default continues for a period of 5 business days after notice from Landlord,

.2 Tenant has not discharged or vacated any lien referred to in Section 2.5 within 48 hours after notice from Landlord requiring Tenant to do so,

.3 Tenant is in default under this lease (other than under Section 2.2.5 or its covenant to pay rent or with respect to the discharge of any lien) and such default continues for 15 days or such longer period as may be reasonably required in the circumstances to cure such default after notice by Landlord to Tenant specifying reasonable details of the default and requiring it to be remedied,

.4 an execution issues against any property of Tenant located at the Store ~~or any guarantor or indemnifier of this Lease~~ and remains outstanding for more than 10 days after written notice thereof, or any receiver of any property of Tenant ~~or any guarantor or indemnifier of this Lease~~ is appointed, or Tenant ~~or any guarantor or indemnifier of this Lease~~ becomes insolvent or makes application for relief from creditors under the provisions of any statute now or hereafter in force or, under the Bankruptcy and Insolvency Act, files a notice of intention or a proposal, makes an assignment in bankruptcy, or has a receiving order made against it, or otherwise becomes bankrupt or insolvent, or any action, steps or proceedings whatever, are taken with a view to the winding up, dissolution or liquidation of Tenant ~~or any guarantor or indemnifier of this Lease~~, or with a view to the restructuring or compromise of any debt or other obligation of Tenant ~~or any guarantor or indemnifier of this Lease~~ except pursuant to a bona fide corporate reorganization permitted by the terms of this lease.

.5 any insurance policy is cancelled or not renewed by an insurer by reason of the use or occupation of the Store,

.6 Tenant makes any bulk sale or removes any substantial part of Tenant Property from the Store other than in the course of normal sales to customers or pursuant to a permitted Transfer or when the same are no longer required for the conduct of Tenant's business and other Tenant Property of equal or greater value and utility is contemporaneously substituted therefore,

.7 Tenant or any person acting on behalf of Tenant submits any report or statement required to be furnished to Landlord under this lease which, for any reason other than inadvertent clerical error, is false or misleading, or,

.8 the Store has been abandoned, or has become vacant or has remained unoccupied for a period of 5 consecutive days without the written consent of Landlord or the Store has been used or occupied by any other person or persons other than Tenant or any person permitted by Section 2.6 hereof; or

.9 intentionally deleted

.10 a receiver, interim receiver, trustee, liquidator or a receiver and manager is appointed for all or part of the property of Tenant or Tenant's business or of a guarantor's, Indemnifier's, occupant's, licensee's, concessionaire's or franchisee's property or business;

.11 Tenant is in breach of any Environmental Law or fails to provide to Landlord a Hazardous Substance Audit when required, or

.12 re-entry is permitted under any other provision of this lease or in law,

then and in any such event the then current month's rent together with the rent for the 3 months next ensuing shall immediately become due and payable, and at the option of Landlord, the Term shall become forfeited and void, and Landlord may without notice or any form of legal process whatsoever forthwith re-enter the Store, anything contained in any statute or law to the contrary notwithstanding, and may expel all persons and remove all property from the Store and such property may be removed and sold or disposed of by Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of Tenant without Landlord being considered guilty of trespass or conversion or becoming liable for any loss or damage which may be occasioned thereby, provided, however, that such forfeiture shall be wholly without prejudice to the right of Landlord to recover arrears of rent and damages for any antecedent default by Tenant of its covenants under this lease. Should Landlord at any time terminate this lease by reason of any such event, then, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur as a result of such termination.

Notwithstanding any termination of this lease, Landlord shall be entitled to receive rent up to the time of termination plus accelerated rent as herein provided and damages including but not limited to:

- .1 damages for the loss of rent suffered by reason of this lease having been prematurely terminated;
- .2 the costs of reclaiming and repairing the Store; and
- .3 solicitor's fees and disbursements on a solicitor and his own client basis.

#### *INJUNCTIVE RELIEF*

#### **9.3 Intentionally Deleted**

#### *REMEDIES GENERALLY*

9.4 Mention in this lease of any particular right, remedy or remedies of Landlord in respect of any default by Tenant shall not preclude Landlord from, and Landlord shall have, any and all other rights and remedies in respect thereof, whether available at law or in equity or by statute or expressly provided for herein. No right or remedy shall be exclusive or dependent upon any other right or remedy, but Landlord may from time to time exercise any one or more of such rights and remedies generally or in combination, all such rights and remedies being cumulative and not alternatives.

### **PART 10**

#### **STANDARD PROVISIONS**

##### *COVENANTS OF LANDLORD*

10.1 Landlord covenants with Tenant for quiet enjoyment, and that Landlord shall perform and observe all covenants in this lease required to be performed and observed by it. If Landlord is in default, Tenant shall not have or exercise any right or remedy with respect thereto unless such default continues for 10 days or such longer period as may be reasonably required in the circumstances to cure such default after notice by Tenant to Landlord specifying reasonable details of the default and requiring it to be remedied.

##### *COVENANTS OF TENANT*

10.2 Tenant covenants to pay rent when due under this lease and to perform and observe all covenants in this lease required to be performed and observed by it.

##### *SURRENDER OF STORE*

10.3 At the end of the Term, Tenant shall surrender the Store and all Leasehold Improvements not permitted to be removed, to Landlord, all in good and substantial repair and condition in accordance with Tenant's repair

obligations in this lease. If at the expiration of the Term by elapse of time Tenant shall hold over for any reason, the tenancy of Tenant thereafter shall be from month to month at a monthly rental equal to twice the monthly amount of all rent payable immediately prior to the expiration of the Term and shall otherwise be subject to all covenants provided for in this lease except as to duration of the Term.

#### *REMOVAL OF FIXTURES*

10.4 Unless requested to do so by Landlord, Tenant shall not remove any Leasehold Improvements whether at the expiration or sooner termination of the Term. If so requested by Landlord, Tenant shall remove such Leasehold Improvements as are designated by Landlord and Tenant Property not later than the expiration or sooner termination of the Term. If not in default Tenant may, on the expiration or sooner termination of the Term, remove from the Store all Tenant Property. Tenant shall repair any damage to the Store and the Project which may be caused by installation or removal of Tenant Property or Leasehold Improvements and shall leave the Store in a neat and tidy condition. On the expiration or sooner termination of the Term, all Tenant Property, and all fixtures, furnishings or equipment affixed in any manner to the Store not so removed or not entitled to be removed by Tenant shall, at Landlord's election either, be deemed to have become the property of Landlord without payment or compensation of any kind, or, may be removed and disposed of by Landlord at Tenant's cost and without liability of any kind to Landlord. Leasehold Improvements shall become the property of Landlord upon installation.

#### *EFFECT OF TERMINATION*

10.5 The expiry or termination of this lease whether by elapse of time or by the exercise of any right of either Landlord or Tenant pursuant to this lease shall be without prejudice to the right of Landlord to recover arrears of rent and the right of each party to recover damages for an antecedent default by the other.

#### *OTHER LEASE*

10.6 **Intentionally Deleted**

### ***PART II***

#### ***LANDLORD'S TITLE***

#### *TRANSFERS*

11.1 Landlord, at any time and from time to time, may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Project or in the Store and, at any time and from time to time, may enter into any mortgage of the whole or any part of its interest in the Project or in the Store. If the party acquiring such interest agrees to assume, and so long as it holds such interest, to perform the covenants of Landlord under this lease, Landlord shall thereupon be released from all of its covenants under this lease.

#### *MORTGAGES*

11.2 If at any time during the currency of a mortgage of the interest of Landlord in the Store or Project, notice of which has been given to Tenant, Landlord shall be in default under this lease and such default would give rise to a right in Tenant to terminate this lease, Tenant, before becoming entitled as against the holder of such mortgage to exercise any right to terminate this lease, shall give to such mortgagee notice in writing of such default. Such mortgagee shall have 60 days after the giving of such notice, or such longer period as may be reasonable in the circumstances, within which to remedy such default, and if such default is remedied within such time Tenant shall not by reason thereof terminate this lease. The rights and privileges granted to any such mortgagee by virtue of this Section shall not be deemed to alter, affect or prejudice any of the rights and remedies available to Tenant as against Landlord. Any notice to be given to such mortgagee shall be deemed to have been properly given if mailed by registered mail to its most recent address of which Tenant has notice.

### *PRIORITY OF LEASE*

11.3 This lease and all rights of Tenant under this lease are subject and subordinate to all mortgages now or hereafter made by Landlord, except that the holder of any such mortgage may subordinate and postpone such mortgage to this lease at any time by an instrument in writing to such effect registered against the title to the Project without any further consent or agreement of Tenant. Tenant if so requested, shall attorn to such mortgagee when such mortgagee takes possession of the Project and to any purchaser of the Project and shall recognize such mortgagee or purchaser as Landlord under this lease. Upon the written request of the Tenant, the Landlord shall use its reasonable efforts to obtain at the Tenant's expense, an agreement from the permanent financing mortgagee of the Project to the effect that upon the execution and delivery by the Tenant to the Landlord of the Lease, if the Tenant shall pay the rent and comply with all terms and conditions contained in the Lease and attorn to the permanent financing mortgagee, the Tenant shall be permitted to remain in quiet possession of the Store without interruption or disturbance from the permanent financing mortgagee. The Tenant shall (i) promptly execute such documents as may be required by the Landlord to give effect to the foregoing, and (ii) indemnify the Landlord from and against all costs including legal costs incurred by the Landlord in connection with obtaining and preparing any such agreement.

### *PART 12*

### *GENERAL MATTERS*

#### *NOTICES*

12.1 Any notice provided for in this lease shall be addressed to Landlord, Tenant or Indemnifier at such party's address specified in Appendix 1, shall be in writing and signed by the party giving the notice and shall be effectively given by registered mail or by facsimile or by delivery of such notice to such address, ~~or, as an alternative in the case of notice to Tenant, by delivery of such notice to the Store.~~ Such notice, if delivered or sent by facsimile, shall be conclusively deemed to have been given and received at the time of such delivery or the time of confirmed transmission by facsimile, in either case, unless given on a non-business day, or after 5:00 p.m. in which event such notice shall be deemed to have been given and received on the next business day. If in this lease two or more persons are named as Tenant, such notice may be given to any one of such persons and shall constitute notice to all. Each of Landlord, Tenant and Indemnifier may, from time to time by notice to the other, change its address for the purpose of any subsequent notice. Any notice to be given by Landlord may be signed and given by Landlord or by Manager or by an authorized representative of either.

#### *ESTOPPEL CERTIFICATES*

12.2 Each party at any time and from time to time within 10 days after notice from the other shall execute and deliver to the other and to any party designated by the other, a statement in writing certifying that this lease is unmodified and in full force and effect (or, if modified, stating the modifications and that the same is in full force and effect as modified), the amount of the rent then being paid under this lease, the dates to which the same, and the other sums provided in this lease to be paid by Tenant, have been paid, the Commencement Date and duration of the Term and stating whether or not there is any existing default of which it has notice, and the particulars and amount of insurance policies on the Store and any such other information as may be reasonably requested. Any statement delivered pursuant to the provisions of this Section shall be binding upon the party giving the statement.

#### *OTHER CERTIFICATES*

12.3 Each party agrees that the following certificates shall be conclusive and binding in respect of any question of fact or opinion with respect to the matters stipulated:

.1 A certificate procured by Landlord from an architect, professional engineer, land surveyor or other qualified individual as to: Gross Leaseable Areas of premises including the Store; any question of fact concerning the completion of any construction or other work, either by Landlord or Tenant; the extent to which the completion of any work or obligation has been delayed by Force Majeure; whether the Project or any part thereof including the

Store is being kept in good repair; the determination or allocation of any costs forming part of Additional Rent; the cause of any destruction or damage and the extent and duration for which rentable premises in the Project are incapable of being used for their intended purposes by reason of any destruction or damage.

.2 A certificate procured by Landlord from a licensed public accountant, who may be Landlord's auditor, as to any question of fact or opinion concerning the computation, determination or allocation of Gross Revenue, Operating Cost, Tenant's Service Cost or Additional Rent or the proper amount of any payment to Landlord or Tenant under this lease.

Any certificate procured by Landlord shall be prepared using generally accepted practices and procedures appropriate to such certificate.

#### *FORCE MAJEURE*

12.4 Whenever and to the extent that either party shall be unable to fulfil, or shall be delayed or restricted in the fulfilment of any obligation (other than the payment of any money) under any provision of this lease, by reason of Force Majeure, such party shall, so long and to the extent that any such impediment exists, be relieved from the fulfilment of such obligation and the other party shall not be entitled to compensation for any loss, damage, inconvenience, nuisance or discomfort thereby occasioned.

#### *DEMOLITION OR RENOVATION*

12.5 If any Authority issues or makes an order, law, regulation or a judgment that would, in Landlord's opinion, necessitate the demolition or substantial renovation of the Project, any part thereof, or the Store, Landlord shall have the right to terminate this lease by giving a termination notice to Tenant which specifies a date of termination of this lease which is at least 30 days after such termination notice is given. If Landlord or its successors, transferees or those having the right, choose to sell, demolish, or substantially renovate the Project or any part thereof, in close proximity to the Store, Landlord shall have the right to terminate this lease by giving a termination notice to Tenant which specifies a date of termination of this lease which is at least 3 months after such termination notice is given.

#### *DELAY IN FIXTURING*

##### **12.6 Intentionally Deleted**

#### *INCONVENIENCE AND CONSEQUENTIAL LOSS*

12.7 Subject to Section 6.3, Tenant acknowledges and agrees that Landlord's exercise of Landlord's rights and remedies under this lease including, without limitation, the rights and remedies under Part 6 of this lease may adversely affect Tenant's business, its Gross Revenue and may cause Tenant to experience other consequential losses and hardship. Notwithstanding that, Tenant agrees that Landlord has reserved and is entitled to fully exercise its rights and remedies under this lease and Tenant shall not be entitled to any remedy, compensation, or reduction in rent payable under this lease for any interruption, inconvenience, discomfort, loss or damage attributable to enforcement of Landlord's remedies or to repair, renovation, alteration, rebuilding, demolition, reduction or expansion of any portion of the Project (including the Common Facilities) or any construction or other work in or about the Project caused by, carried out or otherwise authorized or permitted by Landlord.

#### *LEGAL RELATIONSHIP*

12.8 The provision in this lease for the payment of Percentage Rent is a reservation of rent only, and neither such provision nor any other provision of this lease is intended to create a joint venture, partnership, agency or any other similar relationship between the parties, such relationship being that of landlord and tenant only.

### *WAIVERS*

12.9 No waiver by either party of any breach or non-compliance by the other party under any provision of this lease and no waiver by either party of any term or condition of this lease shall be a waiver of any continuing or subsequent breach or failure or of any other provision, term or condition, nor shall any forbearance or failure to seek a remedy for any breach or failure be a waiver of any rights and remedies with respect to such or any subsequent breach or failure.

### *SEVERABILITY*

12.10 If any provision of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this lease shall be separately valid and enforceable to the fullest extent permitted by law.

### *INTERPRETATION*

12.11 This lease shall be construed in accordance with the laws of the Province in which the Project is situate and the parties attorn to the exclusive jurisdiction of the courts of such Province to deal with all actions in respect of this lease. The Section headings of this lease have been inserted for convenience of reference only and they shall not be referred to in the interpretation of this lease. This lease shall be read with all changes of gender and number required by the context. Time shall be of the essence of this lease and each of the provisions hereof.

### *COVENANTS*

12.12 If two or more persons are Tenant, the liability of each is joint and several. If Tenant is a partnership or other business association, the members of which are subject to personal liability, the liability of each member is joint and several.

### *WHOLE AGREEMENT*

12.13 This lease contains the whole agreement between the parties with respect to the subject matter of this lease. There is no promise, inducement, representation, warranty, collateral agreement or condition affecting the Project, the Store, the business to be conducted by Tenant, or this lease or supported by this lease other than as expressed in this lease. All representations and inducements made by either party or their representatives which are relied upon by the other party are contained herein and each party disclaims reliance on any other representations or inducements.

### *AMENDMENTS*

12.14 This lease may not be amended or altered except by instrument in writing signed by Landlord and Tenant.

### *NO OFFER*

12.15 The submission by Landlord to Tenant of this lease shall have no binding force or effect, shall not constitute an option for leasing the Store, nor confer any rights or impose any obligations upon either party until the execution and delivery of this lease by Tenant and Landlord.

### *REGISTRATION*

12.16 Tenant shall not register this lease or any part thereof but may register a notice or caveat in respect thereof, which notice or caveat shall disclose only the existence and Term of this lease and such other non-financial terms as Landlord may approve.



### **ASSIGNS**

12.17 This lease shall enure to the benefit of and be binding upon the parties hereto, shall be binding upon their respective successors and assigns and subject to the limitations on Transfer by Tenant set forth above, shall enure to the benefit of and be enforceable by only such successors and assigns which have agreed to assume and to perform each of the covenants of the party to which they have succeeded or from which they have received such assignment in the same manner and to the same extent as if originally named in this lease as such party.

### **AUTHORIZATION**

12.18 Tenant covenants that it has all requisite power and possesses all licenses, franchises, permits, consents, approvals and other rights necessary to enable it to enter into this lease and carry out its provisions.

### **AGENCY**

12.19 Tenant acknowledges that Manager has executed this agreement solely in its capacity of agent and manager for Landlord and the Manager shall have no personal liability under the provisions of this lease. Subject to the foregoing, Manager shall represent and act for and on behalf of Landlord for all purposes of this lease.

### **PRIOR LEASE DOCUMENTATION**

12.20 The parties acknowledge that Tenant's tenancy under this lease was created pursuant to the following documentation:

- (i) letter agreement dated October 8, 1996 (the "Letter Agreement") between Landlord and Dylex Limited ("Dylex"), as tenant, in which Landlord agreed to lease the Store to Dylex for a term of ten (10) years and sixteen (16) days commencing on September 15, 1997 and ending September 30, 2007;
- (ii) Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice dated August 17, 2001 in which Richter & Partners Inc. (the "Interim Receiver"), in its capacity as trustee of the Estate of Dylex, was appointed interim receiver of Dylex;
- (iii) letter dated September 26, 2001 (the "Extension Letter") from the Interim Receiver to the Landlord in which the Interim Receiver, on behalf of Dylex, exercised the option to extend the term of the Letter Agreement for a further period of five (5) years so that it would then expire on September 30, 2012;
- (iv) Order of the Honourable Mr. Justice Spence of the Ontario Court of Justice dated September 28, 2001 in which Dylex was declared bankrupt and the Interim Receiver was appointed as trustee of the estate of Dylex; and
- (v) assignment of lease agreement dated October 30, 2001 (the "Assignment of Lease") between Landlord, the Interim Receiver (in its capacity as trustee of the estate of Dylex), as assignor, and Tenant, as assignee, in which the Letter Agreement and the Extension Letter were assigned by the Interim Receiver, on behalf of Dylex, to Tenant effective as of October 30, 2001 (the "Assignment Date") on the terms and conditions more particularly set out therein.

Effective as of the date of this lease specified in Key Data Item 22 of Appendix I, the parties agree that each of the Letter Agreement, the Extension Letter and the Assignment of Lease shall merge with and form part of this lease such that each document shall be of no further force and effect and that Tenant's tenancy of the Store shall be governed exclusively by the terms and conditions of this lease.

The parties acknowledge and agree that, as of the Assignment Date, each of Landlord and Tenant had no claims against the other party in respect of any default or obligation of Landlord or Tenant pursuant to the terms of this lease which occurred prior to the Assignment Date.

IN WITNESS WHEREOF the parties hereto have executed this lease.

**LANDLORD:**

**SCARBOROUGH TOWN CENTRE HOLDINGS INC.**  
by its Manager (without personal liability),  
**OMERS Realty Management Corporation.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
**TOM FALLS**  
VICE PRESIDENT, RETAIL PORTFOLIO-EAS

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
**DEVON JONES**  
VICE PRESIDENT, LEGAL

I/We have authority to bind the Corporation


**TENANT:**

**FAIRWEATHER LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
**Paul Bremer**  
Secretary / Treasurer

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation

## ***SCHEDULE 1***

### ***DEFINITIONS***

In this lease certain recurring words and phrases have defined meanings as follows:

**"Additional Rent"** means all amounts payable by Tenant under this lease other than Basic Rent and Percentage Rent.

**"assignment"** means any transaction whereby any rights of Tenant under this lease are transferred to anyone (whether immediately, conditionally or contingently) and includes an assignment or specific or floating charge whereby the interest of Tenant is mortgaged or pledged as security for any indebtedness or other obligation and includes an assignment by operation of law.

**"Authority"** means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, Landlord, Tenant, the Project or the Store including the businesses carried on therein;

**"Basic Rent"** means the rental referred to in key data item 10 and Section 3.1.

**"Business Tax"** means any business tax or assessment or any other tax, assessment, rate or levy imposed by any Authority having jurisdiction, in respect of, any business carried on in, from or through the Store or the whole or any part of the Project or any use, possession or occupancy of any property, premises or space in the Project.

