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THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDATION RETURN TO:

Kenneth S. Hilton, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036

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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MORTGAGE CENTER

When recorded mail to:  
LandAmerica Financial Group, Inc.  
attn: Sonya Delgado  
3636 N. Central Ave, Suite 350  
Phoenix, AZ 85012  
Escrow No. 02-21126

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OPTION AND SUBORDINATION AGREEMENT

THIS OPTION AND SUBORDINATION AGREEMENT (this "Agreement"), dated as of July 31, 2000, is by and between CS REMAINDER III, LLC, a Delaware limited liability company ("Optionor"), having an address c/o of U.S. Realty Advisors, LLC, 1370 Avenue of the Americas, New York, New York 10019, and COUNTRY STORES PROPERTY III, LLC, a Delaware limited liability company ("Optionee"), having an address c/o of U.S. Realty Advisors, LLC, 1370 Avenue of the Americas, New York, New York 10019.

WITNESSETH:

WHEREAS, Optionor is the owner of a remainder interest in the parcel of land more particularly described in Exhibit A annexed attached hereto and made a part hereof (the "Land"), commencing upon the expiration of the Estate for Years (as hereinafter defined); and

WHEREAS, Optionee is (i) the owner of an estate for years in the Land (the "Estate for Years") expiring at midnight on July 31, 2021 (the "Estate for Years Expiration Date"), and (ii) the owner in fee of any buildings, structures and other improvements now or hereafter located on the Land (the "Improvements"; the Land and the Improvements, collectively the "Property"); and

WHEREAS, the Property is subject to the terms and conditions of that certain Lease Agreement (the "Lease", capitalized terms not otherwise defined herein shall have the meanings given such terms in the Lease) of even date herewith, between Optionee, as landlord, and Cracker Barrel Old Country Store, Inc., a Tennessee corporation, as tenant (the "Lessee"); and

WHEREAS, Optionee may wish to lease the Land upon the expiration of the Estate for Years and Optionor is willing to lease all of its right, title and interest therein to Optionee and has agreed to grant to Optionee an option to lease the Land at such times and upon the conditions set forth herein; and

WHEREAS, Optionee may wish to purchase Optionor's interest in the Land and Optionor is willing to grant to Optionee an option to purchase Optionor's interest in the Land at the times and upon the conditions set forth herein; and

HOLD FOR MERIDIAN TITLE CORP

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Hammond, IN

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WHEREAS, Optionee may wish to subject its interest in the Estate for Years and the Improvements and Optionor's interest in the Land to a first mortgage or first deed of trust lien (a "Mortgage", which for purposes of this Agreement shall include an assignment of any rents or leases relating to the Land or the Improvements), and Optionor is willing to encumber its interest in the Land and join in such Mortgage at the times and upon the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby mutually covenanted and agreed by and between Optionor and Optionee as follows:

1. Grant of Lease Option. Optionor hereby grants to Optionee the exclusive and irrevocable option (the "Lease Option") to lease the Land pursuant to a ground lease (the "Ground Lease") in the form of Exhibit B attached hereto and made a part hereof, the term of which shall commence immediately upon expiration of the Estate for Years, and shall expire as provided for herein. Subject to Section 3(c) hereof, in the event of the exercise of the Lease Option, the annual Basic Rent, as defined in the Ground Lease, shall be in the amount set forth on Schedule 1 attached to the Ground Lease.

2. Purchase Price. The purchase price for (a) Optionee's rights under this Agreement and (b) Optionor's agreement to subject Optionor's interest to a Mortgage and as otherwise contemplated by Section 7 and Section 9 hereof, is \$61,512, payable upon execution hereof.

3. Exercise.

(a) If at any time, and from time to time, Lessee extends the term of the Lease for any period as allowed under the Lease and Optionee has not purchased the Land as provided in Section 8 hereof, unless Optionee has delivered to Optionor the Option Termination Notice (as hereinafter defined), the Lease Option will be deemed to have been exercised for the Land for a term or terms ending on the date through which the term of the Lease has been extended, without the need for any action on the part of Optionee or Optionor. Optionee agrees to give Optionor notice of any extension of the term of the Lease by Lessee promptly, and to promptly deliver two (2) counterparts of the Ground Lease executed by Optionee to Optionor; provided, however, that failure by Optionee to give such notice or deliver such counterparts will not affect the rights of Optionee hereunder and the terms of the Ground Lease shall, nevertheless, be in full force and effect.