**"Capital Tax"** means any tax or taxes payable by the Taxpayer to any taxing authority based upon or computed by reference to the value of the Project, or the paid-up capital or place of business of the Taxpayer including without limitation, provincial capital tax and federal large corporation tax. If the system of capital taxation shall be altered such that any new tax shall be levied or imposed in substitution or replacement for or in addition to Capital Tax from time to time levied or imposed, then any such new tax or levy shall be deemed to be Capital Tax or included in Capital Tax.

**"Capital Tax for the Project"** is included in Operating Cost and for any Fiscal Period means the amount calculated by multiplying the aggregate book value to Taxpayer of the Project (and all equipment used in connection therewith) by the applicable Capital Tax rate imposed, from time to time, by the taxing authority having jurisdiction. Aggregate book value shall be net of depreciation and amortization for financial statement purposes and determined as at the end of such Fiscal Period and may be imputed by Landlord (i) as if the Project was the only property of Taxpayer, but with any applicable tax exemption allocated equitably by Landlord amongst all of Taxpayer's properties and/or assets, and (ii) on the basis of Landlord's determination of the amount of capital attributable to the Project. The parties acknowledge that Capital Tax for the Project is an approximation based upon the concept of Capital Tax, and is not necessarily the actual Capital Tax paid or payable by Taxpayer in respect of the Project. If the calculation or basis of Capital Tax changes then Landlord may adjust the calculation or basis of such amount to reasonably reflect such change.

**"change in control"** means, in the case of any corporation or partnership, the transfer, by sale, assignment, operation of law, transmission on death, mortgage, trust, issuance from treasury, cancellation or redemption, or otherwise, of any shares, voting rights or interest, which will result in a change of the identity of the person exercising, or who might exercise, effective control of such corporation or partnership whether directly or indirectly, unless such change occurs as the result of the issuance, tender or trading in shares in each case provided such shares are listed upon a recognized stock exchange.

**"Commencement Date"** means September 15, 1997

**"Common Facilities"** means all common facilities from time to time furnished or designated by Landlord (as the same from time to time may be altered, diminished, reconstructed or expanded) in connection with the Project and

now or hereafter developed or designated by Landlord, and including, without limiting the generality of the foregoing, the roof, ceiling and floor slabs, exterior walls and exterior and interior structural portions of the Project and all facilities and equipment for the production, generation or transmission of HVAC, Utilities, chilled water, and primary or make-up air, and mechanical, sprinkler, electrical and sewage facilities and equipment and telephone and other communications facilities, other than any of such items which are contained within any rentable premises in the Project for the exclusive use of such premises, and excluding Leasehold Improvements, and also including parking areas and parking structures, access roads, driveways, entrances and exits, sidewalks, Malls, ramps, landscaped areas, stairways, escalators, elevators, passageways, mechanical and electrical rooms, garbage facilities, delivery facilities, fire protection and detection equipment, security equipment, first-aid and information facilities and washrooms; provided that any of the foregoing may be located within the Project or elsewhere if designated from time to time by Landlord as forming part of the Common Facilities.

**"Competing Business"** intentionally deleted

**"Construction Schedule"** means the provisions set forth in Schedule 3 to this lease.

**"Contaminant"** means any solid, liquid, or gaseous substance, any Hazardous Waste, any Toxic Substances, any odour, heat, sound vibration, radiation or combination of any of them that may, if Discharged, have an adverse effect on the environment or on people, property or the normal conduct of business.

**"CPI"** means the Consumer Price Index (All Items for Regional Cities) for the City in which the Project is located, or if there is no Consumer Price Index for that City, for the City in Canada nearest the Project for which there is a Consumer Price Index - or any substitute index designated by the Landlord - published by Statistics Canada or any other Authority; if another index is substituted, the Landlord shall be entitled to make necessary conversions.

**"Design Criteria"** has the meaning provided in the Construction Schedule.

**"Discharge"** means any spill release, escape, leak or movement of a Contaminant into the environment, the indoor or outdoor air, into or onto the ground, into the surface water or ground water, into the sewers or any watercourse, or into, onto or from the Store or the Project.

**"Environmental Claim"** means all claims, losses, costs, expenses, fines, penalties, payments and/or damages (including, without limitation, all solicitors' fees on a solicitor and own client basis) relating to, arising out of, resulting from or in any way connected with the presence of any Contaminant at the Store or the Project, including, without limitation, all costs and expenses of any remediation or restoration of the Store, the Project and/or any property adjoining or in the vicinity of the Store or the Project required by Environmental Law;

**"Environmental Law"** means the statutes, regulations, policies, directives, orders, approvals and other legal requirements of an Authority or of the common law which affect the Project, the Store, and Landlord's or Tenant's business, and which impose any obligations relating to the protection, conservation or restoration of the environment, the Project or the Store.

**"Fiscal Period"** means any fiscal period adopted from time to time by Landlord for the purpose required by the context in which it is used.

**"Fixturing Period"** means the period specified in key data item 15.

**"Fast Food Service Costs"** means the portions of Operating Cost allocated by Landlord for payment by Fast Food Service Tenants on the basis that such portions are primarily attributable to the operations of Fast Food Service Tenants and to the provision of fast food service facilities and services in the Project.

**"Fast Food Service Cost Contribution"** means that proportion of Fast Food Service Costs in each Fiscal Period which the total Gross Leaseable Area from time to time of the Store, is of, the total Gross Leaseable Area from time to time of the premises of all Fast Food Service Tenants.

**"Fast Food Service Tenants"** means those tenants of the Project from time to time designated by Landlord as engaged in providing fast food services to customers of the Project, and entitled to the benefit of the common fast food facilities and services in the Project, regardless of where the premises of such tenants are located in the Project.

**"Force Majeure"** means a fire, strike, lock-out or other casualty or contingency beyond the reasonable control and not the fault of the party thereby affected, where the effects of such casualty or contingency are not avoidable by the exercise of reasonable effort or foresight by such party (but does not include insolvency, lack of funds, or other financial casualty or contingency).

**"Free Standing Stores"** means all rentable premises located in separate ancillary or satellite buildings on the Project.

**"Gross Leaseable Area"** means, in respect of any rentable premises including the Store, the exact area in square feet of all floor space on every floor or level therein including for this purpose and measured from:

- (a) the outside surface of all exterior walls;
- (b) the outside surface of all interior walls, doors and windows separating such premises from any portion of the Common Facilities; and
- (c) the centre line (determined without regard to any finished treatment on such wall) of all interior walls separating such premises from adjacent rentable premises.

Where a portion of any rentable premises is recessed from a demising line, the area of such recess shall be included as part of the Gross Leaseable Area of such premises. There shall be no deduction or exclusion from the Gross Leaseable Area for anything occupying floor space.

**"Gross Revenue"** means all of the gross receipts and revenues of every nature and kind with respect to all business and retailing activity conducted by any means at, in, upon, through or from the Store or the Project ~~and any Competing Business~~ and, whether at wholesale or retail, whether for cash, credit, exchange of merchandise or other consideration and whether by Tenant or any other person conducting business and retailing activity by any means at, in, upon, through or from the Store ~~and any Competing Business~~ including every subtenant, franchisee or licensee; and including the selling price of all merchandise, services and entertainment sold or for which orders are obtained or which are delivered or provided to the purchaser at, in upon, through or from the Store or the Project ~~or the Competing Business~~ including, without limitation, all merchandise, services and entertainment sold, ordered, provided or delivered at, in, upon, through or from the Store or the Project ~~or any Competing Business~~ by means of e-commerce and the Internet or by machines or devices of any kind, including vending machines and machines or other devices operated by coins, credit cards, electronic communication or otherwise. Each sale shall be treated as a sale for the full price (including all finance charges) at the time such sale is made, regardless of when or if Tenant receives payment.

Gross Revenue shall not include or there shall be deducted to the extent otherwise included therein:

- (i) sales or rentals of merchandise for which cash has been refunded, but only to the extent of the refund provided that the selling price of such merchandise has been previously included in Gross Revenue;
- (ii) the selling or rental price of merchandise returned by customers for exchange, but the selling or rental price of merchandise delivered to the customer in exchange will be included in Gross Revenue;
- (iii) retail tax imposed by federal, provincial, municipal or any other governmental authorities directly on sales and rentals and collected from customers at the point of sale or rental by the Tenant acting as agent for the authority, but only if the amount is added separately to

the selling or rental price and does not form part of the quoted price for the article or the service and is actually paid by the Tenant to the authority; and

- (iv) any goods and services taxes imposed by the federal government on the sale or rental of goods and services and collected from customers at the point of sale or rental by the Tenant acting as agent for the federal government, whether or not the amount is charged separately from the selling or rental price provided the amount is readily identifiable as such;
- (v) transfers of merchandise between the Tenant's stores and merchandise returned to the Tenant's suppliers, but only if the transfers or returns are for convenience and not for reducing Gross Revenue;
- (vi) sales of fixtures and equipment normally used in the conduct of the Tenant's business in the Store after such use is no longer required by the Tenant and which the Tenant does not normally sell;
- (vii) allowances made on merchandise claimed to be defective or unsatisfactory, provided the sale price of such merchandise was previously included in Gross Revenue;
- (ix) delivery charges made by the Tenant and separately charged apart from the selling price;
- (x) interest, financing or carrying charges separately charged to the Tenant's customers with respect to merchandise purchased in the Store;
- (xi) the selling price of gift or merchandise certificates or coupons, however, such gift or merchandise certificates or coupons shall be included in Gross Revenue at the time of their redemption in the Store; and
- (xii) bulk sales associated with any subletting or assignment not prohibited by this Lease.

"Hazardous Substance Audit" means an inspection, investigation and report for the Store completed on behalf of and at Tenant's sole expense, by an independent environmental consultant designated or approved by Landlord, together with such tests, surveys and inquiries as Landlord or such consultant deems advisable in the circumstances, into the presence or existence of any Contaminant in, on or about the Store, including in the Leasehold Improvements or in any Tenant Property, and into the condition or status of the Store, Leasehold Improvements and Tenant Property in relation to possible contamination by any Contaminant, and shall include the consultant's written report and certification as to the presence or absence of any Contaminant, addressed and delivered to Landlord, summarizing the nature and results of all inspections, tests, surveys and inquiries conducted, and the consultant's recommendations for any remedial, removal or precautionary actions that are or may be required under Environmental Law or under the provisions of the lease in the circumstances.

"Hazardous Waste" means any hazardous waste, hazardous product, deleterious substance, special waste, liquid industrial waste, bio-medical waste, dangerous goods or substance which is controlled or regulated under Environmental Law. For ease of reference, this includes, but is not limited to, any waste which is composed in whole or in part of substances which are: (i) corrosive, (ii) ignitable, (iii) pathological, (iv) radioactive, (v) reactive, or (vi) toxic; and liquid waste, whether or not from a commercial or industrial process, that cannot lawfully be disposed of through the municipal sewers.

"HVAC" means heating, ventilating or cooling or any combination thereof.

"HVAC Facilities" means facilities and equipment used for or in connection with the provision and supply of HVAC, as from time to time existing.

"Interest Rate" means, with respect to each relevant Fiscal Period, a rate of interest which is two percentage points per annum more than the rate of interest per annum established by a bank named by Landlord, as a reference rate of

interest to determine the interest rate such bank will charge for Canadian dollar commercial loans to its customers in Canada and which such bank quotes or publishes as its prime rate.

**"Landlord"** includes Landlord and its successors and assigns.

**"lease year"** in the case of the first lease year means the period beginning on the Commencement Date and terminating on the first anniversary of the last day of the month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which event the first lease year terminates on the expiration of the period of 12 months thereafter. Each subsequent lease year commences on the first day following the expiration of the preceding lease year and terminates on the earlier of the expiration of 12 months thereafter or on the expiration or sooner termination of this lease.

**"Leasehold Improvements"** means all fixtures, improvements, installations, alterations and additions from time to time made, constructed, erected or installed in or to the Store with the exception of Tenant Property, and shall also include all or any portion of any HVAC Facilities, sewage, sprinkler, mechanical and electrical equipment and facilities and equipment for or in connection with the supply of HVAC, Utilities or communications wherever located, exclusively serving the Store.

**"Major Stores"** means premises in the Project having a Gross Leaseable Area in excess of 15,000 square feet each.

**"Major Tenant"** means the lessee or occupant of any Major Store.

**"Mall"** means each enclosed customer concourse of the Project onto which Retail Premises front and have direct access, on the ground floor level of the Project and on any main level above or below the ground floor level which has been from time to time in each case, designated as a retail mall by Landlord.

**"Manager"** means Landlord's authorized agent and manager for the Project as named in key data item 21 and who may be changed from time to time.

**"mortgage"** includes a mortgage, pledge, charge, hypothec, privilege, encumbrance or any other financing arrangement and, where the context requires, a ground or underlying lease, and **"mortgagee"** includes the holder of such mortgage and the lessor under such ground or underlying lease.

**"Opening Date"** means the date already determined or to be determined by Landlord upon which the Project (or any portion thereof in which the Store is situate) has been or is to be officially opened to customers for business.

**"Operating Cost"** includes the total direct and indirect cost and expense, without duplication, incurred or accrued and attributed by Landlord to discharge its obligations under this lease and with respect to the ownership, administration, operation, management, maintenance, improvement, insuring, cleaning, supervision, rebuilding, replacement and repair of the Project, plus an administrative fee equal to 15% of such total cost and expense. If Landlord decides not to charge the full amount of any one or more of the foregoing costs and expenses in the year in which it is incurred, then any such uncharged portions may be charged in any subsequent years and there shall be included, interest at the Interest Rate on the uncharged portion of such costs and expenses from time to time. Indirect and offsite costs, depreciation charges, interest at the Interest Rate on undepreciated portions of capital costs and Capital Tax for the Project shall be determined and allocated by Landlord to Operating Cost in accordance with the provisions of this lease. No amount shall be included in Operating Cost for financing or mortgage charges of the lands and buildings comprised in the Project, and Landlord shall deduct the proceeds paid to Landlord under any insurance maintained by it pursuant to this lease where the expense to which such proceeds relate was previously included in Operating Cost. Prior to calculating Tenant's Share of Operating Cost, Landlord shall deduct from the total Operating Cost, amounts payable for such costs pursuant to Landlord's leases with Major Tenants and contributions to such costs receivable by Landlord in respect of those parts of other rentable premises in the Project which have been excluded in the calculation of Tenant's Share.

**There shall be deducted or excluded from Operating Cost the following:**

- (a) net recoveries that reduce the expense incurred by the Landlord in operating and maintaining the Project and the Common Facilities, received by the Landlord from tenants as a result of any act, omission, default or negligence of tenants or as the result of breaches by tenants of the provisions in their leases (but not recoveries from tenants under clauses similar to this definition of "Operating Cost");
- (b) net proceeds from insurance policies taken out by the Landlord, to the extent that the proceeds relate to the costs and expenses incurred in the maintenance and operation of the Project and the Common Facilities; (if the Landlord defaults under Section 9.03, it will deduct an amount equal to the net proceeds that the Landlord would have been entitled to had it not defaulted under that Section);
- (c) net revenues received by the Landlord from the operation of any parking facilities within the Project but only to the extent that such revenues offset that portion of the Operating Costs which are incurred directly in respect of such parking facilities;
- (d) the amount of any sales tax, goods and services tax, value added tax or any similar tax ("GST") paid or payable by the Landlord on the purchase of goods and services included in Operating Costs, which may be available to the Landlord as a credit or offset in determining the Landlord's net tax liability or refund on account of GST;
- (e) the Landlord's business taxes (other than business taxes assessed against the Project and payable by the Tenant pursuant to its business operations in respect of the Store);
- (f) ground rentals, penalties relating to the late payment of taxes and principal, interest or other carrying charges or mortgage payments or other financing with respect to the Project;
- (g) all fines, suits, claims, demands, costs, charges or expenses of any kind or nature for which the Landlord is or may become liable by reason of any breach, violation or non-performance by the Landlord or those for whom the Landlord is in law responsible of any covenants, terms or provisions contained in this Lease;
- (h) amounts expended by the Landlord for advertising and promotion of the Project except as expressly payable by the Tenant pursuant to this Lease;
- (i) the cost of remedying any non-compliance with statutes, regulations, ordinances or other governmental requirements in connection with (A) the original construction of the Project or (B) any reconstruction, renovation or expansion to the Project on the part of the Landlord; and
- (j) any costs of performing the Landlord's Work in connection with the original construction of the Project as set out in Schedule "3".

"Operating Standards" means the rules, procedures and requirements as amended and supplemented from time to time, (initially as set forth in Schedule 2 to this lease) governing the manner in which Tenant and others doing business in the Project shall operate and conduct their businesses.

"Other Lease" - intentionally deleted.

"Percentage Rent" means the rental referred to in key data item 11 and Section 3.2

"Permitted Transferee" is defined in Section 2.6.7.

"person" means any individual, corporation, partnership, trust, joint venture other legal entity or other business association and includes a government or departmental subdivision or agency thereof.



**"Project"** means the lands and premises described in Schedule 4, as the same may be from time to time, altered, diminished, enlarged, reconstructed or expanded, and includes the Common Facilities and all structures, improvements, services, fixtures and facilities used in the operation thereof and now or hereafter constructed, erected and installed thereon, but excludes all improvements to rentable premises made or installed therein by or on behalf of any occupant of such premises, and further excludes all property owned by or for which any occupant of rentable premises is primarily responsible to repair, maintain or insure.

**"Protected Area"** means the area referred to in key data item 17.

**"Realty Tax"** means any real property, municipal, school or local improvement tax, assessment or charge or any other tax, assessment or charge imposed upon or in respect of any real property from time to time by any Authority, including any costs incurred by Landlord in determining or verifying the propriety or reasonableness of or contesting the same in good faith; but excluding any Capital Tax and any income or profits tax upon the income of Landlord, to the extent any such tax is not imposed in lieu of any tax, assessment or charge upon or in respect of the Project or upon Landlord in respect thereof, and further excluding each Business Tax of Landlord in respect of the Project and without duplication of any Business Tax of Tenant or in respect of the Store. If any other tax, assessment or charge is imposed by any governmental or regulatory authority upon or in respect of all or any portion of the Project, the revenues therefrom or Landlord, in substitution for, or (so long as they are based on real property) in addition to any Realty Tax from time to time imposed, then any such other tax, assessment or charge shall be deemed to be a Realty Tax.

**"Related Corporation"** means a holding corporation, subsidiary corporation or affiliate of Tenant, as each of those terms is defined in the Business Corporations Act or similar statute of the Province in which the Project is located.

**"rent"** means Basic Rent, Percentage Rent and Additional Rent.

**"Retail Hours"** means the business days and hours from time to time designated by Landlord for the Project.

**"Retail Premises"** means that portion of rentable premises in the Project which fronts onto, has direct customer access to, and is on the same level as any Mall and which, during any applicable time period, is either actually used and occupied or is intended by Landlord to be used and occupied for the purpose of retailing goods or services, but excludes Major Stores, free standing buildings and premises used or intended for use by any Authority or by the Crown or Crown agencies or other governmental agencies or bodies and excludes premises used for recreational, community, theatre, or day care purposes and further excludes premises or areas designated by Landlord from time to time as being for use as mechanical, storage, office, administrative or other similar uses or for non-retailing use.

**"Security Deposit"** - intentionally deleted.

**"Store"** means the premises shown outlined in red on Schedule "5" and includes the Leasehold Improvements; and the boundaries thereof extend to and include: (i) the inside surface of exterior walls and of structural columns therein; (ii) exterior doors and windows and any walls separating such premises from a Mall; (iii) the centre line of any walls separating such premises from adjacent rentable premises or from any portion of the Common Facilities other than a Mall; (iv) the top surface of the structural subfloor; and (iv) the bottom surface of the structural ceiling or, if there is no ceiling, a plane extending across the Store at the top of the demising walls as determined by Landlord. Furthermore, such premises and the Store shall include the surface of any area recessed from the demising line and shall exclude any Common Facilities located within such boundaries.

**"sublease"** means any transaction other than an assignment whereby any right of use, occupancy or possession (whether exclusive, non-exclusive, permanent or temporary) relating to the whole or any part of the Store is conferred upon anyone (whether immediately, conditionally or contingently) and includes but is not limited to any sublease, sub-sublease, concession, franchise, licence agreement or any other arrangement (such as but not limited to a management agreement) conferring any such right of use, occupancy or possession and whether or not Tenant is a party thereto.

**"Taxpayer"** means Landlord and each of the entities constituting Landlord and each of the owners of the Project, as the case may be.

**"Tenant"** includes Tenant and its respective heirs, executors, administrators, successors and assigns, as the case may be.

**"Tenant Property"** means the trade fixtures, chattels, merchandise and personal effects within the Store.

**"Tenant's Service Cost"** means the total direct and indirect cost and expense, without duplication, incurred or accrued and attributed by Landlord, for the provision and supply by or through Landlord, of HVAC, steam, chilled water, make-up or primary air, and any Utilities used or consumed in the Store or in the conduct of Tenant's business, including the cost of maintenance, replacement, repair and operation, and the cost of depreciation on the capital cost of, and interest at the Interest Rate on the undepreciated portion of the capital cost of, all equipment, facilities and installations utilized in connection with such provision and supply and whether or not such equipment, facilities and installations are shared with other premises within or outside the Project or with the Common Facilities, or with other portions of the Project (including the cost to Landlord of determining and allocating such cost and expense). Indirect and offsite costs, depreciation charges and interest on undepreciated portions of capital costs shall be determined and allocated by Landlord to Tenant's Service Cost in accordance with the provisions of this lease.