(b) Except as set forth in Section 3(a) hereof, if Optionee desires to exercise the Lease Option to enter into the Ground Lease, Optionee must exercise such Lease Option by sending written notice to Optionor no later than one hundred eighty (180) days prior to the Estate for Years Expiration Date (the "Lease Option Expiration Date"); provided, however, that Optionee shall not forfeit its right to exercise the Lease Option for failure to timely give such notice of exercise unless Optionee fails to give such notice of exercise within thirty (30) days after Optionee receives written notice from Optionor advising Optionee of its failure to timely give such

notice of exercise. Subject to the previous sentence, failure of Optionee to give such notice on or prior to the Lease Option Expiration Date shall cause the Lease Option to expire. Notwithstanding anything to the contrary contained herein, Optionee shall have the right to terminate the Lease Option and the automatic exercise of such Lease Option as described in Section 3(a) hereof by sending written notice to Optionor no later than one hundred eighty (180) days prior to the Lease Option Expiration Date (the "Option Termination Notice"). In the event Optionee sends the Option Termination Notice to Optionor, the Lease Option shall terminate, be of no further force or effect and in no event shall the Lease Option automatically be deemed to have been exercised as provided in Section 3(a) hereof.

(c) Notwithstanding anything to the contrary contained herein, in the event the Estate for Years shall expire prior to the expiration of the Initial Term of the Lease, the Lease Option will be deemed to have been exercised for the Land for a term (the "Stub Period") commencing upon the expiration of the Estate for Years and ending simultaneously with the expiration of the Initial Term (unless otherwise extended pursuant to this Section 3), without the need for any action on the part of Optionee or Optionor. The annual Basic Rent, as defined in the Ground Lease, during the Stub Period shall be in the amount set forth on Schedule 1 attached to the Ground Lease.

4. Title. Title to the Land on the commencement of the term of the Ground Lease shall be subject to all matters of record, other than matters resulting from acts or omissions of Optionor, unless (i) consented to by Optionee, (ii) resulting from any acts of Lessee or (iii) created at the request of Lessee and/or Optionee.

5. The Ground Lease Terms. Upon the exercise of the Lease Option by Optionee and receipt by Optionor of the executed counterparts of the Ground Lease, Optionor agrees to execute and promptly return a counterpart copy of the Ground Lease to Optionee. Failure to execute the Ground Lease prior to the Estate for Years Expiration Date shall not affect Optionee's right to obtain actual and/or constructive possession of the Land and Improvements on said date under the terms set forth in the Ground Lease. The terms of the Ground Lease shall be as set forth in Exhibit B.

6. Recordation of Ground Lease. The Ground Lease or a memorandum thereof may be recorded by either Optionor or Optionee in the appropriate public office or offices in the county where the Land is located so as to constitute notice to third parties of the contents of the Ground Lease. The party to the Ground Lease causing or requiring the Ground Lease, any memorandum thereof, any sublease or assignment or memorandum thereof to be recorded shall pay any recordation, transfer, or other tax or fee whatsoever incident to such recordation.

7. Optionee's Rights to Mortgage the Land. Optionee shall have the right, at any time and from time to time, to subject Optionee's and Optionor's respective interests in the Land to a Mortgage provided that any such Mortgage may only secure a note or notes (1) having a maturity date not later than the Estate for Years Expiration Date, the debt service for which is equal to or less than the rent payable under the Lease allocable to the Property on or about the payment dates

of such debt service and a balloon payment (if any) at maturity not greater than the amount of the balloon payment due under the Mortgage encumbering the Property being executed and delivered on or about the date hereof, or (2) if the note or notes is to refinance a balloon due at maturity, then the aggregate original principal amount of such note or notes shall not exceed the amount of the balloon being refinanced plus the customary and reasonable transaction costs of the refinancing, shall mature not later than the last day of the term of the Ground Lease theretofore exercised by Optionee and shall self-liquidate by level payments over such term. Although the subordination contained herein shall be self-operative, Optionor agrees, at any time and from time to time, upon request of Optionee, to join with Optionee in the execution, acknowledgment and delivery of a Mortgage creating a lien on Optionee's and Optionor's respective interests in the Property or extending, renewing, replacing, rearranging or modifying the debt secured by any such lien under a previously executed Mortgage. Optionor hereby subjects and subordinates and agrees in the future to subject and subordinate its interest in the Land to any such Mortgage, and any extension, renewal, replacement, rearrangement, spreader, consolidation or modification thereof; provided, however, that Optionor shall have no liability (except to the extent of its interest in the Land) for repayment of the indebtedness secured by the Mortgage or for performance of any obligations thereunder; and provided, further, that each Mortgage shall provide that the holder of the note secured thereby shall not seek a deficiency judgment against Optionor.