**"Tenant's Share"** means that proportion of any amount which the total Gross Leaseable Area from time to time of the Store, is of, the total Gross Leaseable Area from time to time of the whole of the Retail Premises.

**"Term"** means the period specified in key data item 6, from the date specified in key data item 7 (i.e. the Commencement Date) to the date specified in key data item 8.

**"Toxic Substances"** means any substance which is listed on the List of Toxic Substances prescribed under the Canadian Environmental Protection Act (1999,c.33) (as amended from time to time, or any replacement legislation), or is designated to be toxic or hazardous by an Authority.

**"Transfer"** means any assignment, sublease, change in control, or parting with possession, or any other transaction or occurrence (including an expropriation, amalgamation, receivership or seizure by execution or other legal process) which has or might have the effect of changing the identity of Tenant or the persons controlling Tenant, or, changing the identity of the person having lawful use, occupancy or possession of the whole or any part of the Store, whether such change is or might be immediate, deferred, conditional, exclusive, non-exclusive, permanent or temporary.

**"Utilities"** means water, gas, fuel, electricity, telephone, waste disposal and other utilities or services or any combination thereof other than HVAC.

**"Utility Costs"** means all costs and expenses related to or associated with the production, generation, transmission, distribution, delivery, supply and servicing of Utilities to the Store, other consumers in the Project, to the common facilities and to Landlord in connection with the Project, including, without limitation, all deposits, letters of credit and interest and carrying costs related thereto, and supply, distribution, production, demand and consumption charges, costs, and surcharges, all costs and charges related to administration, debt servicing and metering, as well as all costs incurred for consultants and brokers retained by Landlord in connection with the procurement, management and administration of Utilities for the Project and Utility consumers therein.

## **SCHEDULE 2**

### **OPERATING STANDARDS**

Tenant shall comply and shall cause all persons within its control to comply with the following Operating Standards. Amendments and supplements to such standards by Landlord shall be upon reasonable prior notice to Tenant.

1. Tenant shall be open for business throughout the Retail Hours .
2. Tenant shall operate its business in a first class manner and keep the Store's appearance in first class condition.
3. Tenant shall not permit to be carried on in the Store, any mail order or catalogue business; or the sale of any form of lottery participation; nor any liquidation, going out of business, restructuring, distress, fire or bankruptcy sale, nor a bulk sale other than pursuant to a permitted Transfer, **provided, however, the Tenant may conduct a fire sale for a period of thirty (30) days following a fire occurring in the Store in respect of goods actually damaged by smoke entering the Store.**
4. Tenant shall not commit or permit any waste or damage to the Store or the Project, or commit or permit anything which may disturb the quiet enjoyment of any occupant of the Project or which may interfere with the operation of the Project. Tenant will not cause or permit any nuisance or hazard in or about the Store and Tenant will not permit the storage of any Contaminant or any Discharge in or about the Store or the Project and will keep the Store free of Contaminants, debris, trash, rodents, vermin and anything of a dangerous, noxious or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or any noxious or strong noises or odours or anything which may disturb the enjoyment of the Project and the Common Facility by customers and other tenants of the Project. Without limiting the generality of the foregoing Tenant shall not use or permit the use of any equipment or device such as, without limitation, loudspeakers, stereos, public address systems, sound amplifiers, radios, televisions, VCR's or DVD's which is in any manner audible or visible outside of the Premises; and no noxious or strong odours shall be allowed to permeate outside the Store and no items may be placed outside the Store or in any recessed storefront area; in each case without the prior written consent of Landlord which may be arbitrarily withheld or withdrawn on 24 hours notice to Tenant.
5. The only signs and advertising matter permitted in or about the Store shall be a storefront identification sign approved by Landlord and professional signs and advertising matter which are usual to Tenant's business and not objectionable to Landlord.
6. Tenant shall not permit any machines or devices selling or dispensing merchandise or services and operated by coins, credit cards or otherwise, to be present in the sales or display area of the Store.
7. Tenant shall comply with Landlord's instructions concerning storage, removal and disposal of waste and refuse.
8. Tenant shall not overload or misuse any Utilities or floor in the Store.
9. If the Store has a recessed storefront, Landlord shall have the right to regulate or prohibit displays and sales of merchandise within such recessed area and Tenant shall comply with any instructions of Landlord regarding such recessed area.
10. Tenant's right of use of Common Facilities under the lease is subject to compliance with the following rules:

.1 During or in connection with any of Landlord's activities under this lease and the making of alterations, improvements, reconstructions or repairs to any portion of the Project, Landlord may close portions of the Common Facilities and may erect temporary scaffolds and other construction aids in the Common Facilities and

on the exterior of the Store, and may interfere (to the extent necessary and reasonable) with the use of and access over any portion of the Common Facilities.

.2 Tenant shall make and receive deliveries of supplies, fixtures, equipment, furnishings and merchandise only through the receiving facilities designated by Landlord for such purpose. Tenant shall not at any time park or allow vehicles making or receiving deliveries to or from the Store to be parked in parking areas not specifically allocated by Landlord for the purpose of parking such vehicles.

.3 If part or parts of the parking areas are allocated from time to time by Landlord for tenant and employee parking, Tenant shall park and shall ensure that its employees park their vehicles only in such allocated parking areas. Landlord may prohibit Tenant and its employees from parking anywhere in the Project. Tenant shall provide to Landlord on demand a list of all license numbers of all Tenant and Tenant employee vehicles using the Common Facilities. Tenant shall pay to Landlord a parking charge of \$35.00 per day (or such greater amount as the Landlord may from time to time establish as being necessary to discourage unauthorized parking) for each vehicle of Tenant or any of its employees or others under its control that is parked without the prior written permission of Landlord in any parking area not designated for use by Tenant and such other persons.

.4 The parking areas or other parking facilities serving the Project, or any portion thereof from time to time may be operated as a paid parking facility by Landlord or any other person selected by Landlord. Parking rates or charges may be imposed by such other person or by Landlord provided they are not excessive having regard to the facilities provided and subject to the right of Landlord to set rates or charges sufficient, in its sole discretion, to discourage long term and non-customer parking and to produce a sufficient turnover of parking spaces.

11. intentionally deleted

### ***SCHEDULE 3***

#### ***CONSTRUCTION SCHEDULE***

##### ***PART 1 - DEFINITIONS***

**1.1** In this Construction Schedule terms defined in the lease are used with the meanings so defined and the following additional defined terms have the meanings indicated:

**"As-is Condition"** means the existing condition of the Store prior to the commencement of any Landlord's Work or Tenant's Work.

**"Design Criteria"** means Landlord's manual, as amended and supplemented by Landlord from time to time, setting out standards and procedures applicable to any work or material for the Store including preparation and review of plans and the conduct and completion of Tenant's Work whether at the beginning or at any time during the Term. Such manual shall provide for architectural, mechanical and Utilities standards, specifications and criteria established by Landlord, from time to time, for rentable premises in the Project, including but not limited to standards, specifications and criteria for storefronts, interior improvements, and signs.

**"Landlord's Work"** means all items of work specified in Part 4.

**"Landlord's Work at Tenant's Expense"** means all the work described in this Construction Schedule to be performed by or on behalf of Landlord at Tenant's expense.

**"lease"** means the offer, agreement or lease to which this Construction Schedule is attached or incorporated by reference.

**"plans"** means plans, specifications and drawings.

**"Tenant Outline Drawing"** means the plans described as such in Part 2.

**"Tenant Detail Plans"** means the final plans described in Part 2 as reviewed by Landlord.

**"Tenant's Work"** means all items of work described or referred to in Part 5, to be carried out by Tenant at Tenant's expense.

##### ***PART 2 - PLANS AND APPROVALS***

###### ***2.1 Tenant Outline Drawing***

Landlord shall provide to Tenant a Tenant Outline Drawing, if available, or, building working drawings relevant to the Store consisting of one or more plans which show the approximate dimensions of the Store and the approximate location of its boundary walls and which may show the approximate location of mechanical equipment and Utilities serving the Store.

###### ***2.2 Design Criteria***

Tenant acknowledges having received and reviewed a copy of the Design Criteria for the Project. The Design Criteria is incorporated by reference into and forms part of this Construction Schedule. All Tenant's Work and plans shall conform to the Design Criteria.

###### ***2.3 Plans and Documentation***

Tenant shall submit a complete set of architectural, structural, mechanical, electrical and signage drawings and a completion schedule for Tenant's Work in accordance with the requirements and procedures set out in the

Design Criteria. Landlord review of final plans for all Tenant's Work and Landlord's written authorization to proceed with Tenant's Work in accordance with the final plans as reviewed by Landlord is required prior to commencement of any such work. Landlord may require revisions to such plans as a condition of its authorization to proceed. Any Tenant's Work which is not done in accordance with the plans, specifications, information and revisions delivered to and reviewed by Landlord or is not otherwise in accordance with the requirements of the lease and the Design Criteria and which has not been removed or corrected forthwith after request by Landlord, may be removed or corrected by Landlord at the expense of Tenant. Review of plans by Landlord is restricted to the acceptability of general design intent only and shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency, or their compliance with applicable laws, by-laws, regulations, or codes, and Tenant shall be solely responsible for all such items. Tenant shall also be responsible for checking all dimensions on site. During the conduct of any Tenant's Work, Tenant shall keep accessible within the Store one set of Landlord-reviewed Tenant Detail Plans.

Upon completion of Tenant's Work and prior to the opening of the Store, Tenant and/or its contractors shall furnish Landlord with two (2) sets of as-built documents consisting of, but not limited to, the following:

- record drawings depicting the actual on-site conditions and/or revisions made during the construction process.
- inspection and/or completion Certificates for all applicable trades prepared and delivered by the relevant architects or engineers and confirming completion of all components of Tenant's Work in accordance with all relevant codes, regulations, requirements and approved plans.
- Air Balancing Reports as prepared by a Landlord-approved contractor.
- Electrical Load Balance Report as prepared by a Landlord-approved contractor.
- Occupancy Permit as provided by the local authorities having jurisdiction.

Should Tenant fail to provide as-built documentation which Landlord determines to be adequate, within thirty (30) days from occupancy, Landlord shall have the right to enter the Store and prepare such documentation at Tenant's expense payable as rent on demand.

#### **2.4 Plan Review Charge**

**Intentionally Deleted**

### **PART 3 - CONDUCT OF TENANT'S WORK**

#### **General Rules Regarding Tenant's Work**

##### **3.1 Tenant's Contractors**

Prior to commencing any portion of Tenant's Work, Tenant shall obtain Landlord's approval of any general contractor or subcontractor whom Tenant proposes to involve in the completion of such portion of Tenant's Work. Tenant shall obtain or cause its contractors and or any subcontractors to obtain builder's risk and commercial general liability insurance against personal and bodily injury, including death, and property damage on an occurrence basis and having limits of not less than \$5,000,000.00 in respect of any one occurrence and such insurance shall be in force prior to Tenant or its contractors gaining access to the Store.

##### **3.2 Landlord's Access**

All Tenant's Work shall be subject to the inspection, supervision and approval of Landlord. Landlord and anyone authorized by it shall have access to the Store at all times for the purpose of inspecting Tenant's Work or conducting Landlord's Work.

##### **3.3 Plan Conformity**

It is the sole responsibility of Tenant to confirm to its satisfaction prior to commencing any of Tenant's Work, that any and all dimensions shown on Tenant Outline Drawing, Tenant Detail Plans and any other plans are accurate and conform to actual measurements and dimensions. Landlord makes no representations in respect of the accuracy (and is not responsible for any inaccuracy) of any dimensions shown on any plans.

### **3.4     *Work Affecting Structure***

Tenant shall not allow or cause to be imposed upon any floor area of the Store or the Project a greater working load than the maximum allowable live load of such floor area. Tenant shall not allow or cause to be suspended from the underside of the roof or roof structure any load other than normal ceiling and lighting loads unless it shall have obtained the prior written approval of Landlord. Tenant shall not allow or cause to be drilled or cut any conduit, pipe sleeves, chases or duct equipment openings in any floors, columns, walls, steel decks or roofs of the Store or the Project. Any work contemplated by Tenant Detail Plans which may affect the integrity of any base building component shall be performed by Landlord's designated contractor at Tenant's expense.

### **3.5     *Commencement of Tenant's Work***

No Tenant's Work shall be commenced or undertaken until all procedural and review requirements contained in this Construction Schedule (including the Design Criteria) have been satisfied by Tenant, including but not limited to the following:

- inspection and acceptance of premises in As-Is Condition by Tenant (which shall be deemed to have occurred if Tenant commences work).
- receipt by Tenant of Landlord-reviewed Tenant Detail Plans and Landlord's written authorization to proceed with Tenant's Work.
- Tenant's contractor(s) have a building permit and proper insurance coverage in force in accordance with Part 8 of the lease.
- review and acceptance by Tenant of rules and regulations pertaining to contractors working at the Project.
- execution and delivery by Tenant of a Tenant Possession Notice in a form provided by Landlord which shall include acknowledgement of commencement of the Fixturing Period and delivery of possession of the Store to Tenant.
- delivery by Tenant to Landlord, a copy of the Hazardous Substance Audit for the Store which shall be completed on behalf of and at the sole expense of Tenant by an environmental consultant designated or approved by Landlord

### **3.6     *Fixturing Period and Occupation for Tenant's Work***

So long as Tenant has complied with all obligations under the lease, the Construction Schedule and the Design Criteria, Tenant shall occupy the Store commencing on the start of the Fixturing Period but if no Fixturing Period is provided for in the lease, Tenant shall occupy the Store on the date set out in key data item 7.

## **PART 4 - LANDLORD'S WORK**

### **4.1     *Existing Store***

Tenant accepts the Store in As-Is Condition except for completion of any further work which is specified in this Construction Schedule to be done by Landlord at Landlord's expense.

#### **4.2     *Basic Building***

The structural frame of the Project includes columns, beams, joists, floors and roof.

#### **4.3     *Walls***

Demising walls are constructed of metal stud and drywall, or concrete or masonry, or, if exterior building walls, materials selected by Landlord for such walls.

#### **4.4     *Floors***

If Tenant's use of the Store requires any allowable live floor load to be increased, upgrading work shall be performed by Landlord's designated contractor(s) at Tenant's expense.

#### **4.5     *Services***

Facilities and equipment for sprinklers, Utilities and HVAC are provided to the Store only to the extent indicated on the Tenant Outline Drawing. Where Tenant Detail Plans show approved extension or alteration of any such items and if service capacities are available, Landlord shall carry out such extensions or alterations and all such work and materials shall be paid for by Tenant upon demand. If the Tenant Detail Plans depict an HVAC system or electrical services requiring less capacity than shown on the Tenant Outline Drawing, then such services will be provided to the Store only to the extent indicated on the Landlord-approved Tenant Detail Plans.

### ***PART 5 - TENANT'S WORK***

5.1     Tenant shall carry out and complete, in a prompt and good and workmanlike manner, all necessary work in connection with preparing the Store for opening, including the storefront, ceiling, plumbing, electrical, HVAC Facilities, metering, fire-rating and any other work, improvements or finishings necessary to prepare the Store for opening including the demolition and disposal of any existing improvements and fixtures in the Store, as well as any alterations to such items and the Store proposed to be done by Tenant at any time during the Term. All such work shall only be undertaken and carried out in compliance with the Landlord-reviewed Tenant Detail Plans and this Construction Schedule including the Design Criteria and Landlord's written authorization to proceed.

5.2     Upon completion of Tenant's Work, Tenant shall request Landlord to perform a deficiency inspection. Landlord will perform and report on such inspection, acting reasonably, and Tenant will arrange to have all deficiencies noted on Landlord's deficiency report corrected. Should tenant fail to correct all deficiencies within 30 days after receipt of Landlord's deficiency report, Landlord shall have the right to enter the Store and have the deficiencies corrected at Tenant's expense.

### ***PART 6 - PAYMENT SCHEDULE***

#### **6.1     *Landlord's Work at Tenant's Expense***

All Landlord's Work at Tenant's Expense and any other work undertaken, performed or paid by Landlord on Tenant's behalf shall be at the expense of Tenant and payable to Landlord as invoiced by Landlord. The cost of such work shall include the actual cost of all labour, materials, taxes and architectural, engineering and contractors' fees, and an administration fee equal to fifteen (15%) percent of the aggregate of such costs. In the absence of actual cost figures Landlord shall prepare a reasonable estimate of the cost and Tenant shall make payments based on such estimate in accordance with this Section. When the work is completed and actual costs are known, the parties shall make all appropriate adjustments.

### ***PART 7 - ACKNOWLEDGEMENT***

7.1     The parties acknowledge and agree that each of the Landlord's Work and the Tenant's Work was completed in full compliance with this Construction Schedule and the Lease as of the Commencement Date.



***SCHEDULE 4***

***LEGAL DESCRIPTION OF PROJECT***

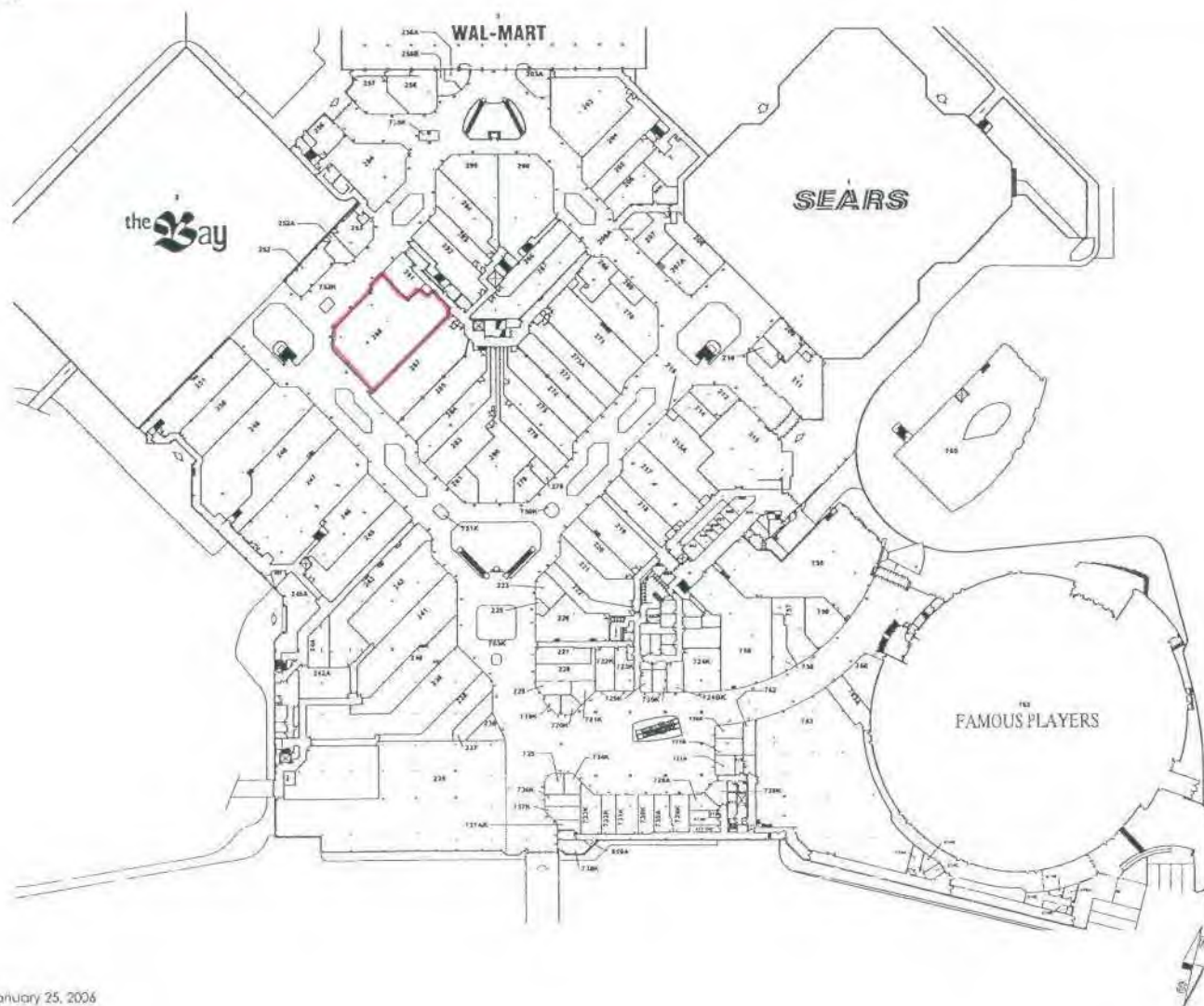
1. Parcel M-2, section M-1410, being Block M, Plan M-1410,
  2. Parcel N-1, section M-1410, being Block N, Plan M-1410,
- all in the City of Toronto (formerly in the City of Scarborough, in the Municipality of Metropolitan Toronto).

# SCARBOROUGH TOWN CENTRE

Scarborough, Ontario

floor plan - upper level


## SCHEDULE 5 - LEASING PLAN FLOOR PLAN OF THE SHOPPING CENTRE



Oxford Shopping Centres \* January 25, 2006

The purpose of this plan is to identify the approximate location and dimension of the lease premises in the Shopping Centre. The landlord reserves the right at any time to relocate, reconfigure or alter the building and structures, other leased premises, and Common Area and Localities, and the Lease Premises from that shown on the plan. All information, dimensions, size and area are approximate only and are to be verified on site. In-service washroom locations are subject to verification.

This is **Exhibit “M”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

LEASE EXTENSION AND AMENDING AGREEMENT

THIS AGREEMENT (the "Agreement") is dated December 2, 2024.

BETWEEN:

SCARBOROUGH TOWN CENTRE HOLDINGS INC.

(the "Landlord")

OF THE FIRST PART

- and -

FAIRWEATHER LTD.

(the "Tenant")

OF THE SECOND PART

WHEREAS:

- A. By a lease dated February 22, 2006 (the "Original Lease"), the Landlord leased to the Tenant for a term of 15 years, 4 months, and 16 days commencing on September 15, 1997 and expiring on January 31, 2013 (the "Term"), certain premises known as Store No. 288, containing an area of 7,801 square feet (the "Store") located in Scarborough Town Centre (the "Project"), in Toronto, Ontario; upon the terms and conditions set out therein;
- B. By an agreement dated August 21, 2009 (the "First Lease Extension and Amending Agreement"), Landlord and Tenant agreed to extend the Term of the Lease for a period of 3 years commencing on February 1, 2013 and expiring on January 31, 2016, upon the terms and conditions more particularly set out therein;
- C. By an agreement dated December 3, 2012 (the "Second Lease Extension and Amending Agreement"), Landlord and Tenant agreed to extend the Term of the Lease for a period of 7 years commencing on February 1, 2016 and expiring on January 31, 2023, upon the terms and conditions more particularly set out therein;
- D. By a lease amending agreement dated April 2, 2014 (the "Lease Amending Agreement"), Landlord and Tenant agreed to amend the lease, amongst other things, Tenant to complete a full renovation of the Store under the brand name "Fairweather/Stockhomme", upon the terms and conditions more particularly set out therein;
- E. By an agreement dated January 18, 2021 (the "Rent Relief Agreement") Landlord and Tenant agreed to amend the lease, amongst other things, to temporarily modify certain provisions therein and to extend the Term for a period of 1 year commencing on February 1, 2023 and expiring on January 31, 2024, upon the terms and conditions more particularly set out therein;
- F. By an agreement dated January 16, 2024 (the "Third Lease Extension and Amending Agreement"), Landlord and Tenant agreed to extend the Term of the Lease for a period of 1 year commencing on February 1, 2024 and expiring on January 31, 2025, upon the terms and conditions more particularly set out therein;
- G. The Original Lease, the First Lease Extension and Amending Agreement, the Second Lease Extension and Amending Agreement, the Lease Amending Agreement, the Rent Relief Agreement and the Third Lease Extension and Amending Agreement are hereinafter referred to as the "Lease"; and
- H. The parties have agreed to extend the Term of the Lease for a further period of 2 years commencing on February 1, 2025 upon the terms and conditions contained in the Lease as amended by this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants and agreements between the parties and the sum of One Dollar (\$1.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The foregoing recitals are true in substance and in fact.
2. The Term of the Lease is hereby extended for a further period of 2 years commencing on February 1, 2025 (the "Effective Date") and ending on January 31, 2027 (the "Extended Term"), (unless terminated earlier



pursuant to the terms of the Lease), upon the same terms, covenants and conditions as are contained in the Lease, except as otherwise specifically set out in the Lease, and also except that:

- (a) the Tenant will accept the Premises in an "as is" condition and the Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Premises;
- (b) any renovations, alterations or improvements in or to the Premises are the sole responsibility of the Tenant and shall be undertaken and completed at the Tenant's expense and strictly in accordance with the provisions of the Lease;
- (c) there shall be no fixturing period, rent free period, or requirement on Landlord's part to do any Landlord's Work or pay to Tenant any construction allowance, inducement, loan or other amount in connection with the Lease or improvements installed in the Premises;
- (d) there shall be no further right to extend the Term or renew the Lease;
- (e) during the Extended Term, in lieu of Basic Rent, Percentage Rent, Tenant's Share of Operating Costs, Tenant's Share of Realty Taxes, Marketing Fund, and the Tenant's Service Cost, the Tenant shall pay to the Landlord, without any deduction, abatement or set-off whatsoever, the amount equal to 15% of Gross Revenue, plus applicable taxes thereon, payable in arrears commencing on the 10<sup>th</sup> day of the second calendar month of the Extended Term and each succeeding calendar month thereafter and of the month following the end of the Extended Term.

In addition to Section 2(e) above, Tenant shall pay all charges for utilities consumed in respect of the Premises, together with applicable taxes thereon.

3. Landlord Termination Right — Landlord may at any time during the Extended Term on not less than 90 days' written notice to the Tenant, terminate the Lease (as amended by this Agreement) without bonus, penalty or compensation of any kind from the Landlord to the Tenant. Notwithstanding the foregoing, Landlord acknowledges that such termination date shall not occur during the period of November 1 to December 31.

4. The Tenant represents and warrants that it has the right, full power and authority to agree to the amendments to the Lease set out in this Agreement and the other provisions contained in this Agreement.

5. In all other respects the Lease as amended by this Agreement is hereby ratified and confirmed, and this Agreement and the Lease shall be read as one instrument. All terms and expressions when used in this Agreement have the same meaning as they have in the Lease unless a contrary intention is expressed herein. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement. The Tenant acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except as set out in this Agreement.

6. The parties agree that this Agreement may be executed in one or more counterparts and delivered by electronic transmission, and each counterpart when so executed and delivered shall be deemed to be an original, shall have the same effect as if all parties had executed the same copy of this Agreement, and all counterparts when taken together shall constitute one and the same document. Upon request by Landlord, Tenant shall deliver to Landlord executed originals of this Agreement in accordance with the electronic copy bearing original signatures of the parties to this Agreement.

The parties hereto consent and agree that this Agreement may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The parties further consent and agree that: (a) to the extent a party signs this Agreement using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically; and (b) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability, and admissibility, the same as hand-written signatures.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, permitted successors and permitted assigns, as the case may be.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SCARBOROUGH TOWN CENTRE HOLDINGS INC.,  
by its manager (without personal liability),  
OPGI MANAGEMENT GP INC., as general partner of  
the OPGI MANAGEMENT LIMITED PARTNERSHIP

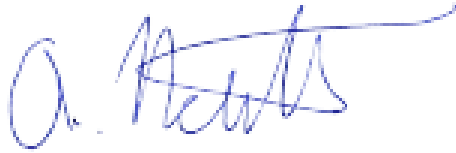
Signed by: (Landlord)  
Per: Mark D'ion  
Name: Mark D'ion  
Title: VP, Retail Leasing  
Per: David Holmes  
Name: David Holmes  
Title: Vice-President

I/We have the authority to bind the corporation.

FAIRWEATHER LTD. (Tenant)  
Per: Isaac Ben-tah  
Name: Isaac Ben-tah  
Title: President  
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the corporation.

This is **Exhibit “N”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “**Agreement**”) dated **JULY 15, 2025**.

BETWEEN:

**KINGSWAY GARDEN HOLDINGS INC.**  
(the “**Licensor**”)

OF THE FIRST PART

and

**FAIRWEATHER LTD.**  
**o/a Designer Depot**  
(the “**Licensee**”)  
**86780 3215 RT0001**

OF THE SECOND PART

Licensee has requested the right to use and Licensor has agreed to give Licensee a non-exclusive, revocable license to enter upon and use the location known as **CRU #65** (the “**Licensed Area**”) containing an area of approximately **81,202 (EIGHTY-ONE THOUSAND TWO HUNDRED TWO)** square feet in the approximate location shown hatched on Schedule A attached hereto located in **Kingsway Mall** (the “**Project**”), in the City of **Edmonton**, Province of **Alberta**.

**IN CONSIDERATION** of the mutual covenants and agreements between the parties and the sum of Two Dollars (\$2.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**1. Use**

- (a) Licensor hereby grants to Licensee a non-exclusive, revocable license to use the Licensed Area on the terms and conditions set out in this Agreement. The Licensed Area shall be used solely for the principal business of the retail sale of ladies’, men’s, young ladies’, young men’s, teens’, tweens’, and children’s apparel and outerwear, which will comprise approximately 80% of the merchandise offered. As ancillary to such principal use, the Licensed Area may also be used for the retail sale of home goods (approximately 10%) and footwear, accessories, lingerie, cosmetics, and costume jewellery (approximately 10%), and for no other purpose.
- (b) Licensee shall use only the advertised name “**Designer Depot**” for its business in the Licensed Area and shall not change or permit the change of that advertised name without the prior written consent of Licensor.
- (c) Licensee represents and warrants to Licensor that all merchandise it intends to sell in the Licensed Area shall be lawfully manufactured under license from the brand it purports to be and shall not be merchandise commonly known as “counterfeit goods” or goods that violate any intellectual property laws (collectively, the “**Counterfeit Goods**”). If Licensor knows, discovers or suspects that Counterfeit Goods are being sold from the Licensed Area, Licensee shall immediately discontinue the sale of such Counterfeit Goods upon Licensor’s request, and Licensee shall indemnify and hold Licensor harmless from any losses, costs or the like that Licensor may incur as a result of any violation(s) of this covenant by Licensee.
- (d) Licensee acknowledges that its rights under this Agreement are a mere licence and that it has no leasehold or other property interest in respect of the Licensed Area, the Project, or any part of it. Licensee shall not register any notice or other document pertaining to this Agreement on title to the Project or the lands on which the Project is situated.

- 2. Fixturing Period** – Licensee shall have a maximum period of **60 days** (the “**Fixturing Period**”) commencing on the date Licensor notifies Licensee that the Licensed Area is ready for the purpose of allowing Licensee to install its fixtures and inventory, and ending on the earlier of: (i) the date Licensee opens for business to the general public; or (ii) the day immediately preceding the Rent



Commencement Date. It is anticipated the Fixturing Period will commence on or about **September 1, 2025** (the “**Possession Date**”), subject to completion of certain landlord work.

The Licensed Area shall be fully stocked, fixtured, staffed, and open for business to the general public by the expiry of the Fixturing Period. All of the provisions of this Agreement apply during the Fixturing Period including, but not limited to, the obligation of Licensee to pay to Licensor, upon being invoiced, all costs for security, garbage removal, electricity, water, temporary HVAC, and other services and utilities provided to Licensee or attributable to Licensee’s occupation of the Licensed Area during the Fixturing Period, but Licensee shall not be responsible for the License Fee (as hereinafter defined) under this Agreement during the Fixturing Period. Should Licensee open for business prior to the expiry of the Fixturing Period, the License Fee shall commence as of the actual opening date.

3. **License Period** – The duration of this Agreement (the “**License Period**”) shall be the period commencing on the earlier of: (a) the date any part of the Licensed Area is opened for business; or (b) the day immediately following the expiry of the Fixturing Period (the “**Commencement Date**”) and expiring on **March 31, 2027**, unless terminated earlier by Licensor pursuant to this Agreement.
4. **Licensor’s Work** – The Licensee shall accept the Licensed Area in its existing “as-is” condition, in a **clean and broom-swept state**. The Licensor shall have no obligation to provide any materials or perform any work in or to the Licensed Area, except as expressly set out herein. **The Licensor warrants that, as of the Possession Date, the HVAC system(s) serving the Licensed Area shall be in good working condition, and the Licensor shall be solely responsible for the maintenance, repair, and replacement of such HVAC system(s). The Licensor shall also ensure that, as of the Possession Date, all lighting (including bulbs and ballasts), electrical, and plumbing systems within the Licensed Area are in good working order.**
5. **Licensee’s Work** – The Licensee shall, at its sole cost and expense, complete all work necessary to build out the Licensed Area and make it fully fixtured, equipped, and ready for business in accordance with the terms of this Agreement, including, without limitation, the Licensor’s Design Criteria and Manual. The Licensee shall submit to the Licensor, for review and approval, **all signage plans** no less than thirty (30) days prior to the commencement of any work by the Licensee.
6. **License Fee** – Licensee shall pay to Licensor, without any deduction, abatement, or set-off whatsoever, a fee (the “**License Fee**”) of **\$10,000.00 per month**, plus applicable taxes, payable in equal consecutive monthly instalments, each in advance on the Commencement Date and on the first day of each calendar month thereafter during the License Period. In addition, Licensee shall pay to Licensor **\$3,500.00 per month for utilities**, also payable in advance on the Commencement Date and on the first day of each calendar month thereafter during the License Period. If the License Period begins on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the License Fee and utilities payable for such month shall be prorated on a per diem basis (based on a 30-day month). All cheques are to be made payable to **OPGI Management LP o/a Kingsway**. **Licensee must enrol in Pre-Authorized Debit program.**
7. **Marketing Fee** – Intentionally deleted.
8. **Percentage Fees** – In addition to the License Fee, Licensee shall pay to Licensor the amount, if any, by which **10% (TEN PERCENT)** of Gross Revenue for each calendar month of the License Period exceeds the License Fee payable for such calendar month (the “**Percentage Fees**”), plus applicable taxes. Licensee shall deliver to Licensor payment for Percentage Fees calculated as aforesaid with the written statement set out below on the fifteenth (15<sup>th</sup>) day after each calendar month.
9. **Gross Revenue** – “**Gross Revenue**” means the total sale or rental price whether for cash, credit, charge, exchange or otherwise, of all sales (including rentals) of merchandise and services and of all other receipts whatsoever, in respect of all business conducted at, in, upon or from the Licensed Area and all sales completed by delivery at the Licensed Area whether or not such orders are filled from the Licensed Area or elsewhere and whether or not orders are placed elsewhere, and including all sales by any sub-licensee, concessionaire, vending machine, coin operated machine, or otherwise in the Licensed Area, and all internet or other ecommerce sales completed by delivery at or from the Licensed Area or ordered or made through an internet or other ecommerce computer, terminal or device located in the Licensed Area. No deduction will be made for uncollected or uncollectible accounts. Gross Revenue shall not include, however, any sums (other than any commission or service fee to Licensee) shown separately from the price, collected and paid out for

any sales, service or similar tax levied or assessed by any governmental authority which Licensee is required to remit directly to such authority.

On or before the 10th day after each calendar month during the License Period and the month following the end of the License Period, Licensee shall deliver to Licenser a written statement certified to be correct by Licensee showing in reasonable detail the Gross Revenue for the immediately preceding month.

10. **Gross Revenue Records** – Full, true and accurate records from which Gross Revenue may be readily and correctly determined shall be kept by Licensee in accordance with generally accepted accounting procedures in the shopping centre industry in Canada until at least the 3<sup>rd</sup> anniversary of the end of the License Period. Licenser or anyone designated by Licenser shall have access to such records at any and all times during business hours for the purpose of examining, reviewing or auditing all such accounting records and procedures adopted by Licensee.
11. **Maintenance and Repair** – Licensee agrees to accept the Licensed Area in an “as is” clean broom swept condition, and all maintenance and cleaning of the Licensed Area shall be the responsibility of Licensee, at its sole cost. Licensee shall keep and maintain the Licensed Area and its contents in a clean, neat, safe and orderly condition and in good repair and first-class condition at all times throughout the License Period and shall return the Licensed Area and its contents to Licenser in such condition and repair at the expiration or earlier termination of the License Period. Licensee shall immediately notify Licenser of any damage caused by Licensee to the Licensed Area or any repairs which are required to be made to the Licensed Area and Licenser may, at its option and without in any way limiting the obligations of Licensee under this Agreement, carry out and complete such repairs. All such costs incurred by Licenser, plus an administration fee of 15% of such costs, shall be paid by Licensee to Licenser upon demand. Licensee shall not make any repairs, alterations, replacements, improvements or renovations of any nature or kind whatsoever to the Licensed Area without the written approval of Licenser, which approval may be unreasonably withheld by Licenser. If Licensee makes any repairs, alterations, replacements, improvements or renovations to the Licensed Area without the prior written approval of Licenser (the “**Unauthorized Alterations**”), Licensee shall immediately remove such Unauthorized Alterations and repair the Licensed Area, at its sole cost and expense, upon request from Licenser. Notwithstanding the foregoing, Licenser may, at its option and without in any way limiting the obligations of Licensee under this Agreement, carry out and complete such removal and repair resulting from the Unauthorized Alterations. All costs incurred by Licenser, plus an administration fee of 15% of such costs, shall be paid by Licensee to Licenser upon demand.
12. **Telephone Service by Licensee** – Installation of telephone service lines and all charges incurred in connection with the installation and operation thereof shall be the responsibility of Licensee.
13. **Maintenance and Utilities by Licenser** – Licensee shall pay to Licenser, on demand, the cost of utilities (the “**Utilities**”) provided to the Licensed Area as determined by Licenser in its sole discretion. Licenser shall not be liable for interruption or cessation of, or failure in the supply of utilities, services or systems in, to or serving the Project or the Licensed Area, whether they are supplied by Licenser or others.
14. **Signs** – Licensee shall be permitted to erect its signs at its sole cost and expense. Such signs shall be visible to the public from the Licensed Area. Licensee shall obtain Licenser’s prior written approval as to size, location, content and method of installation of such signs, such approval not to be unreasonably withheld.
15. **Permits and Taxes** – Licensee shall obtain, at its expense, all licenses, permits and authorizations required to conduct its business in and from the Licensed Area and shall, upon request, provide Licenser with proof of having obtained them. Licensee shall pay when due all taxes, rates, levies and assessments which may be imposed, levied, assessed or charged against Licensee as a result of the operation of its business in and from the Licensed Area.
16. **Control of the Project** – Licensee acknowledges and agrees that the Project is at all times under the exclusive control of Licenser. Licensee shall: (a) comply with all applicable laws and by-laws and with all rules, regulations and directives, written or oral, from time to time established by Licenser in respect of the Project or the Licensed Area including, without limitation, those rules and regulations set out in Schedule B attached hereto; and (b) cause its officers, agents, servants, employees, contractors, customers, invitees and all persons having business with Licensee to comply with all such laws, by-laws, rules, regulations and directives.

**17. Operation of Business** – Licensee shall at all times during the License Period: (a) occupy and continuously, actively and diligently conduct its business in and from the whole of the Licensed Area in a first-class manner, on such days and during such hours as are determined by Licensor from time to time and not otherwise; (b) offer for sale high quality merchandise that is, and keep the general appearance of the Licensed Area and its storefront in a manner, consistent with the standards of a first-class shopping centre; and (c) shall participate fully in Licensor's loyalty and gift card programs and accept gift cards sold by Licensor.

**18. Insurance** – Licensee shall maintain:

- (a) all risk property insurance in amounts sufficient to fully cover, on a replacement cost basis without deduction for depreciation, all leasehold improvements and all property, including without limitation Licensee's inventory, furniture and trade fixtures, in the Licensed Area which is not owned by Licensor for all perils including, but not limited to, fire, explosion, plate glass, impact by air craft or vehicles, lightning, riot, vandalism, malicious acts, smoke, leakage from defective equipment, wind storm, hail, collapse, flood or earthquake;
- (b) if applicable, boiler and machinery insurance on a replacement cost basis to cover leasehold improvements and all property in the Licensed Area that is not owned by Licensor;
- (c) liability insurance on an occurrence basis, against claims for bodily injury (including death), personal injury and property damage in or about the Licensed Area, contractual liability, liquor liability insurance (if liquor is permitted by Licensor to be served on the Licensed Area), tenant's or occupant's legal liability, non-owned automobile liability, and owner's and contractors' protective liability, on a comprehensive basis and in amounts which are from time to time acceptable to a prudent tenant or occupant in the community in which the Project is located, but not less than \$5,000,000.00, or such other amount in excess thereof available to Licensee, in respect of each occurrence;
- (d) business interruption insurance, including loss of profits, for a period of at least 12 months; and
- (e) any other form of insurance, in such amounts and against such risks, as Licensor may in its discretion require.

Policies for such insurance shall: (i) be in a form, on terms and with an insurer approved by Licensor; (ii) require at least 30 days' written notice to Licensor of termination or material alteration during the License Period; (iii) with respect to property, boiler and machinery and business interruption insurance contain a waiver of subrogation clause; (iv) contain a standard mortgage clause as required by any mortgagee; (v) contain a provision that Licensee's insurance is primary; (vi) not call into contribution any other insurance available to Licensor; (vii) contain a severability of interests clause and a cross-liability clause, where applicable and shall not contain a co-insurance clause; and (viii) add Licensor, its manager and its mortgagees, and any persons designated by Licensor, as additional insureds. If requested by Licensor, Licensee shall from time to time promptly deliver to Licensor certified copies of such policies. Licensee shall promptly deliver to Licensor certificates of all such policies upon renewal of such policies at least once in each calendar year and, in addition, on any change being made thereto together with evidence satisfactory to Licensor that all premiums thereon have been paid and the policies are in full force and effect.

**19. A. Release of Licensor** – Licensee hereby releases Licensor and its directors, officers, shareholders, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property and persons of Licensee and its employees, or as a result of damages or losses including economic losses relating to damage to the Project or loss of access to the Licensed Area, and whether or not such loss or claim may have arisen out of the negligence of Licensor or those for whom Licensor is in law responsible, and Licensee agrees to indemnify and hold harmless Licensor and its directors, officers, shareholders, employees and agents from any loss, cost, damage, expense, suit, action and demand relating to such claim or loss, including all resulting consequential and indirect losses including such losses relating to suits, actions or claims of third party clients or customers of Licensee.