Optionee agrees to pay all fees and expenses incurred in connection with a Mortgage, including brokerage commissions and attorneys' fees, commitment fees and other fees payable to the holder of such Mortgage, recording fees and mortgage recording taxes and other taxes, title insurance premiums and survey costs. Optionor agrees to execute such other instruments as may reasonably be required by the holder or beneficiary of such Mortgage, provided that no such instrument shall impose upon Optionor any liability (except to the extent of its interest in the Land) for the repayment of any indebtedness or performance of any obligation secured by such Mortgage.

8. Purchase Option. Optionor hereby grants to Optionee an option (the "Purchase Option") to purchase on the Estate for Years Expiration Date or on the last day of the Initial Term or any Extended Term of the Ground Lease (or at any time, in the event of the bankruptcy of or similar event with respect to Optionor), Optionor's fee title to the Land, subject to the Lease if the Lease remains in effect at such time, with at least three (3) months written notice to Optionor of Optionee's intention to do so (or on at least five (5) days notice in the event of a bankruptcy of or similar event with respect to Optionor); provided, however, that Optionee shall not forfeit its right to exercise the Purchase Option for failure to timely give such notice of exercise unless Optionee fails to give such notice of exercise within thirty (30) days after Optionee receives written notice from Optionor advising Optionee of its failure to timely give such notice of exercise. The purchase price to be paid on exercise of the Purchase Option shall be the fair market value of Optionor's fee title to the Land and residual interest in the Improvements thereon (the "Fair Market Value") in their then current condition. In the event Optionor and Optionee are unable to agree upon the Fair Market Value, the same shall be determined by an appraisal conducted as follows:

Optionor and Optionee shall each designate an appraiser within fifteen (15) days after notice from either of them that it is unable to agree on the Fair Market Value. If either fails to designate such appraiser within such 15-day period, then the designation of the second appraiser shall be by the appraiser first designated. The appraisers so designated shall meet within five (5) days after the designation of the second appraiser and if such two appraisers agree upon the Fair Market Value within ten (10) days, the agreed amount shall be the Fair Market Value. If they are unable to agree upon the Fair Market Value within ten (10) days after such meeting, said two appraisers shall appoint a third appraiser to act with the first two appraisers in determining the Fair Market Value. If the two appraisers cannot agree on a third appraiser, the third appraiser shall be appointed by the American Arbitration Association. All appraisers designated pursuant to this Section 8 shall be sworn to perform their duties as appraisers, fairly and impartially, and the determination of the appraisers shall be given within a period of ten (10) days after the appointment of such third appraiser. The decision of a majority of the appraisers shall determine the Fair Market Value and the purchase price payable by Optionee under this Section 8. If a majority of the three appraisers is unable to agree on the Fair Market Value within said 10-day period, each of the three appraisers shall promptly prepare an appraisal of the Fair Market Value and the three appraisals shall be added together and their total divided by three with the resulting quotient being the Fair Market Value. If, however, the low appraisal and/or high appraisal varies by more than ten percent (10%) from the middle appraisal, the appraisal or appraisals so varying shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two with the resulting quotient being the Fair Market Value. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be the Fair Market Value.

In making a determination of Fair Market Value, the appraisers shall value Optionor's fee title to the Land as if encumbered by the Ground Lease.

On the closing date fixed for the purchase of Optionor's interest in the Land, Optionee shall pay, subject to the other provisions of this Section 8, to Optionor, in lawful money of the United States, the Fair Market Value and Optionor shall execute and deliver to Optionee a good and sufficient deed, assignment and/or other instruments as may be appropriate, in recordable form reasonably acceptable to Optionee, which shall transfer Optionor's interest in the Land, subject to the items specified in Section 4 hereof.

Optionor shall pay any and all taxes and fees at that time customarily paid by the seller in a real estate transaction and Optionee shall pay all fees at that time customarily paid by the purchaser.

9. Default Under Mortgage. Without limiting the provisions of any Mortgage (including provisions which are intended to subordinate or subject Optionor's interest in the Property to any such Mortgage), in the event that Optionee or Optionor defaults under a

Mortgage, Optionor agrees that Optionee's rights hereunder, including the Lease Option and the Purchase Option, may be exercised by the holder of the Mortgage and its assigns in the same manner as if exercised by Optionee hereunder without the need for any action on the part of Optionee or Optionor.