**B. Release of Licensee** - Licenser hereby releases Licensee and its directors, officers, shareholders, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property and persons of Licenser and its employees, and whether or not such loss or claim may have arisen out of the negligence of Licensee or those for whom Licensee is in law responsible, and Licenser agrees to indemnify and hold harmless Licensee and its directors, officers, shareholders, employees and agents from any loss, cost, damage, expense, suit, action and demand relating to such claim or loss, including all resulting consequential and indirect losses of Licenser, and excluding such claims or losses relating to any loss, cost, damage, expense, suit, action or demand of or by third parties.

Any and all release and indemnity clauses which are included in this Agreement for the benefit of Licenser shall also benefit the owners and mortgagees of the lands on which the Project is situated and their respective property managers and asset managers, and the officers, directors, shareholders, employees and agents of each of the foregoing owners, mortgagees, property managers and asset managers, and, for the purposes of such clauses, Licenser is hereby acting as agent or trustee on behalf of and for the benefit of the persons or entities mentioned above.

20. **A. Indemnity of Licenser** – Licensee indemnifies and holds harmless Licenser, its directors, officers, shareholders, employees and agents from any and all claims, demands and costs for damage and injury, including death, to the person or property of any person, firm or corporation, (except for Licenser and its employees) arising out of Licensee's use of or operations in the Licensed Area, including the Project and the lands on which the Project is situated, except where the damage or injury arises out of the negligence of Licenser, its directors, officers, employees and agents and those for whom in law it is responsible.

**B. Indemnity of Licensee** - Licenser indemnifies and holds harmless Licensee, its directors, officers, shareholders, employees and agents from any and all claims, demands and costs for damage and injury, including death, to the person or property of any person, firm or corporation, (except for Licensee and its employees) arising out of Licenser's operations in the Project and on the lands on which the Project is situated, except where the damage or injury arises out of the negligence of Licensee, its directors, officers, employees and those for whom in law it is responsible or any other licensees, tenants or persons in the Project.

21. **No Transfer** – Licensee shall not assign, sub-license, or otherwise transfer this Agreement or its interest therein or permit any other person to share occupancy or to take occupancy of the Licensed Area. Without in any way limiting the generality of the foregoing, any direct or indirect change in the effective control of Licensee shall be deemed to be an assignment of this Agreement.

22. **Default by Licensee** –

If:

- (a) Licensee fails to pay any amounts payable pursuant to this Agreement when due and fails to **remedy the default within five (5) days after written notice**; or
- (b) Licensee fails to observe or perform any of the other terms, obligations or conditions of this Agreement to be observed or performed by Licensee or is otherwise deemed to be in default hereunder, and **such failure persists after ten (10) days written notice from the Licenser**.

and Licensee does not cure such default within 2 days of receipt of written notice from Licenser, then, in addition to any other rights or remedies Licenser has pursuant to this Agreement or at law, Licenser may, at its option, terminate this Agreement, exclude Licensee from the Licensed Area, and re-enter and repossess the Licensed Area without prejudice to Licenser's other rights and remedies including the right to recover monies due and owing by Licensee under this Agreement as at the date of termination of the Licence Period. In such event, Licensee shall vacate the Licensed Area in accordance with the terms of this Agreement and shall have no further rights or entitlement with respect to it. Licensee shall pay to Licenser on demand all costs (including legal fees and disbursements on a substantial indemnity basis) incurred by Licenser in enforcing any of the obligations of Licensee under this Agreement and in obtaining possession of the Licensed Area after default of Licensee.

23. **Termination** – Intentionally deleted

24. **Relocation** – Intentionally deleted
25. **Deposit** – Licenser acknowledges receipt of the sum of **\$10,000.00**, plus applicable taxes, to be held by Licenser without interest and applied on account of any default of Licensee and otherwise applied on account of the last License Fee accruing due hereunder. If Licensee is in default hereunder, Licenser shall retain the deposit without prejudice to its other rights and remedies under this Agreement or at law.
26. **Notice** – Any notices, demands, requests or other instruments from one party to the other under this Agreement shall be in writing and shall be deemed duly given if delivered or if mailed by registered mail: (a) in the case of any notice to Licenser at c/o Oxford Properties Group, Suite 900, 100 Adelaide Street West, Toronto, Ontario M5H 0E2, Attention: Vice President, Legal Services, with a copy to the management office for the Project, c/o Oxford Properties Group, **Kingsway Mall Administration, Suite 320, 1 Kingsway Garden Mall, Edmonton, AB, T5G 3A6, Attention: Lindsay Botha;** and (b) in the case of any notice to Licensee to **Fairweather Ltd. o/a Designer Depot, 1185 Caledonia Road, Toronto, ON, M6A 2X1, Attention: Isaac Benitah, [ibenitah@inc.ca](mailto:ibenitah@inc.ca)**, whether or not Licensee has departed from, vacated or abandoned the Licensed Area or such address, as the case may be. Any notice, demand, request or consent shall be deemed to have been given at the time of delivery or, if mailed by registered mail, 3 days after the date of mailing thereof. Either party shall have the right to designate by notice, in the manner set forth above, a different address to which notice is to be given. No notice given by facsimile, email or by other similar electronic means will be considered to have been validly given.
27. **Entire Agreement** – This Agreement (including the Schedules attached to it) contains all the obligations, representations and warranties of Licenser in respect of the Project and the Licensed Area and the entire agreement between the parties concerning the subject matter of this Agreement. Licensee expressly disclaims reliance on any promises, inducements, representations, warranties, collateral agreements or conditions in entering into this Agreement other than as expressly set out in this Agreement. Time is of the essence of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Project is located. Licensee acknowledges and agrees that no landlord and tenant relationship exists or is intended to be created between Licenser and Licensee.
28. **Confidentiality** – Licensee acknowledges that the terms of this Agreement, including all financial terms and all financial information obtained by Licensee in relation to this Agreement, the Project, Licenser or its manager, and the contents hereof are strictly confidential. Licensee covenants and agrees not to disclose or allow disclosure of same to any third party other than Licensee's solicitors or by Licensee's lenders in conjunction with a loan or financing by Licensee, and except as required by a court of competent jurisdiction, provided Licensee shall obtain a similar covenant of confidentiality from Licensee's solicitors and lenders.
29. **Sales Taxes** – Unless otherwise noted, amounts quoted in this Agreement do not include any applicable sales taxes.
30. **Rules and Regulations** – Licensee shall comply with the rules and regulations set out in Schedule B attached hereto and any and all revisions to such rules and regulations made by Licenser in its sole discretion from time to time.
31. **Holding Over** - If with Licenser's written consent, which consent Licenser may withhold in its sole discretion, Licensee remains in possession of the Licensed Area after the expiration of the Licence Period or earlier termination of this Agreement: (a) Licensee shall be deemed to be occupying the Licensed Area on a month-to-month basis on the same terms and conditions contained in this Agreement, save and except for the License Fee which shall be equal to the License Fee set out in this Agreement; and (b) either party may terminate this Agreement at any time upon at least 30 days' prior written notice to the other party.
32. **Counterparts and Electronic Signatures** – The parties agree that this Agreement may be executed in one or more counterparts and delivered by electronic transmission, and each counterpart when so executed and delivered shall be deemed to be an original, shall have the same effect as if all parties had executed the same copy of this Agreement, and all counterparts when taken together shall constitute one and the same document. Upon request by Licenser, Licensee shall deliver to Licenser executed originals of this Agreement in accordance with the electronic copy bearing original signatures of the parties to this Agreement.

The parties hereto consent and agree that this Agreement may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The parties further consent and agree that: (a) to the extent a party signs this Agreement using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically; and (b) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability, and admissibility, the same as hand-written signatures.

- 33. Binding Agreement** - This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, trustees, administrators, successors and assigns, as the case may be.

The parties have properly executed this Agreement.

**LICENSOR:**  
**OXFORD PROPERTIES GROUP**  
**on behalf of Licensor**

Per: Nancy Jarnevic, GM



Per: \_\_\_\_\_

We have authority to bind the corporation

**LICENSEE:**  
**FAIRWEATHER LTD.**  
**o/a Designer Depot**

Per: Paul Brener

Name: \_\_\_\_\_

Title: Paul Brener

Paul Brener (Jul 16, 2025 08:10 EDT)

Per: \_\_\_\_\_

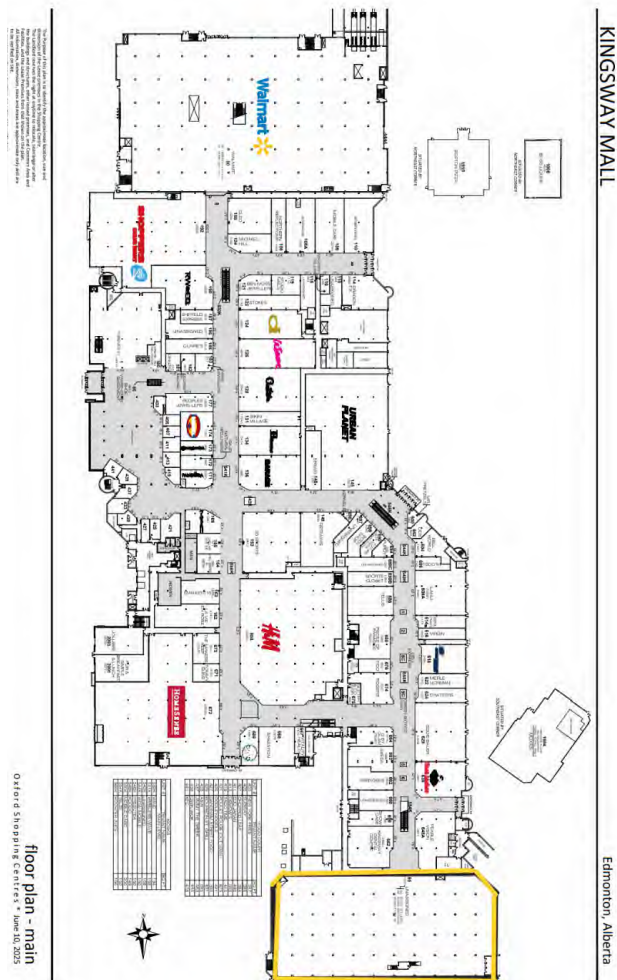
Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the corporation

## SCHEDULE A

### PLAN OF LICENSED AREA



This drawing is diagrammatic only and is intended only to show the general location of the Licensed Area as of the date of this Agreement and is not intended to show the exact leasing lines of the Licensed Area, nor the exact configuration, number, location and size of tenants, occupants, improvements, buildings or common areas and facilities of the Project nor the exact dimensions of the Project. The configuration, number, location, and size of any improvements, buildings, common areas and facilities on this drawing may vary from time to time from their actual configuration, number, location and size. Any references to store names on this drawing shall in no manner constitute any kind of representation or warranty as to present or future occupancy of spaces at the Project by such stores and Licensor does not make any representation or warranty with respect to any other matters shown in this drawing. Furthermore, Licensor reserves the right to modify this drawing in whole or in part to: (a) change, add, relocate or eliminate the size, shape, nature and identity of any improvements, buildings or common areas and facilities shown herein; and/or (b) change or eliminate the name of any tenant or the nature or use of any tenancy shown on this drawing.



## **SCHEDULE B**

### **RULES AND REGULATIONS**

#### **1. Security**

Licensor may from time to time adopt appropriate systems and procedures for the security or safety of the Project, any persons occupying, using or entering the same, or any equipment, finishings or contents thereof, and Licensee shall comply with Licensor's reasonable requirements relative thereto.

#### **2. Locks**

Licensor may from time to time install and change locking mechanisms on entrances to the Project, common areas thereof, and the Licensed Area, and (unless 24-hour security is provided by the Project) shall provide to Licensee a reasonable number of keys and replacements therefor to meet the bona fide requirements of Licensee. In these rules, "keys" include any device serving the same purpose. Licensee shall not add to or change existing locking mechanisms on any door in or to the Licensed Area without Licensor's prior written consent. If with Licensor's consent, Licensee installs lock(s) incompatible with the Project master locking system:

- (a) Licensor, without abatement of License Fee, shall be relieved of any obligation under the Agreement to provide any service to the affected areas which require access thereto,
- (b) Licensee shall indemnify Licensor against any expense as a result of forced entry thereto which may be required in an emergency, and
- (c) Licensee shall at the end of the License Period and at Licensor's request remove such lock(s) at Licensee's expense.

#### **3. Return of Keys**

At the end of the License Period, Licensee shall promptly return to Licensor all keys for the Project and Licensed Area which are in possession of Licensee.

#### **4. Windows**

Licensee shall observe Licensor's rules with respect to maintaining window coverings at all windows in the Licensed Area so that the Project presents a uniform exterior appearance, and shall not install any window shades, screens, drapes, covers or other materials on or at any window in the Licensed Area without Licensor's prior written consent. Licensee shall ensure that window coverings are closed on all windows in the Licensed Area while they are exposed to the direct rays of the sun.

#### **5. Repair, Maintenance, Alterations and Improvements**

Licensee shall carry out Licensee's repair, maintenance, alterations and improvements in the Licensed Area only during times agreed to in advance by Licensor and in a manner which will not interfere with the rights of other tenants in the Project.

#### **6. Water Fixtures**

Licensee shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Licensee shall be paid for by Licensee.

#### **7. Personal Use of Licensed Area**

The Licensed Area shall not be used or permitted to be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes.

#### **8. Heavy Articles**

Licensee shall not place in or move about the Licensed Area without Licensor's prior written consent any safe or other heavy article which in Licensor's reasonable opinion may damage the Project, and Licensor may designate the location of any heavy articles in the Licensed Area.

**9. Carpet Pads**

In those portions of the Licensed Area where carpet has been provided directly or indirectly by Licensor, Licensee shall at its own expense install and maintain pads to protect the carpet under all furniture having casters other than carpet casters.

**10. Bicycles, Animals**

Licensee shall not bring any animals or birds into the Project and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Project except in areas designated from time to time by Licensor for such purposes.

**11. Deliveries**

Licensee shall ensure that deliveries of materials and supplies to the Licensed Area are made through such entrances, elevators and corridors and at such times as may from time to time be designated by Licensor and shall promptly pay or cause to be paid to Licensor the cost of repairing any damage in the Project caused by any person making such deliveries.

**12. Furniture and Equipment**

Licensee shall ensure that furniture and equipment being moved into or out of the Licensed Area is moved through such entrances, elevators and corridors and at such times as may from time to time be designated by Licensor, and by movers or a moving company approved by Licensor, and shall promptly pay or cause to be paid to Licensor the cost of repairing any damage in the Project caused thereby.

**13. Solicitations**

Licensor reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Project.

**14. Food and Beverages**

Only persons approved from time to time by Licensor may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Project, or use the elevators, corridors, stairwells, balconies or other common areas for any such purpose. Except with Licensor's prior written consent and in accordance with arrangements approved by Licensor, Licensee shall not permit on the Licensed Area the use of equipment for dispensing food or beverages or for the preparation, solicitation of orders for, sale, serving or distribution of food or beverages.

**15. Refuse**

Licensee shall place all refuse in proper receptacles provided by Licensee at its expense in the Licensed Area or in receptacles (if any) provided by Licensor for the Project, and shall keep sidewalks and driveways outside the Project, and lobbies, corridors, stairwells, ducts and shafts of the Project, free of all refuse.

**16. Obstructions**

Licensee shall not obstruct or place anything in or on the sidewalks or driveways outside the Project or in the lobbies, corridors, stairwells, balconies or other common areas of the Project, or use such locations for any purpose except access to and exit from the Licensed Area without Licensor's prior written consent. Licensor may remove at Licensee's expense any such obstruction or thing (unauthorized by Licensor) without notice or obligation to Licensee.

**17. Dangerous or Immoral Activities**

Licensee shall not make any use of the Licensed Area which involves the danger of injury to any person, nor shall the same be used for any immoral purpose.

**18. Proper Conduct**

Licensee shall not conduct itself in any manner which is inconsistent with the character of the Project as a first quality building or which will impair the comfort and convenience of other tenants in the Project.

**19. Gift Cards**



Licensee will participate in and accept gift certificates or gift cards sold by Licensor.

**20. Employees, Agents and Invitees**

In these Rules and Regulations, Licensee includes the employees, agents, invitees and licensees of Licensee and others permitted by Licensee to use or occupy the Licensed Area.

**OPTIONAL – FOR VEHICLE DISPLAY USES ONLY**

21. If applicable, automobile displays must provide Licensor with keys for the car(s) for the duration of the License Period. The car(s) must be kept clean; the battery disconnected; the fuel tank not more than 1/8 full in order to allow for expansion of product, gas cap locked (vehicles unable to be equipped with lock-on type caps must have caps sealed in a manner acceptable to the Fire Department); protective wheel pads used; and a grease/oil resistant pad placed under the chassis. All doors must be closed when not showing the vehicle and every vehicle MUST BE LOCKED and checked before leaving the Project at night.
22. Running of display vehicles during exhibit is prohibited.
23. Propane charged cylinders are not permitted on self-propelled vehicles or trailers on display inside the Project.
24. If at any time an inspector deems that equipment is being operated in a manner dangerous to public safety, (s)he shall cancel the privilege of the exhibitor concerned.
25. Vehicles must have floor mats under each tire. No tire cleaner/polish is allowed to be used while inside the mall proper. No liquid spray or cleaners of any kind are to be used on the surface of the vehicle while inside the mall proper.
26. All vehicles must have their engines turned off before entering the common areas of the Project. Licensee shall push vehicles from the entrance designated by Licensor through the common areas to the Licensed Area.
27. When exiting all vehicles must be pushed from their location to the exit designated by Licensor. Engines may not be turned on until after leaving the designated exit.

**SCHEDULE C**  
**FEE SCHEDULE 2025 – 2027**

Month	License Fee	Utilities	Subtotal	GST	Total Due	Breakpoint 10%
November 2025	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
December	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
January 2026	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
February	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
March	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
April	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
May	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
June	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
July	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
August	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
September	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
October	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
November	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
December	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
January 2027	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
February	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00
March	\$10,000.00	\$3,500.00	\$13,500.00	\$675.00	14,175.00	\$100,000.00

**Contact Information:**

Isaac Benitah  
1185 Caledonia Road, Toronto, ON, M6A 2X1  
416-785-1771  
[ibenitah@inc.ca](mailto:ibenitah@inc.ca)




# Designer Depot Sept 1, 2025 - March 31, 2025

Final Audit Report

2025-07-16

Created:	2025-07-15
By:	Sara Tokhanbeigi (STokhanbeigi@oxfordproperties.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1j5pykt0wJl7L-X-srfxKUURjyRTqK_H

## "Designer Depot Sept 1, 2025 - March 31, 2025" History

-  Document created by Sara Tokhanbeigi (STokhanbeigi@oxfordproperties.com)  
2025-07-15 - 9:10:47 PM GMT
-  Document emailed to Paul Brener (pbrener@incgroup.ca) for signature  
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-  Document emailed to Sara Tokhanbeigi (STokhanbeigi@oxfordproperties.com) for approval  
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-  Document emailed to Nancy Jarnevic (NJarnevic@oxfordproperties.com) for signature  
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Approval hosted by Sara Tokhanbeigi (STokhanbeigi@oxfordproperties.com)  
Approval Date: 2025-07-15 - 9:18:32 PM GMT - Time Source: server
-  Document e-signed by Paul Brener (pbrener@incgroup.ca)  
Signature Date: 2025-07-16 - 12:10:21 PM GMT - Time Source: server
-  Document e-signed by Nancy Jarnevic (NJarnevic@oxfordproperties.com)  
Signature Date: 2025-07-16 - 3:21:30 PM GMT - Time Source: server
-  Agreement completed.  
2025-07-16 - 3:21:30 PM GMT

This is **Exhibit “O”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)LSO#**



**RETAIL CONCEPT**



# designer Depot









designer  
Depot **dl**  
Designer labels. Depot prices.



SALE  
UP TO  
50% OFF  
ON  
SELECTED  
ITEMS



ENTIRE  
STORE  
50%  
70%  
OFF

25





ENTIRE  
STORE  
**50**<sup>TO</sup>  
**70**<sup>% OFF</sup>



designer  
Depot

CANADA  
SUPER  
MILK  
MAGAZINE

SALE  
49  
39

















\$199

designer  
Depot **dp**  
Designer labels. Depot prices.



\$199

Reebok CANADA be  
STEVE MARRIN FAHRENHEIT  
Polo Suits  
SUPER  
TOMMY HILF  
DESSA OPPENHEIM  
POLO  
HARRIS  
PUMA  
INC. MAGAZINE



SUITS



\$199

\$25

SALE SALE SALE SALE



not prices.



Reebok CANADA be  
STEVE MADDEN FAHRENHEIT  
SUPER  
TRIPLE GOOSE  
BEECE OPPENHEIMER  
ROCK  
IMPRESS  
MAGAZINE



SUITS

designer Depot

149

199

199

149

29

LOW  
25

SALE SALE SALE













This is **Exhibit “P”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") dated May 6, 2025

BETWEEN:

Hillcrest Holdings Inc.  
Montez Hillcrest Inc.  
(collectively the "Licensors")

OF THE FIRST PART

and

Majora Inc. o/a Wyrth  
(the "Licensee")

OF THE SECOND PART

Licensee has requested the right to use and Licensors has agreed to give Licensee a non-exclusive, revocable license to enter upon and use the location **C09A** (the "Licensed Area") containing an area of approximately **4,717** square feet in the approximate location shown hatched on Schedule A attached hereto located in **Hillcrest** (the "Project"), in the City of **Richmond Hill**, Province of **Ontario**.

**IN CONSIDERATION** of the mutual covenants and agreements between the parties and the sum of Two Dollars (\$2.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**1. Use**

- (a) Licensors hereby gives to Licensee a non-exclusive revocable license to use the Licensed Area on the terms and conditions contained in this Agreement. Licensee shall use the Licensed Area solely for the principal business of **the sale at retail of housewares, giftware, furniture and gift related items for the home and garden and related accessories**, and for no other purpose.
- (b) Licensee shall use only the advertised name "**Wyrth**" for its business in the Licensed Area and shall not change or permit the change of that advertised name without the prior written consent of Licensors.
- (c) Licensee represents and warrants to Licensors that all merchandise it intends to sell in the Licensed Area shall be lawfully manufactured under license from the brand it purports to be and shall not be merchandise commonly known as "counterfeit goods" or goods that violate any intellectual property laws (collectively, the "**Counterfeit Goods**"). If Licensors knows, discovers or suspects that Counterfeit Goods are being sold from the Licensed Area, Licensee shall immediately discontinue the sale of such Counterfeit Goods upon Licensors' request, and Licensee shall indemnify and hold Licensors harmless from any losses, costs or the like that Licensors may incur as a result of any violation(s) of this covenant by Licensee.
- (d) Licensee acknowledges that its rights under this Agreement are a mere licence and that it has no leasehold or other property interest in respect of the Licensed Area, the Project, or any part of it. Licensee shall not register any notice or other document pertaining to this Agreement on title to the Project or the land.

**2. Fixturing Period** – Intentionally deleted.

**3. License Period** – The duration of this Agreement (the "License Period") shall be the period commencing on **September 1, 2025** (the "**Commencement Date**") and expiring on **August 31, 2026**, unless terminated earlier by Licensors pursuant to this Agreement.

4. **Licensor's Work** – Licensee shall accept the Licensed Area in an "as-is" condition and Licensor is not required to provide any material or do any work to or in respect of the Licensed Area.
5. **Licensee's Work** ~~Licensee shall build out the Licensed Area and shall provide and carry out in accordance with the provisions of this Agreement including, without limitation, Licensor's Design Criteria, Licensor's Manual, at its expense, all equipment and work required in order to render the Licensed Area complete and suitable to open for business.~~
6. **License Fee** – Licensee shall pay to Licensor, without any deduction, abatement or set-off whatsoever, a monthly fee (the "License Fee") of **\$7,140.00** plus applicable taxes, payable in equal consecutive monthly instalments, each in advance on the Commencement Date and on the first day of each calendar month thereafter during the License Period. If the License Period begins on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the License Fee payable for such month shall be prorated on a per diem basis (based on a 30-day month). All cheques are to be made payable to **Hillcrest Mall Management Inc.**
7. **Percentage Fees** – In addition to the License Fee, Licensee shall pay to Licensor the amount, if any, by which 12% of Gross Revenue for each calendar month of the License Period exceeds the License Fee payable for such calendar month (the "Percentage Fees"), plus applicable taxes. Licensee shall deliver to Licensor payment for Percentage Fees calculated as aforesaid with the written statement set out below.
8. **Gross Revenue** – "Gross Revenue" means the total sale or rental price whether for cash, credit, charge, exchange or otherwise, of all sales (including rentals) of merchandise and services and of all other receipts whatsoever, in respect of all business conducted at, in, upon or from the Licensed Area and all sales completed by delivery at the Licensed Area whether or not such orders are filled from the Licensed Area or elsewhere and whether or not orders are placed elsewhere, and including all sales by any sub-licensee, concessionaire, vending machine, coin operated machine, or otherwise in the Licensed Area, and all internet or other ecommerce sales completed by delivery at or from the Licensed Area or ordered or made through an internet or other ecommerce computer, terminal or device located in the Licensed Area. No deduction will be made for uncollected or uncollectible accounts. Gross Revenue shall not include, however, any sums (other than any commission or service fee to Licensee) shown separately from the price, collected and paid out for any sales, service or similar tax, levied or assessed by any governmental authority which Licensee is required to remit directly to such authority.

On or before the 10th day after each calendar month during the License Period and the month following the end of the License Period, Licensee shall deliver to Licensor a written statement certified to be correct by Licensee showing in reasonable detail the Gross Revenue for the immediately preceding month.

9. **Gross Revenue Records** – Full, true and accurate records from which Gross Revenue may be readily and correctly determined shall be kept by Licensee in accordance with generally accepted accounting procedures in the shopping centre industry in Canada until at least the 3<sup>rd</sup> anniversary of the end of the License Period. Licensor or anyone designated by Licensor shall have access to such records at any and all times during business hours for the purpose of examining, reviewing or auditing all such accounting records and procedures adopted by Licensee.
10. **Maintenance and Repair** – Licensee agrees to accept the Licensed Area in an "as is" condition, and all maintenance and cleaning of the Licensed Area shall be the responsibility of Licensee, at its sole cost. Licensee shall keep and maintain the Licensed Area and its contents in a clean, neat, safe and orderly condition and in good repair and first-class condition at all times throughout the License Period and shall return the Licensed Area and its contents to Licensor in such condition and repair at the expiration or earlier termination of the License Period. Licensee shall immediately notify Licensor of any damage caused by Licensee to the Licensed Area or any repairs which are required to be made to the Licensed Area and Licensor may, at its option and without in any way limiting the obligations of Licensee under this Agreement, carry out and complete such repairs. All such costs incurred by Licensor, plus an administration fee of 15% of such costs, shall be paid by Licensee to Licensor upon demand. Licensee shall not make any repairs, alterations, replacements, improvements or renovations of any nature or kind whatsoever to the Licensed Area without the written approval of Licensor, which approval may be unreasonably withheld by Licensor. If Licensee makes any repairs, alterations, replacements, improvements or renovations to the Licensed Area without the prior written approval of Licensor (the "Unauthorized Alterations"), Licensee shall immediately remove such Unauthorized Alterations and repair the Licensed Area, at its sole cost

and expense, upon request from Licensor. Notwithstanding the foregoing, Licensor may, at its option and without in any way limiting the obligations of Licensee under this Agreement, carry out and complete such removal and repair resulting from the Unauthorized Alterations. All costs incurred by Licensor, plus an administration fee of 15% of such costs, shall be paid by Licensee to Licensor upon demand.

11. **Telephone Service by Licensee** – Installation of telephone service lines and all charges incurred in connection with the installation and operation thereof shall be the responsibility of Licensee.
12. **Maintenance and Utilities by Licensor** – Licensee shall pay to Licensor, on demand, the cost of utilities (the “Utilities”) provided to the Licensed Area as determined by Licensor in its sole discretion. Licensor shall not be liable for interruption or cessation of, or failure in the supply of utilities, services or systems in, to or serving the Project or the Licensed Area, whether they are supplied by Licensor or others.
13. **Signs** – Licensee shall be permitted to erect its **non-illuminated** signs at its sole cost and expense. Such signs shall be visible to the public from the Licensed Area. Licensee shall obtain Licensor’s prior written approval as to size, location, content and method of installation of such signs, such approval not to be unreasonably withheld.
14. **Permits and Taxes** – Licensee shall obtain, at its expense, all licenses, permits and authorizations required to conduct its business in and from the Licensed Area and shall, upon request, provide Licensor with proof of having obtained them. Licensee shall pay when due all taxes, rates, levies and assessments which may be imposed, levied, assessed or charged against Licensee as a result of the operation of its business in and from the Licensed Area.
15. **Control of the Project** – Licensee acknowledges and agrees that the Project is at all times under the exclusive control of Licensor. Licensee shall: (a) comply with all applicable laws and by-laws and with all rules, regulations and directives, written or oral, from time to time established by Licensor in respect of the Project or the Licensed Area including, without limitation, those rules and regulations set out in Schedule B attached hereto; and (b) cause its officers, agents, servants, employees, contractors, customers, invitees and all persons having business with Licensee to comply with all such laws, by-laws, rules, regulations and directives.
16. **Operation of Business** – Licensee shall at all times during the License Period: (a) occupy and continuously, actively and diligently conduct its business in and from the whole of the Licensed Area in a first-class manner, on such days and during such hours as are determined by Licensor from time to time and not otherwise; (b) offer for sale high quality merchandise that is, and keep the general appearance of the Licensed Area and its storefront in a manner, consistent with the standards of a first-class shopping centre; and (c) shall participate fully in Licensor’s loyalty and gift card programs and accept gift cards sold by Licensor.
17. **Insurance** – Licensee shall maintain:
  - (a) all risk property insurance in amounts sufficient to fully cover, on a replacement cost basis without deduction for depreciation, all leasehold improvements and all property, including without limitation Licensee’s inventory, furniture and trade fixtures, in the Licensed Area which is not owned by Licensor for all perils including, but not limited to, fire, explosion, plate glass, impact by air craft or vehicles, lightning, riot, vandalism, malicious acts, smoke, leakage from defective equipment, wind storm, hail, collapse, flood or earthquake;
  - (b) if applicable, boiler and machinery insurance on a replacement cost basis to cover leasehold improvements and all property in the Licensed Area that is not owned by Licensor;
  - (c) liability insurance on an occurrence basis, against claims for bodily injury (including death), personal injury and property damage in or about the Licensed Area, contractual liability, liquor liability insurance (if liquor is permitted by Licensor to be served on the Licensed Area), tenant’s or occupant’s legal liability, non-owned automobile liability, and owner’s and contractors’ protective liability, on a comprehensive basis and in amounts which are from time to time acceptable to a prudent tenant or occupant in the community in which the Project is located, but not less than \$5,000,000.00, or such other amount in excess thereof available to Licensee, in respect of each occurrence;

- (d) business interruption insurance, including loss of profits, for a period of at least 12 months; and
- (e) any other form of insurance, in such amounts and against such risks, as Licensor may in its discretion require.

Policies for such insurance shall: (i) be in a form, on terms and with an insurer approved by Licensor; (ii) require at least 30 days' written notice to Licensor of termination or material alteration during the License Period; (iii) with respect to property, boiler and machinery and business interruption insurance contain a waiver of subrogation clause; (iv) contain a standard mortgage clause as required by any mortgagee; (v) contain a provision that Licensee's insurance is primary; (vi) not call into contribution any other insurance available to Licensor; (vii) contain a severability of interests clause and a cross-liability clause, where applicable and shall not contain a co-insurance clause; and (viii) add Licensor, its manager and its mortgagees, and any persons designated by Licensor, as additional insureds. If requested by Licensor, Licensee shall from time to time promptly deliver to Licensor certified copies of such policies. Licensee shall promptly deliver to Licensor certificates of all such policies upon renewal of such policies at least once in each calendar year and, in addition, on any change being made thereto together with evidence satisfactory to Licensor that all premiums thereon have been paid and the policies are in full force and effect.

18. **A. Release of Licensor** – The Licensee hereby releases the Licensor and its directors, officers, shareholders, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property and persons of the Licensee and its employees, or as a result of damages or losses including economic losses relating to damage to the Project or loss of access to the Licensed Area, and whether or not such loss or claim may have arisen out of the negligence of the Licensor or those for whom the Licensor is in law responsible, and the Licensee agrees to indemnify and hold harmless the Licensor and its directors, officers, shareholders, employees and agents from any loss, cost, damage, expense, suit, action and demand relating to such claim or loss, including all resulting consequential and indirect losses including such losses relating to suits, actions or claims of third party clients or customers of the Licensee.

**B. Release of Licensee** - The Licensor hereby releases the Licensee and its directors, officers, shareholders, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property and persons of the Licensor and its employees, and whether or not such loss or claim may have arisen out of the negligence of the Licensee or those for whom the Licensee is in law responsible, and the Licensor agrees to indemnify and hold harmless the Licensee and its directors, officers, shareholders, employees and agents from any loss, cost, damage, expense, suit, action and demand relating to such claim or loss, including all resulting consequential and indirect losses of the Licensor, and excluding such claims or losses relating to any loss, cost, damage, expense, suit, action or demand of or by third parties.

Any and all release and indemnity clauses which are included in this Agreement for the benefit of the Licensor shall also benefit the owners and mortgagees of the Lands and their respective property managers and asset managers, and the officers, directors, shareholders, employees and agents of each of the foregoing owners, mortgagees, property managers and asset managers, and, for the purposes of such clauses, the Licensor is hereby acting as agent or trustee on behalf of and for the benefit of the persons or entities mentioned above.

19. **A. Indemnity of Licensor** – The Licensee indemnifies and holds harmless the Licensor, its directors, officers, shareholders, employees and agents from any and all claims, demands and costs for damage and injury, including death, to the person or property of any person, firm or corporation, (except for the Licensor and its employees) arising out of the Licensee's use of or operations in the Licensed Area, including the Lands and the Project, except where the damage or injury arises out of the negligence of the Licensor, its directors, officers, employees and agents and those for whom in law it is responsible.

**B. Indemnity of Licensee** - The Licensor indemnifies and holds harmless the Licensee, its directors, officers, shareholders, employees and agents from any and all claims, demands and costs for damage and injury, including death, to the person or property of any person, firm or corporation, (except for the Licensee and its employees) arising out of the Licensor's operations in the Lands and the Project, except where the damage or injury arises out of the negligence of the Licensee, its



directors, officers, employees and those for whom in law it is responsible or any other licensees, tenants or persons in the Project.

20. **No Transfer** – Licensee shall not assign, sub-license, or otherwise transfer this Agreement or its interest therein or permit any other person to share occupancy or to take occupancy of the Licensed Area. Without in any way limiting the generality of the foregoing, any direct or indirect change in the effective control of Licensee shall be deemed to be an assignment of this Agreement.

21. **Default by Licensee** –

If:

- (a) Licensee fails to pay any amounts payable pursuant to this Agreement when due; or
- (b) Licensee fails to observe or perform any of the other terms, obligations or conditions of this Agreement to be observed or performed by Licensee or is otherwise deemed to be in default hereunder,

and Licensee does not cure such default within 5 days of receipt of written notice from Licenser, then, in addition to any other rights or remedies Licenser has pursuant to this Agreement or at law, Licenser may, at its option, terminate this Agreement, exclude Licensee from the Licensed Area, and re-enter and repossess the Licensed Area without prejudice to Licenser's other rights and remedies including the right to recover monies due and owing by Licensee under this Agreement as at the date of termination of the Licence Period. In such event, Licensee shall vacate the Licensed Area in accordance with the terms of this Agreement and shall have no further rights or entitlement with respect to it. Licensee shall pay to Licenser on demand all costs (including legal fees and disbursements on a substantial indemnity basis) incurred by Licenser in enforcing any of the obligations of Licensee under this Agreement and in obtaining possession of the Licensed Area after default of Licensee.

22. **Termination** – Licenser may at any time in its sole discretion, with 30 days' prior notice to Licensee, terminate this Agreement and revoke the license granted hereby for any reason whatsoever. Upon such termination, Licensee shall immediately vacate the Licensed Area and the Project. If Licensee fails to vacate the Licensed Area and the Project, Licenser may take physical possession of the Licensed Area and remove Licensee and its property from it without Licenser thereby being liable for any damages or other remedies or costs nor shall Licenser be required to refund any fees, deposits or other monies (including, without limitation, the License Fee) paid by Licensee to Licenser. Any such termination shall be without prejudice to Licenser's right to recover any amounts then owing or damages for any default or breach by Licensee of its obligations hereunder. *Notwithstanding the above and anything in this License Agreement, the Licenser agrees not to terminate the License Agreement during the period of November 1, 2025 - December 31, 2025.*
23. **Relocation** – Licenser may, with 30 days' prior notice to Licensee, relocate the Licensed Area (including, without limitation, reducing the area of Licensed Area) at any time throughout the License Period without any liability or compensation to Licensee. *Notwithstanding the above and anything in this License Agreement, the Licenser agrees not to relocate the Licensed Area during the period of November 1, 2025 - December 31, 2025.*
24. **Deposit** – Intentionally deleted.

25. **Notice** – Any notices, demands, requests or other instruments from one party to the other under this Agreement shall be in writing and shall be deemed duly given if delivered or if mailed by registered mail: (a) in the case of any notice to Licenser at c/o Oxford Properties Group, Suite 900, 100 Adelaide Street West, Toronto, Ontario M5H 0E2, Attention: Vice President, Legal Operations, with a copy to the management office for the Project, c/o Oxford Properties Group, Hillcrest Mall Management Inc., Suite 209, 9350 Yonge Street, Richmond Hill, Ontario, L4C 5G2 Attention: Christine Clarkin; and (b) in the case of any notice to Licensee to Majora Inc. 1185 Caledonia Road, Toronto, Ontario, M6A 2X1, Attention: Debby Benitah, President, whether or not Licensee has departed from, vacated or abandoned the Licensed Area or such address, as the case may be. Any notice, demand, request or consent shall be deemed to have been given at the time of delivery or, if mailed by registered mail, 3 days after the date of mailing thereof. Either party shall have the right to designate by notice, in the manner set forth above, a different address to which notice is to be given. No notice given by facsimile, email or by other similar electronic means will be considered to have been validly given.

26. **Entire Agreement** – This Agreement (including the Schedules attached to it) contains all the obligations, representations and warranties of Licenser in respect of the Project and the Licensed Area and the entire agreement between the parties concerning the subject matter of this

Agreement. Licensee expressly disclaims reliance on any promises, inducements, representations, warranties, collateral agreements or conditions in entering into this Agreement other than as expressly set out in this Agreement. Time is of the essence of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Project is located. Licensee acknowledges and agrees that no landlord and tenant relationship exists or is intended to be created between Licensor and Licensee.

27. **Confidentiality** – Licensee acknowledges that the terms of this Agreement, including all financial terms and all financial information obtained by Licensee in relation to this Agreement, the Project, Licensor or its manager, and the contents hereof are strictly confidential. Licensee covenants and agrees not to disclose or allow disclosure of same to any third party other than Licensee's solicitors or by Licensee's lenders in conjunction with a loan or financing by Licensee, and except as required by a court of competent jurisdiction, provided Licensee shall obtain a similar covenant of confidentiality from Licensee's solicitors and lenders.
28. **Sales Taxes** – Unless otherwise noted, amounts quoted in this Agreement do not include any applicable sales taxes.
29. **Rules and Regulations** – Licensee shall comply with the rules and regulations set out in Schedule B attached hereto and any and all revisions to such rules and regulations made by Licensor in its sole discretion from time to time.
30. **Holding Over** - If with Licensor's written consent, which consent Licensor may withhold in its sole discretion, Licensee remains in possession of the Licensed Area after the expiration of the Licence Period or earlier termination of this Agreement: (a) Licensee shall be deemed to be occupying the Licensed Area on a month-to-month basis on the same terms and conditions contained in this Agreement, save and except for the License Fee which shall be equal to twice the License Fee set out in this Agreement; and (b) either party may terminate this Agreement at any time upon at least 30 days' prior written notice to the other party.
31. **Counterparts** - The parties agree that this Agreement may be executed in one or more counterparts and delivered by electronic transmission, and each counterpart when so executed and delivered shall be deemed to be an original, shall have the same effect as if all parties had executed the same copy of this Agreement, and all counterparts when taken together shall constitute one and the same document. Upon request by Licensor, Licensee shall deliver to Licensor executed originals of this Agreement in accordance with the electronic copy bearing original signatures of the parties to this Agreement.
32. **Binding Agreement** - This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, trustees, administrators, successors and assigns, as the case may be.

The parties have properly executed this Agreement.