10. **Broker.** The parties warrant and represent to each other that no broker or finder brought about this Agreement.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State where the Property is located.

12. **Notices.** All notices and other instruments given or delivered pursuant to this Agreement shall be in writing, and the giving of such notice or other communication shall be deemed to have been completed (a) when delivered by hand, (b) on the earlier of receipt or refusal by the addressee to accept delivery after being sent by first class registered or certified mail, postage prepaid, return receipt requested, and (c) on the earlier of receipt or the refusal of the addressee to accept delivery when sent by a nationally recognized overnight courier. Copies of notices must be sent to all of the parties listed below. Each party shall have the right to specify, from time to time, as its address for purposes of this Agreement, any address and any addressee, in the continental United States, upon giving fifteen (15) days written notice thereof to the other party; provided, however, that the total number of parties to which notices must be sent may not be increased. The addresses of the parties hereto for purposes of this Agreement, until notice has been given as above provided, shall be as follows:

Optionor:

c/o U.S. Realty Advisors, LLC  
1370 Avenue of the Americas  
New York, New York 10019, 29<sup>th</sup> Floor  
Attn: David M. Ledy

With copy to:

Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036  
Attn: Kenneth S. Hilton, Esq.

With copy to:

Dennis L. Ruben, Esq.  
Executive Vice President and General Counsel  
FCCA Acquisition Corporation  
17207 North Perimeter Drive  
Scottsdale, AZ 85255

Optionee:

c/o U.S. Realty Advisors, LLC  
1370 Avenue of the Americas, 29th Floor  
New York, New York 10019  
Attention: David M. Ledy

With copy to:

Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036  
Attention: Kenneth S. Hilton, Esq.

With copy to:

Dennis L. Ruben, Esq.  
Executive Vice President and General Counsel  
FFCA Acquisition Corporation  
17207 North Perimeter Drive  
Scottsdale, AZ 85255

13. Entire Agreement. This Agreement and the other documents executed or delivered by the parties hereto contemporaneously with the execution and delivery of this Agreement constitute the entire understanding between the parties with respect to the subject matter contemplated herein or therein, and this Agreement cannot be modified in any way except by written instrument signed by Optionor and Optionee (or their respective successors in interest, as applicable).

14. Captions. The captions to the Sections are used for convenience only and shall not be construed to modify, limit or expand any of the terms hereof or otherwise affect the obligations of the parties hereto.

15. Successors and Assigns. Each of the covenants, provisions and conditions of this Agreement shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns and all persons claiming by, under or through any of them, including, without limitation, any holder of a Mortgage.

16. Rule Against Perpetuities, Etc. If any option under this Agreement would, in the absence of the limitation imposed by this Section 16, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in property or the suspension of the power of alienation of property, then any option of Optionee hereunder shall be exercisable by Optionee only during the period which shall begin as of the date hereof and end 20 years and 6 months after the date of death of the last survivor alive on the date of the execution and delivery of this Agreement of the descendants of Joseph P. Kennedy, deceased father of the late President John F. Kennedy.

17. **Certificates of Compliance.** Upon the request of any party, not more frequently than annually, each party to this Agreement will deliver to the other party a certificate signed by a member, an officer or general partner of such party certifying that such party is in full compliance with the terms and conditions of this Agreement.

18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

19. **Nature of Obligations.** The obligations hereunder are covenants running with the Land and superior to any subsequent encumbrance or transfer of the Land.





IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**OPTIONEE:**

**COUNTRY STORES PROPERTY III, LLC, a Delaware limited liability company**

By: **Country Stores Equity III, LLC, a Delaware limited liability company**

By:

  
Name: **Jamie Elliott**  
Title: **Vice President**

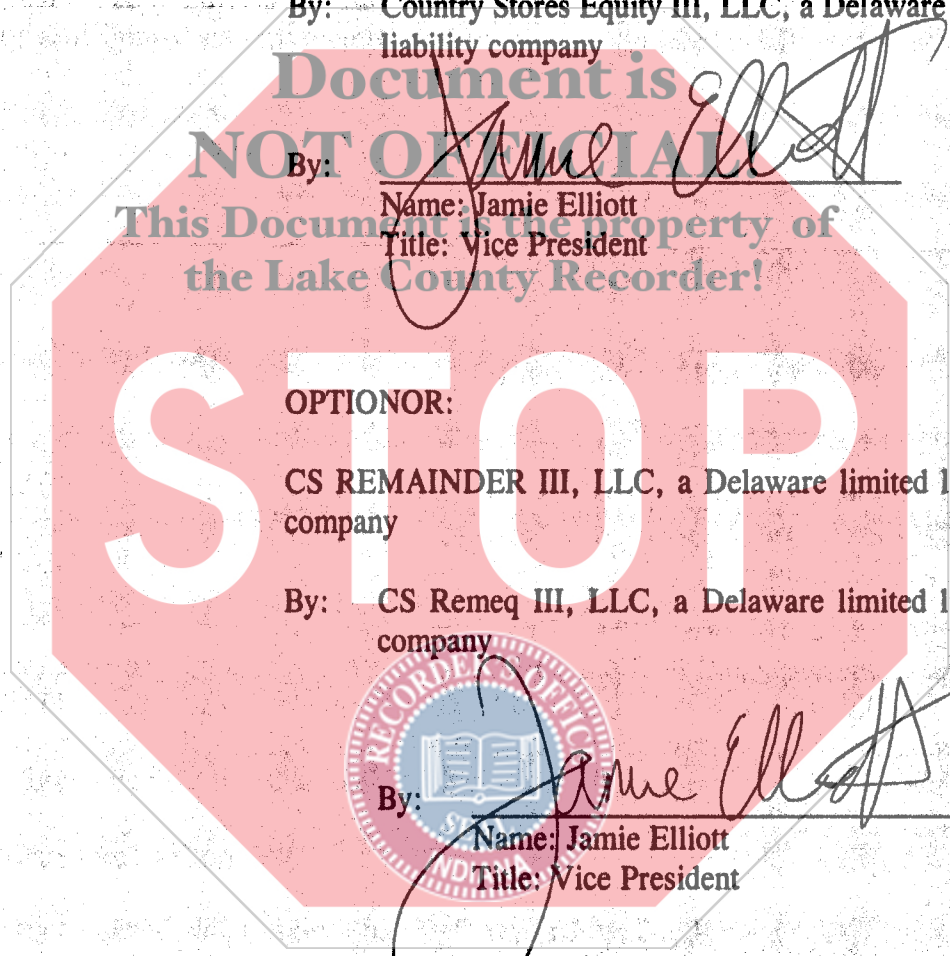
**OPTIONOR:**

**CS REMAINDER III, LLC, a Delaware limited liability company**

By: **CS Remeq III, LLC, a Delaware limited liability company**

By:

  
Name: **Jamie Elliott**  
Title: **Vice President**





**EXHIBIT A**

**LEGAL DESCRIPTION**

**Lot 4, Whiteco First Addition, to the City of Hammond, as shown in Plat Book 82, page 95, in Lake County, Indiana.**



**EXHIBIT B**

**AGREEMENT OF GROUND LEASE**

AGREEMENT OF GROUND LEASE (this "Lease" or this "Agreement"), made as of the \_\_\_\_\_ day of July, 2021, between \_\_\_\_\_, having an address at \_\_\_\_\_ ("Landlord") and \_\_\_\_\_ ("Tenant") having an office at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, Tenant has an estate for years interest in the Demised Premises (hereinafter defined) which expires as of the date hereof; and

WHEREAS, Landlord is the fee owner of the Demised Premises; and

WHEREAS, Landlord and Tenant entered into an Option and Subordination Agreement (the "Option Agreement") dated as of July \_\_, 2000, whereby Landlord granted to Tenant, among other things, an option to enter into a ground lease in respect of the Demised Premises after Tenant's estate for years in the Demised Premises expired; and

WHEREAS, Tenant and Landlord desire to enter into a ground lease for the Demised Premises pursuant to the Option Agreement.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. **Definitions.** The following terms used in this Lease shall have the respective meanings set forth below:

"**Additional Rent**" shall have the meaning set forth in Article 4 (**Rent**) hereof.

"**Basic Rent**" shall have the meaning set forth in Article 4 (**Rent**) hereof.

"**Commencement Date**" shall mean the date hereof.

"**Demised Premises**" shall mean all of Landlord's right, title and interest in and to the land described in **Schedule A** attached hereto together with all appurtenances thereto.

"**Depository**" shall have the meaning set forth in Article 21 (**Depository**) hereof.

"**Extension Notice**" shall mean any notice from Tenant (or the Leasehold Mortgagee pursuant to Article 8(D) hereof) to Landlord setting forth Tenant's election to extend the term of this Lease pursuant to Article 3 (**Term**) hereof.