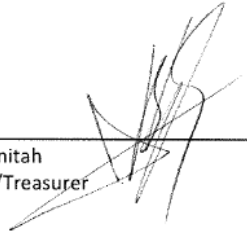
**LICENSOR:**  
**OXFORD PROPERTIES GROUP**  
on behalf of Licensor

Per:   
Ryan Da Silva  
Director & General Manager

Per:   
Christine Clarkin  
Senior Manager, Specialty Leasing

We have authority to bind the corporation

**LICENSEE:**  
**Majora Inc.**

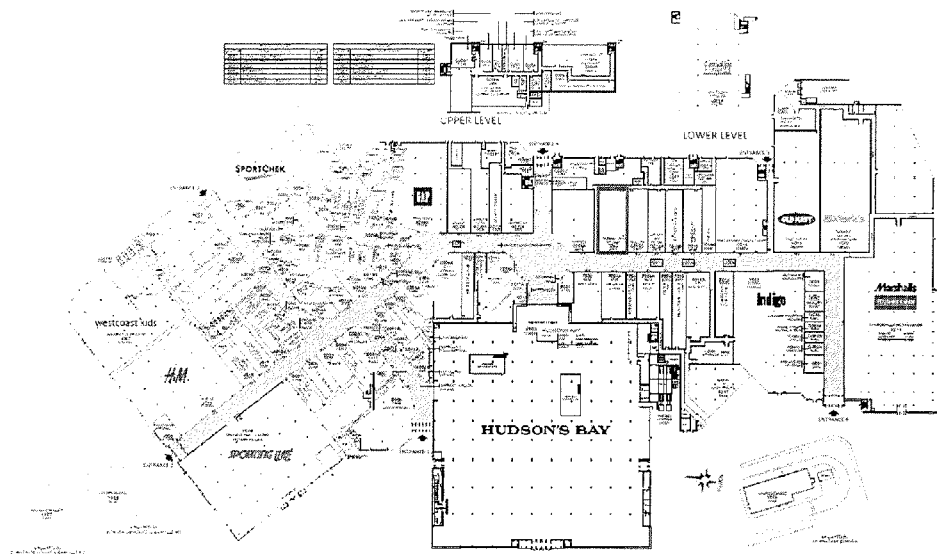
Per:   
Name: Isaac Benitah  
Title: Secretary/Treasurer

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

## SCHEDULE A

### PLAN OF LICENSED AREA



This drawing is diagrammatic only and is intended only to show the general location of the Licensed Area as of the date of this Agreement and is not intended to show the exact leasing lines of the Licensed Area, nor the exact configuration, number, location and size of tenants, occupants, improvements, buildings or common areas and facilities of the Project nor the exact dimensions of the Project. The configuration, number, location, and size of any improvements, buildings, common areas and facilities on this drawing may vary from time to time from their actual configuration, number, location and size. Any references to store names on this drawing shall in no manner constitute any kind of representation or warranty as to present or future occupancy of spaces at the Project by such stores and Licensor does not make any representation or warranty with respect to any other matters shown in this drawing. Furthermore, Licensor reserves the right to modify this drawing in whole or in part to: (a) change, add, relocate or eliminate the size, shape, nature and identity of any improvements, buildings or common areas and facilities shown herein; and/or (b) change or eliminate the name of any tenant or the nature or use of any tenancy shown on this drawing.

## SCHEDULE B

### RULES AND REGULATIONS

#### 1. *Security*

Licensor may from time to time adopt appropriate systems and procedures for the security or safety of the Project, any persons occupying, using or entering the same, or any equipment, finishings or contents thereof, and Licensee shall comply with Licensor's reasonable requirements relative thereto.

#### 2. *Locks*

Licensor may from time to time install and change locking mechanisms on entrances to the Project, common areas thereof, and the Licensed Area, and (unless 24-hour security is provided by the Project) shall provide to Licensee a reasonable number of keys and replacements therefor to meet the bona fide requirements of Licensee. In these rules, "keys" include any device serving the same purpose. Licensee shall not add to or change existing locking mechanisms on any door in or to the Licensed Area without Licensor's prior written consent. If with Licensor's consent, Licensee installs lock(s) incompatible with the Project master locking system:

- (a) Licensor, without abatement of License Fee, shall be relieved of any obligation under the Agreement to provide any service to the affected areas which require access thereto,
- (b) Licensee shall indemnify Licensor against any expense as a result of forced entry thereto which may be required in an emergency, and
- (c) Licensee shall at the end of the License Period and at Licensor's request remove such lock(s) at Licensee's expense.

#### 3. *Return of Keys*

At the end of the License Period, Licensee shall promptly return to Licensor all keys for the Project and Licensed Area which are in possession of Licensee.

#### 4. *Windows*

Licensee shall observe Licensor's rules with respect to maintaining window coverings at all windows in the Licensed Area so that the Project presents a uniform exterior appearance, and shall not install any window shades, screens, drapes, covers or other materials on or at any window in the Licensed Area without Licensor's prior written consent. Licensee shall ensure that window coverings are closed on all windows in the Licensed Area while they are exposed to the direct rays of the sun.

#### 5. *Repair, Maintenance, Alterations and Improvements*

Licensee shall carry out Licensee's repair, maintenance, alterations and improvements in the Licensed Area only during times agreed to in advance by Licensor and in a manner which will not interfere with the rights of other tenants in the Project.

#### 6. *Water Fixtures*

Licensee shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Licensee shall be paid for by Licensee.

#### 7. *Personal Use of Licensed Area*

The Licensed Area shall not be used or permitted to be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes.

#### 8. *Heavy Articles*

Licensee shall not place in or move about the Licensed Area without Licensor's prior written consent any safe or other heavy article which in Licensor's reasonable opinion may damage the Project, and Licensor may designate the location of any heavy articles in the Licensed Area.

**9. Carpet Pads**

In those portions of the Licensed Area where carpet has been provided directly or indirectly by Licensor, Licensee shall at its own expense install and maintain pads to protect the carpet under all furniture having casters other than carpet casters.

**10. Bicycles, Animals**

Licensee shall not bring any animals or birds into the Project and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Project except in areas designated from time to time by Licensor for such purposes.

**11. Deliveries**

Licensee shall ensure that deliveries of materials and supplies to the Licensed Area are made through such entrances, elevators and corridors and at such times as may from time to time be designated by Licensor and shall promptly pay or cause to be paid to Licensor the cost of repairing any damage in the Project caused by any person making such deliveries.

**12. Furniture and Equipment**

Licensee shall ensure that furniture and equipment being moved into or out of the Licensed Area is moved through such entrances, elevators and corridors and at such times as may from time to time be designated by Licensor, and by movers or a moving company approved by Licensor, and shall promptly pay or cause to be paid to Licensor the cost of repairing any damage in the Project caused thereby.

**13. Solicitations**

Licensor reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Project.

**14. Food and Beverages**

Only persons approved from time to time by Licensor may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Project, or use the elevators, corridors, stairwells, balconies or other common areas for any such purpose. Except with Licensor's prior written consent and in accordance with arrangements approved by Licensor, Licensee shall not permit on the Licensed Area the use of equipment for dispensing food or beverages or for the preparation, solicitation of orders for, sale, serving or distribution of food or beverages.

**15. Refuse**

Licensee shall place all refuse in proper receptacles provided by Licensee at its expense in the Licensed Area or in receptacles (if any) provided by Licensor for the Project, and shall keep sidewalks and driveways outside the Project, and lobbies, corridors, stairwells, ducts and shafts of the Project, free of all refuse.

**16. Obstructions**

Licensee shall not obstruct or place anything in or on the sidewalks or driveways outside the Project or in the lobbies, corridors, stairwells, balconies or other common areas of the Project, or use such locations for any purpose except access to and exit from the Licensed Area without Licensor's prior written consent. Licensor may remove at Licensee's expense any such obstruction or thing (unauthorized by Licensor) without notice or obligation to Licensee.

**17. Dangerous or Immoral Activities**

Licensee shall not make any use of the Licensed Area which involves the danger of injury to any person, nor shall the same be used for any immoral purpose.

**18. Proper Conduct**

Licensee shall not conduct itself in any manner which is inconsistent with the character of the Project as a first quality building or which will impair the comfort and convenience of other tenants in the Project.

**19. Gift Cards**

Licensee will participate in and accept gift certificates or gift cards sold by Licensor.

**20. *Employees, Agents and Invitees***

In these Rules and Regulations, Licensee includes the employees, agents, invitees and licensees of Licensee and others permitted by Licensee to use or occupy the Licensed Area.






# Hillcrest License Agreement dated May 6 2025

Final Audit Report

2025-05-29

Created:	2025-05-28
By:	Christine Clarkin (cclarkin@oxfordproperties.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA07O_UKk_VL8JgmjCXilz3G5D5ph0vilu

## "Hillcrest License Agreement dated May 6 2025" History

-  Document created by Christine Clarkin (cclarkin@oxfordproperties.com)  
2025-05-28 - 2:15:24 PM GMT
-  Document emailed to Ryan Da Silva (RDaSilva@oxfordproperties.com) for signature  
2025-05-28 - 2:15:38 PM GMT
-  Email viewed by Ryan Da Silva (RDaSilva@oxfordproperties.com)  
2025-05-28 - 10:50:43 PM GMT
-  Document e-signed by Ryan Da Silva (RDaSilva@oxfordproperties.com)  
Signature Date: 2025-05-29 - 4:01:05 AM GMT - Time Source: server
-  Agreement completed.  
2025-05-29 - 4:01:05 AM GMT



This is **Exhibit “Q”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**

	Fairweather Lease (Upper Canada Mall)	Fairweather Lease (Scarborough Town Centre)	Designer Depot License Agreement (Kingsway Mall)	Wyrth License Agreement (Hillcrest Mall)	HBC Head Lease (Yorkdale Mall)
<b>Lease Expiration Date and Remaining Term with renewal options</b>	January 31, 2026 (2.5 months)	January 31, 2027 (14.5 months)	March 31, 2027 (16.5 months)	August 31, 2026 (9.5 months)	September 25, 2142 (117 years)
<b>Gross Leasable Area</b>	5,010 square feet	7,801 square feet	81,202 square feet	4,717 square feet	300,870 square feet
<b>Landlord Termination Rights</b>	At any time, upon 60 days' written notice from the Landlord.	At any time, upon 90 days' written notice from the Landlord.	License is revocable at any time	At any time, upon 30 days' written notice from the Licensor, but not during the period of November 1, 2025 – December 31, 2025	If the Tenant Department Store ceases to operate for 6 months  Typical remedies of a landlord upon default and certain events of damage and destruction.
<b>Permitted Use</b>	Retail sale of ladies' wear, children's wear, junior ladies' wear, unisex clothing and accessories, and in not more than 10% of the retail sales area of the Premises and also not as a separate store within the Premises, footwear, provided that such footwear is sold as a fashion co-ordinate to such ready to wear fashions [...] and for units E30 and E31, the sale at retail of various	Retail sale of ladies', men's, young ladies' and young men's wearing apparel and as ancillary to such principal use, the sale at retail of directly related fashion accessories, such as by way of example, hats, scarves, belts, purses, fashion jewellery and, in not more than five percent (5%) of the Gross Leasable Area of the store, footwear.	The Licensed Area shall be used solely for the principal business of the retail sale of ladies', men's, young ladies', young men's, teens', tweens', and children's apparel and outerwear, which will comprise approximately 80% of the merchandise offered. As ancillary to such principal use, the Licensed Area may also be used for the retail sale of home goods (approximately 10%	Licensee shall use the Licensed Area solely for the principal business of the sale at retail of housewares, giftware, furniture and gift related items for the home and garden and related accessories, and for no other purpose.	To continuously operate as a <b>single integrated traditional retail department store</b> by reference to the type of store presently operated [in 2002] under the Bay, Sears, Bloomingdales, Macey's or Nordstrom's banners.  Any other type of store, department store, junior department store, specialty store or specialty department store not of the specific

	ladies', mens', young ladies', young men's, and children's wear and as ancillary to such principal use, the retail sale of footwear and directly related accessories including, without limitation, the incidental sale of lingerie, cosmetics and jewellery under the name "FAIRWEATHER/ STOCKHOMME".		and footwear, accessories, lingerie, cosmetics, and costume jewelry (approximately 10), and for no other purpose.		type or kind required to be operated under the preceding paragraph shall be a prohibited use and shall not be permitted to operate.  <b>(emphasis added)</b>
<b>Rent</b>	\$120,000 annually, plus applicable taxes and all charges for utilities	15% of Gross Revenue plus applicable taxes and all charges for utilities in respect of the Premises	A License Fee of \$10,000 per month plus applicable taxes, and \$3,500 per month for Utilities. In addition, Licensee shall pay the amount, if any, by which 10% of Gross Revenue for each calendar month exceeds the License Fee payable for such calendar month.	A License Fee of \$7,140 per month plus applicable taxes. In addition, Licensee shall pay the amount, if any, by which 12% of Gross Revenue for each calendar month exceeds the License Fee payable for such calendar month.	The Head Lease requires the Tenant to pay: (i) basic annual rent of \$500,000; (ii) an Occupancy Payment of \$166,000 (increased annually in line with the Consumer Price Index); (iii) all rates and charges for water, gas, sewage, garbage and refuse removal, telephone and other communications facilities and electric power services and Utilities supplied to or consumed by the Tenant and any others in the Tenant Department Store; (iv) all Real Property Taxes; (v) all taxes and license fees and similar charges on

					<p>the Tenant Property and Leasehold Improvements; and (vi) Additional Rent, being all sums of money required to be paid by the Tenant to the Landlord under the Head Lease whether or not expressly referred to as being rent.</p> <p>Pursuant to an Amending Agreement dated April 3, 2014, Oxford is entitled to increase the basic annual rent payable under the Head Lease by an amount equal to the average annual amount of the additional rent payable by the Tenant pursuant to Article 10 of the Head Lease for the five (5) calendar years immediately preceding the calendar year in which the said increase in annual basic rent takes effect.</p> <p><b>In 2025, the Tenant is required to pay an aggregate amount of rent in the approximate amount of \$2.8 million per year.</b></p>
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This is **Exhibit “R”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**


### Reported Sales Figures of Fairweather at Scarborough Town Centre

Year/Month	Shopping Centre	Tenant Name	Monthly Sales	Monthly Sales Productivity	GLA	Sales Divided by	Rolling 12-month Sales by	Rolling 12-month Sales per
						Rent Occupancy Costs (%)	Volume (\$)	Square Foot (\$)
202301	Scarborough Town Centre	Fairweather/Stockhomme	249,343	32	7,801	39	2,235,934	287
202302	Scarborough Town Centre	Fairweather/Stockhomme	83,865	11	7,801	36	2,256,799	289
202303	Scarborough Town Centre	Fairweather/Stockhomme	78,829	10	7,801	36	2,253,559	289
202304	Scarborough Town Centre	Fairweather/Stockhomme	130,907	17	7,801	36	2,251,220	289
202305	Scarborough Town Centre	Fairweather/Stockhomme	160,205	21	7,801	36	2,245,214	288
202306	Scarborough Town Centre	Fairweather/Stockhomme	216,854	28	7,801	36	2,235,896	287
202307	Scarborough Town Centre	Fairweather/Stockhomme	255,825	33	7,801	36	2,248,435	288
202308	Scarborough Town Centre	Fairweather/Stockhomme	201,919	26	7,801	36	2,246,889	288
202309	Scarborough Town Centre	Fairweather/Stockhomme	147,764	19	7,801	36	2,238,964	287
202310	Scarborough Town Centre	Fairweather/Stockhomme	191,487	25	7,801	36	2,218,659	284
202311	Scarborough Town Centre	Fairweather/Stockhomme	282,172	36	7,801	35	2,259,013	290
202312	Scarborough Town Centre	Fairweather/Stockhomme	287,117	37	7,801	35	2,286,286	293
202401	Scarborough Town Centre	Fairweather/Stockhomme	276,175	35	7,801	35	2,313,118	297
202402	Scarborough Town Centre	Fairweather/Stockhomme	74,505	10	7,801	33	2,303,759	295
202403	Scarborough Town Centre	Fairweather/Stockhomme	77,492	10	7,801	32	2,302,421	295
202404	Scarborough Town Centre	Fairweather/Stockhomme	105,701	14	7,801	32	2,277,215	292
202405	Scarborough Town Centre	Fairweather/Stockhomme	134,520	17	7,801	32	2,251,531	289
202406	Scarborough Town Centre	Fairweather/Stockhomme	195,029	25	7,801	32	2,229,705	286
202407	Scarborough Town Centre	Fairweather/Stockhomme	267,622	34	7,801	31	2,241,501	287
202408	Scarborough Town Centre	Fairweather/Stockhomme	212,161	27	7,801	30	2,251,743	289
202409	Scarborough Town Centre	Fairweather/Stockhomme	154,593	20	7,801	29	2,258,572	290
202410	Scarborough Town Centre	Fairweather/Stockhomme	171,203	22	7,801	29	2,238,288	287
202411	Scarborough Town Centre	Fairweather/Stockhomme	142,269	18	7,801	30	2,098,386	269
202412	Scarborough Town Centre	Fairweather/Stockhomme	270,054	35	7,801	30	2,081,323	267
202501	Scarborough Town Centre	Fairweather/Stockhomme	233,465	30	7,801	30	2,038,614	261
202502	Scarborough Town Centre	Fairweather/Stockhomme	65,926	8	7,801	43	2,030,035	260
202503	Scarborough Town Centre	Fairweather/Stockhomme	86,420	11	7,801	40	2,038,963	261
202504	Scarborough Town Centre	Fairweather/Stockhomme	141,957	18	7,801	37	2,075,219	266
202505	Scarborough Town Centre	Fairweather/Stockhomme	177,727	23	7,801	34	2,118,426	272
202506	Scarborough Town Centre	Fairweather/Stockhomme	243,318	31	7,801	32	2,166,715	278
202507	Scarborough Town Centre	Fairweather/Stockhomme	314,951	40	7,801	29	2,214,043	284
202508	Scarborough Town Centre	Fairweather/Stockhomme	219,619	28	7,801	27	2,221,502	285
202509	Scarborough Town Centre	Fairweather/Stockhomme	125,687	16	7,801	25	2,192,596	281

### Reported Sales Figures of Fairweather at Upper Canada Mall

Year/Month	Shopping Centre	Tenant Name	Monthly Sales	Monthly Sales Productivity	GLA	Sales Divided by		Rolling 12-month Sales by Volume (\$)	Rolling 12-month Sales per Square Foot (\$)
						Rent Occupancy Costs (%)			
202301	Upper Canada Mall	Fairweather/Stockhomme	40,725	8	5,010		72	492,970	98
202302	Upper Canada Mall	Fairweather/Stockhomme	19,177	4	5,010		71	497,117	99
202303	Upper Canada Mall	Fairweather/Stockhomme	20,295	4	5,010		70	497,651	99
202304	Upper Canada Mall	Fairweather/Stockhomme	33,305	7	5,010		69	497,080	99
202305	Upper Canada Mall	Fairweather/Stockhomme	39,726	8	5,010		69	492,740	98
202306	Upper Canada Mall	Fairweather/Stockhomme	51,681	10	5,010		68	495,523	99
202307	Upper Canada Mall	Fairweather/Stockhomme	66,296	13	5,010		65	512,528	102
202308	Upper Canada Mall	Fairweather/Stockhomme	43,536	9	5,010		63	515,843	103
202309	Upper Canada Mall	Fairweather/Stockhomme	33,768	7	5,010		63	518,403	103
202310	Upper Canada Mall	Fairweather/Stockhomme	42,577	8	5,010		63	521,780	104
202311	Upper Canada Mall	Fairweather/Stockhomme	54,321	11	5,010		63	520,893	104
202312	Upper Canada Mall	Fairweather/Stockhomme	76,910	15	5,010		63	522,317	104
202401	Upper Canada Mall	Fairweather/Stockhomme	47,586	9	5,010		63	529,178	106
202402	Upper Canada Mall	Fairweather/Stockhomme	23,959	5	5,010		63	533,960	107
202403	Upper Canada Mall	Fairweather/Stockhomme	20,689	4	5,010		59	534,354	107
202404	Upper Canada Mall	Fairweather/Stockhomme	26,138	5	5,010		57	527,186	105
202405	Upper Canada Mall	Fairweather/Stockhomme	32,436	6	5,010		54	519,897	104
202406	Upper Canada Mall	Fairweather/Stockhomme	41,953	8	5,010		52	510,169	102
202407	Upper Canada Mall	Fairweather/Stockhomme	52,809	11	5,010		50	496,682	99
202408	Upper Canada Mall	Fairweather/Stockhomme	40,875	8	5,010		46	494,021	99
202409	Upper Canada Mall	Fairweather/Stockhomme	33,821	7	5,010		43	494,073	99
202410	Upper Canada Mall	Fairweather/Stockhomme	30,348	6	5,010		40	481,844	96
202411	Upper Canada Mall	Fairweather/Stockhomme	37,294	7	5,010		38	464,817	93
202412	Upper Canada Mall	Fairweather/Stockhomme	74,411	15	5,010		34	462,318	92
202501	Upper Canada Mall	Fairweather/Stockhomme	58,598	12	5,010		29	473,331	94
202502	Upper Canada Mall	Fairweather/Stockhomme	15,858	3	5,010		26	465,230	93
202503	Upper Canada Mall	Fairweather/Stockhomme	18,616	4	5,010		26	463,157	92
202504	Upper Canada Mall	Fairweather/Stockhomme	24,267	5	5,010		26	461,286	92
202505	Upper Canada Mall	Fairweather/Stockhomme	29,056	6	5,010		26	457,906	91
202506	Upper Canada Mall	Fairweather/Stockhomme	41,794	8	5,010		26	457,747	91
202507	Upper Canada Mall	Fairweather/Stockhomme	63,217	13	5,010		26	468,155	93
202508	Upper Canada Mall	Fairweather/Stockhomme	48,914	10	5,010		25	476,194	95
202509	Upper Canada Mall	Fairweather/Stockhomme	30,672	6	5,010		25	473,046	94

This is **Exhibit “S”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



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A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



Mall Name	Store Name	Approximate Square Footage	Address	City	Province
Garden City Shopping Centre	FAIRWEATHER	Under 10,000 SF	2305 McPhillips Street Unit #166	Winnipeg	MB
Portage Place	FAIRWEATHER	Under 10,000 SF	393 Portage Ave Unit 136A	Winnipeg	MB
Garden City Shopping Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	2305 McPhillips Street Unit #123	Winnipeg	MB
Portage Place	INTERNATIONAL CLOTHIERS	Under 10,000 SF	393 Portage Avenue Unit #126/128	Winnipeg	MB
Grant Park Shopping Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1120 Grant Ave Unit #3550	Winnipeg	MB
Tecumseh Mall	FAIRWEATHER	Under 10,000 SF	7654 Tecumseh Road East Unit #D1	Windsor	ON
Tecumseh Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	7654 Tecumseh Road East Unit #H22	Windsor	ON
Seaway Mall	FAIRWEATHER	Under 10,000 SF	800 Niagara Street Unit #K12	Welland	ON
Tsawwassen Mills	FAIRWEATHER	Under 10,000 SF	5000 Canoe Pass Way Unit #436	Tsawwassen	BC
Tsawwassen Mills	INTERNATIONAL CLOTHIERS	Under 10,000 SF	5000 Canoe Pass Way Unit #630	Tsawwassen	BC
Dufferin Mall	CANADA WEATHERGEAR	Under 10,000 SF	900 Dufferin Street Unit #155	Toronto	ON
Eglinton Square	FAIRWEATHER	Under 10,000 SF	1-70 Eglinton Square Boulevard Unit #36	Toronto	ON
East York Town Centre	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	45 Overlea Boulevard Unit # 104	Toronto	ON
Gerrard Square	LABELS	Under 10,000 SF	1000 Gerrard Street E Unit #DD5 and DD6	Toronto	ON
Timmins Square	FAIRWEATHER	Under 10,000 SF	1500 Riverside Drive Unit #11B	Timmins	ON
Intercity Shopping Centre	FAIRWEATHER	Under 10,000 SF	1000 Fort William Road Unit #B001	Thunder Bay	ON
Intercity Shopping Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1000 Fort William Road Unit #185	Thunder Bay	ON
Central City Shopping Centre	FAIRWEATHER	Under 10,000 SF	10153 King George Highway Unit #510	Surrey	BC
Guildford Town Centre	FAIRWEATHER/INTERNATIONAL CLOTHIERS	Under 10,000 SF	10355-152 Street Unit #2608A	Surrey	BC
Central City Shopping Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	10153 King George Blvd Unit #382	Surrey	BC
New Sudbury Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1349 Lasalle Blvd Unit #42	Sudbury	ON
Le Boulevard	INTERNATIONAL CLOTHIERS	Under 10,000 SF	4190 Jean Talon Street East	St. Leonard	QC
Village Shopping Centre	FAIRWEATHER	Under 10,000 SF	430 Topsail Road Unit #47	St. John's	NL
Avalon Mall	FAIRWEATHER/INTERNATIONAL CLOTHIERS	Under 10,000 SF	48 Kenmount Road Unit #2030	St. John's	NL
Fairview Mall	FAIRWEATHER	Under 10,000 SF	285 Geneva Street Unit #A01042A	St. Catharines	ON
Pen Centre	FAIRWEATHER	Under 10,000 SF	221 Glendale Avenue Unit #22	St. Catharines	ON
Pen Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	221 Glendale Avenue Unit #40A	St. Catharines	ON
Cedarbrae Centre	FAIRWEATHER	Under 10,000 SF	3495 Lawrence Avenue East Unit #A01012A	Scarborough	ON
Scarborough Town Centre	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	300 Borough Drive Unit #288	Scarborough	ON
Cedarbrae Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	3495 Lawrence Avenue East Unit #A01011A	Scarborough	ON
Station Mall	FAIRWEATHER	Under 10,000 SF	293 Bay Street Unit #D8	Sault Ste. Marie	ON
Place Vertu	LES AILES DE LA MODE	Under 10,000 SF	3131 Boulevard Cote Vertu Ouest Unit K17A	Saint Laurent	QC
Bower Place	FAIRWEATHER	Under 10,000 SF	4900 Molly Banister Drive Unit #155B	Red Deer	AB
Parkland Mall	FAIRWEATHER	Under 10,000 SF	4747 67th Street Unit #195	Red Deer	AB
Pickering Town Centre	FAIRWEATHER	Under 10,000 SF	1355 Kingston Road Unit #75	Pickering	ON
Lansdowne Place	CANADA WEATHERGEAR	Under 10,000 SF	645 Lansdowne Street W Unit #141	Peterborough	ON
Carlingwood Shopping Centre	FAIRWEATHER	Under 10,000 SF	2121 Carling Avenue Unit #19	Ottawa	ON
Billings Bridge Shopping Centre	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	2269 Riverside Drive Unit #126	Ottawa	ON
Oshawa Centre	FAIRWEATHER	Under 10,000 SF	419 King Street West Unit #2305	Oshawa	ON
Oshawa Centre	INTERNATIONAL CLOTHIERS	Under 10,000 SF	419 King Street West Unit #2335	Oshawa	ON
Orillia Square	FAIRWEATHER	Under 10,000 SF	1029 Brodie Drive Unit #23	Orillia	ON
North York Sheridan Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1700 Wilson Ave Unit #156	North York	ON
Northgate Shopping Centre	FAIRWEATHER	Under 10,000 SF	1500 Fisher Street Unit #163	North Bay	ON

Upper Canada Mall	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	17600 Yonge Street North Unit #EE9	Newmarket	ON
Highland Square	FAIRWEATHER	Under 10,000 SF	689 Westville Road Unit #345	New Glasgow	NS
Bayshore Shopping Centre	FAIRWEATHER	Under 10,000 SF	100 Bayshore Drive Unit #T26	Nepean	ON
Place Versailles	INTERNATIONAL CLOTHIERS	Under 10,000 SF	7275 Rue Sherbrooke Est Unit #36	Montreal	QC
Dixie Outlet Mall	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	1250 South Service Road Unit #121	Mississauga	ON
Erin Mills Town Centre	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	5100 Erin Mills Parkway Unit #E124B	Mississauga	ON
Premium Outlets Montreal	CANADA WEATHERGEAR	Under 10,000 SF	19001 Chemin Notre Dame Unit 212A	Mirabel	QC
White Oaks Mall	DESIGNER DEPOT	Under 10,000 SF	1105 Wellington Rd Unit 31/33	London	ON
White Oaks Mall	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	1105 Wellington Road Unit #7	London	ON
White Oaks Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1105 Wellington Road Unit #281 & 283	London	ON
Lindsay Square	FAIRWEATHER	Under 10,000 SF	401 Kent St West Unit #43	Lindsay	ON
Eastgate Square	FAIRWEATHER	Under 10,000 SF	75 Centennial Parkway North Unit #C006	Hamilton	ON
Eastgate Square	INTERNATIONAL CLOTHIERS	Under 10,000 SF	75 Centennial Parkway North Unit #E18A	Hamilton	BC
Jackson Square	INTERNATIONAL CLOTHIERS	Under 10,000 SF	2 King Street West Unit #148	Hamilton	ON
Lime Ridge Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	999 Upper Wentworth Street Unit # 0173A	Hamilton	ON
Stone Road Mall	FAIRWEATHER	Under 10,000 SF	435 Stone Road Unit #Z7A	Guelph	ON
Prairie Mall	FAIRWEATHER	Under 10,000 SF	11801 100 Street Unit #194A	Grand Prairie	AB
Regent Mall	FAIRWEATHER/INTERNATIONAL CLOTHIERS	Under 10,000 SF	1381 Regent Street Unit #A004B	Fredericton	NB
Regent Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1381 Regent Street Unit #15B	Fredericton	NB
Regent Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1381 Regent Street Unit #I015B	Fredericton	NB
Londonderry Mall	FAIRWEATHER	Under 10,000 SF	137th Avenue & 66th Street Unit #164	Edmonton	AB
Premium Outlets Edmonton	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1 Outlet Collection Way Unit #110	Edmonton	AB
West Edmonton Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1119 -8882 170th Street, Storefront #1928 Unit #C1	Edmonton	AB
Champlain Place	CANADA WEATHERGEAR	Under 10,000 SF	477 Paul Street Unit #L002B	Dieppe	NB
Mic Mac Mall	FAIRWEATHER	Under 10,000 SF	21 Mic Mac Blvd Unit #257A	Dartmouth	NS
Carre Decarie Square	LES AILES DE LA MODE	Under 10,000 SF	6900 Decarie Blvd Unit 113	Cote Saint Luc	QC
Vaughan Mills	FAIRWEATHER	Under 10,000 SF	1 Bass Pro Mills Drive Unit #312	Concord	ON
Cambridge Centre	FAIRWEATHER	Under 10,000 SF	355 Hespeler Road Unit #248	Cambridge	ON
Marlborough Mall	DESIGNER DEPOT	Under 10,000 SF	3600 Memorial Drive	Calgary	AB
Marlborough Mall	FAIRWEATHER	Under 10,000 SF	515 Marlborough Way NE - #1464 Unit #78C	Calgary	AB
North Hill Centre	FAIRWEATHER	Under 10,000 SF	1632 14 Avenue NW Unit # 1684	Calgary	AB
Sunridge Mall	FAIRWEATHER	Under 10,000 SF	2525 - 36th Street NE Unit #205	Calgary	AB
The Core	FAIRWEATHER	Under 10,000 SF	751 3rd Street SW Unit #C341	Calgary	AB
Marlborough Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	515 Marlborough Way NE - #1464 Unit #20	Calgary	AB
The City of Lougheed Shopping Centre	FAIRWEATHER	Under 10,000 SF	9855 Austin Road Unit # 242	Burnaby	BC
Mall Champlain	LES AILES DE LA MODE	Under 10,000 SF	2151 Boul. Lapinière Unit M02D	Brossard	QC
Lynden Park Mall	INTERNATIONAL CLOTHIERS	Under 10,000 SF	84 Lynden Road Unit #D16	Brantford	ON
Shoppers Mall Brandon	INTERNATIONAL CLOTHIERS	Under 10,000 SF	1570-18th Street Unit #2	Brandon	MB
Bramalea City Centre	FAIRWEATHER	Under 10,000 SF	25 Peel Centre Drive Unit #00102A	Brampton	ON
Mall of America	CANADA WEATHERGEAR	Under 10,000 SF	2131 Lindau Ln Unit 120	Bloomington	MN
Quinte Mall	FAIRWEATHER	Under 10,000 SF	390 North Front Street Unit #R01	Belleville	ON
Georgian Mall	FAIRWEATHER/STOCKHOMME	Under 10,000 SF	509 Bayfield Street Unit #A04A	Barrie	ON
Orfus Road***	INTERNATIONAL CLOTHIERS/FAIRWEATHER	Over 40,000 SF	111 Orfus Rd	Toronto	ON
Kingsway Mall***	DESIGNER DEPOT	Over 40,000 SF	109 Kingsway NW	Edmonton	AB

Bramalea City Centre***	DESIGNER DEPOT	Over 40,000 SF	25 Peel Centre Drive Unit 2	Brampton	ON
Tsawwassen Mills	DESIGNER DEPOT	10,000 to 40,000 SF	5000 Canoe Pass Way	Tsawwassen	BC
Orfus Road	WYRTH	10,000 to 40,000 SF	98 Orfus Road	Toronto	ON
Central City Shopping Centre	DESIGNER DEPOT	10,000 to 40,000 SF	10153 King George Highway	Surrey	BC
Orfus Road	DESIGNER DEPOT	10,000 to 40,000 SF	80 Orfus Rd	North York	ON
Woodbine Mall	DESIGNER DEPOT	10,000 to 40,000 SF	500 Rexdale Blvd	Etobicoke	ON
Premium Outlets Edmonton	DESIGNER DEPOT	10,000 to 40,000 SF	1 Outlet Collection Way Unit 301	Edmonton	AB
West Edmonton Mall	DESIGNER DEPOT	10,000 to 40,000 SF	119 -8882 170th Street #1493	Edmonton	AB
Vaughan Mills	DESIGNER DEPOT	10,000 to 40,000 SF	1 Bass Pro Mills Dr	Concord	ON

\*\*\* Denotes premises comprising portions of former HBC spaces that have been recently leased or licensed to Designer Depot.

This is **Exhibit “T”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**





VENTE  
80

LIQUIDATION  
MAINTENANT  
12.99\$

LIQUIDATION  
MAINTENANT  
7.99\$

MAINTENANT  
10.99\$





HOMMES

VENTE  
80%

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VENTE  
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LIQUIDATION  
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LIQUIDATION  
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LIQUIDATION  
MAINTENANT  
39%

20%





LIQUIDATION MAINTENANT 59.99%

HOMMES

VENTE 80%  
DANS TOUT LE MAGASIN

VENTE 80%

VENTE 80%

LIQUIDATION  
MAINTENANT  
59.99%



SPORTS POT

HOMMES

VENTE  
80%  
DANS TOUT LE MAGASIN

VENTE  
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DANS TOUT LE MAGASIN

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DANS TOUT LE MAGASIN

Canada









FEMMES

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LIQUIDATION  
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FEMMES

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VENTE  
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LIQUIDATION  
MAINTENANT  
12

LIQUIDATION  
MAINTENANT  
12



This is **Exhibit “U”** referred to in the  
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Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
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---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



**AILES**  
LES AILES DE LA MODE

**ENTREPÔT  
DIRECT**  
HOMMES • FEMMES • ENFANTS

**SHOCK**  
LIQUIDATION CH

**MEGA VENTE**

VENTE MÈNEE PAR :  
**CONTINENTAL**  
SERVICES AUX DÉTAILLANTS

**BUFFALO**

\*eckō  unltd.

**JACK & JONES**

 **PROJEK Raw**

**lefties**

**VERO MODA**

**MCXX**

**ESPRIT**

**FEMMES / HOMMES / ENFANTS**





































**AILES**  
LES AILES DE LA MODE

**MEGA VENTE**

VENTE MENÉE PAR  
**CONTINENTAL**  
SERVICES AUX DÉTAILLANTS

**JACK & JONES**

**PROJEK Raw**

**ESPRIT**

VENTE MENÉE PAR :  
**CONTINENTAL**  
SERVICES AUX DÉTAILLANTS

**BUFFALO**

**lefties**

\*eckō  unltd.

**VERO MODA®**

**JACK  JONES**

**MEXX**

ESPRIT

**FEMMES / HOMMES / ENFANTS**

**MAX PARK SOLUTIONS**

**AVIS**

STATIONNEMENT  
STRICTEMENT RÉSERVÉ  
AUX VÉHICULES AUTOSURVEILLÉS

RECOMMANDATIONS DE SÉCURITÉ  
- 100, 150, 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1100, 1200, 1300, 1400, 1500, 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900, 4000, 4100, 4200, 4300, 4400, 4500, 4600, 4700, 4800, 4900, 5000, 5100, 5200, 5300, 5400, 5500, 5600, 5700, 5800, 5900, 6000, 6100, 6200, 6300, 6400, 6500, 6600, 6700, 6800, 6900, 7000, 7100, 7200, 7300, 7400, 7500, 7600, 7700, 7800, 7900, 8000, 8100, 8200, 8300, 8400, 8500, 8600, 8700, 8800, 8900, 9000, 9100, 9200, 9300, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 10400, 10500, 10600, 10700, 10800, 10900, 11000, 11100, 11200, 11300, 11400, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13100, 13200, 13300, 13400, 13500, 13600, 13700, 13800, 13900, 14000, 14100, 14200, 14300, 14400, 14500, 14600, 14700, 14800, 14900, 15000, 15100, 15200, 15300, 15400, 15500, 15600, 15700, 15800, 15900, 16000, 16100, 16200, 16300, 16400, 16500, 16600, 16700, 16800, 16900, 17000, 17100, 17200, 17300, 17400, 17500, 17600, 17700, 17800, 17900, 18000, 18100, 18200, 18300, 18400, 18500, 18600, 18700, 18800, 18900, 19000, 19100, 19200, 19300, 19400, 19500, 19600, 19700, 19800, 19900, 20000, 20100, 20200, 20300, 20400, 20500, 20600, 20700, 20800, 20900, 21000, 21100, 21200, 21300, 21400, 21500, 21600, 21700, 21800, 21900, 22000, 22100, 22200, 22300, 22400, 22500, 22600, 22700, 22800, 22900, 23000, 23100, 23200, 23300, 23400, 23500, 23600, 23700, 23800, 23900, 24000, 24100, 24200, 24300, 24400, 24500, 24600, 24700, 24800, 24900, 25000, 25100, 25200, 25300, 25400, 25500, 25600, 25700, 25800, 25900, 26000, 26100, 26200, 26300, 26400, 26500, 26600, 26700, 26800, 26900, 27000, 27100, 27200, 27300, 27400, 27500, 27600, 27700, 27800, 27900, 28000, 28100, 28200, 28300, 28400, 28500, 28600, 28700, 28800, 28900, 29000, 29100, 29200, 29300, 29400, 29500, 29600, 29700, 29800, 29900, 30000, 30100, 30200, 30300, 30400, 30500, 30600, 30700, 30800, 30900, 31000, 31100, 31200, 31300, 31400, 31500, 31600, 31700, 31800, 31900, 32000, 32100, 32200, 32300, 32400, 32500, 32600, 32700, 32800, 32900, 33000, 33100, 33200, 33300, 33400, 33500, 33600, 33700, 33800, 33900, 34000, 34100, 34200, 34300, 34400, 34500, 34600, 34700, 34800, 34900, 35000, 35100, 35200, 35300, 35400, 35500, 35600, 35700, 35800, 35900, 36000, 36100, 36200, 36300, 36400, 36500, 36600, 36700, 36800, 36900, 37000, 37100, 37200, 37300, 37400, 37500, 37600, 37700, 37800, 37900, 38000, 38100, 38200, 38300, 38400, 38500, 38600, 38700, 38800, 38900, 39000, 39100, 39200, 39300, 39400, 39500, 39600, 39700, 39800, 39900, 40000, 40100, 40200, 40300, 40400, 40500, 40600, 40700, 40800, 40900, 41000, 41100, 41200, 41300, 41400, 41500, 41600, 41700, 41800, 41900, 42000, 42100, 42200, 42300, 42400, 42500, 42600, 42700, 42800, 42900, 43000, 43100, 43200, 43300, 43400, 43500, 43600, 43700, 43800, 43900, 44000, 44100, 44200, 44300, 44400, 44500, 44600, 44700, 44800, 44900, 45000, 45100, 45200, 45300, 45400, 45500, 45600, 45700, 45800, 45900, 46000, 46100, 46200, 46300, 46400, 46500, 46600, 46700, 46800, 46900, 47000, 47100, 47200, 47300, 47400, 47500, 47600, 47700, 47800, 47900, 48000, 48100, 48200, 48300, 48400, 48500, 48600, 48700, 48800, 48900, 49000, 49100, 49200, 49300, 49400, 49500, 49600, 49700, 49800, 49900, 50000, 50100, 50200, 50300, 50400, 50500, 50600, 50700, 50800, 50900, 51000, 51100, 51200, 51300, 51400, 51500, 51600, 51700, 51800, 51900, 52000, 52100, 52200, 52300, 52400, 52500, 52600, 52700, 52800, 52900, 53000, 53100, 53200, 53300, 53400, 53500, 53600, 53700, 53800, 53900, 54000, 54100, 54200, 54300, 54400, 54500, 54600, 54700, 54800, 54900, 55000, 55100, 55200, 55300, 55400, 55500, 55600, 55700, 55800, 55900, 56000, 56100, 56200, 56300, 56400, 56500, 56600, 56700, 56800, 56900, 57000, 57100, 57200, 57300, 57400, 57500, 57600, 57700, 57800, 57900, 58000, 58100, 58200, 58300, 58400, 58500, 58600, 58700, 58800, 58900, 59000

# VENTE

JUSQU'À

# VENTE

JUSQU'À

DANS TOUT LE MAGASIN



This is **Exhibit “V”** referred to in the  
Affidavit of Nadia Corrado sworn by Nadia Corrado of the City of  
Toronto, in the Province of Ontario, before me this 13th day of  
November, 2025, in accordance with *O. Reg. 431/20, Administering  
Oath or Declaration Remotely*.



---

A commissioner for taking affidavits

**ANDREW NESBITT**  
**(LSO# 905140)**



HUDSON'S BAY



TOPSHOP  
AT THE BAY



HUDSON'S BAY

HUDSON'S BAY

Yorkdale











BOBBI BROWN

ESTÉE LAUDER  
SUMMER GIFT  
in the season

ESTÉE LAUDER  
SUMMER GIFT  
in the season

FREE  
with any \$100 purchase  
of any Estée Lauder product  
or \$40.00 off any purchase

TILLAMASQUA

TILLAMASQUA

FLORALS





EXIT

LANCÔME

LANCÔME

Dior



Dior Addict  
It's just  
the way you look





















**RIOCAN REAL ESTATE INVESTMENT TRUST et al v. RIOCAN-HBC LIMITED PARTNERSHIP et al**

Applicants

Respondents

Court File No.: CV-25-00744295-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF NADIA CORRADO**  
Sworn November 13, 2025

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Lawyers for Oxford Properties Group, et al.

**RIOCAN REAL ESTATE INVESTMENT TRUST et al v. RIOCAN-HBC LIMITED PARTNERSHIP et al**

Applicants

Respondents

Court File No.: CV-25-00744295-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**RESPONDING MOTION RECORD  
(Returnable December 16, 2025)  
(VOLUME 1 OF 3)**

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