"First Mortgage" shall mean a Mortgage, the lien of which shall be a first lien.

"First Mortgagee" shall mean the holder of a First Mortgage.

"Impositions" shall have the meaning set forth in Article 9 (Taxes) hereof.

"Improvements" shall have the meaning set forth in Article 6 (Title) hereof.

"Initial Term" shall have the meaning set forth in Article 3 (Term) hereof.

"Installment Payment Date" shall have the meaning set forth in Article 4 (Rent) hereof.

"Institutional Lender" shall mean a savings bank, a commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, an educational institution or a state, municipal or similar public employees' welfare, pension or retirement fund or system or any other corporation or organization subject to supervision and regulation by the insurance or banking departments of any State of the United States or of the United States, or any successor department or departments hereafter exercising the same functions as said departments or any private corporate or union pension fund having assets worth at least \$100 million.

"Landlord" shall mean \_\_\_\_\_ and any owner of the Demised Premises from time to time.

"Lease" shall mean this agreement of ground lease.

"Leasehold Mortgage" shall mean the holder of a Mortgage on Tenant's leasehold interest created by this Lease.

"Mortgage" shall mean any Mortgage, deed of trust or other security agreement.

"Permitted Encumbrances" shall mean the encumbrances affecting the Demised Premises as of the date of the Option Agreement.

"Rent" shall mean jointly the Basic Rent and Additional Rent.

"Sublease" shall mean that certain Master Lease dated as of July \_\_\_\_, 2000 by and between Tenant, as landlord, and Subtenant, as tenant, demising the Demised Premises.

"Subtenant" shall mean Cracker Barrel Old Country Store, Inc., a Tennessee corporation, and its successors and assigns under the Sublease.

"Tenant" shall mean \_\_\_\_\_, and its successors and assigns.

"Term" shall mean the Initial Term and the Extended Terms.

"Termination Date" shall mean the date of expiration of the term of this Lease.

2. Demised Premises. Landlord, in consideration of the rents hereinafter reserved and the terms, covenants, conditions and agreements set forth in this Lease to be kept and performed by Tenant, does hereby demise and let unto Tenant, and Tenant does hereby hire and take from Landlord, the Demised Premises for the term as hereinafter set forth.

3. Term.

(A) Initial Term. Tenant shall have and hold the Demised Premises for an initial term (the "Initial Term") of ten (10) years commencing on the Commencement Date and expiring on July 31, 2031. Such Initial Term shall be in effect automatically, without any further action by Tenant, in the event that the Subtenant under the Sublease exercises its renewal option under the Sublease or in the other circumstances contemplated by Article 9 of the Option Agreement.

(B) Extended Terms. Following the Initial Term and so long as no event of default shall have occurred and be continuing, Tenant shall have an option to extend the term of this Lease for a total of ten (30) additional years, such options being six (6) options for five years each (hereinafter, the "Extended Terms" and each separate extension period shall individually be known hereinafter as an "Extended Term"). Such option shall be exercised by Tenant or First Mortgagee giving a written notice of extension (the "Extension Notice") to Landlord, not less than six (6) months prior to the termination of the Initial Term or the Extended Term then in effect, as the case may be, provided, however, that Tenant shall not forfeit its right to the Extended Terms for failure to timely give the Extension Notice unless Tenant fails to give such Extension Notice within 30 days after Tenant receives written notice from Landlord advising Tenant of its failure to timely give such Extension Notice. The first such Extended Term shall be in effect automatically, without any further action by Tenant or the First Mortgagee (Tenant agrees, however, to use reasonable efforts to give notice of such exercise, although the lack of such notice shall not constitute a default hereunder or be a condition to exercise), in the event that the Subtenant under the Sublease exercises its renewal option under the Sublease or in the other circumstances, contemplated by Article 9 of the Option Agreement and whether or not such exercise by Subtenant conforms with the conditions set forth herein with respect to exercise by Tenant of any Extension Term. Each Extension Notice given in accordance with the provisions of this Article 3 shall automatically extend the Term of this Lease without further writing. However, either party upon request of the other, will execute and acknowledge, in form suitable for recording, an instrument confirming any such extension which shall have been properly elected by Tenant.

4. Rent. (a) Tenant shall pay to Landlord, in lawful money of the United States at Landlord's address set forth above, or any other address Landlord shall designate, the rent ("Basic Rent") set forth on Schedule 1 annexed hereto, in monthly installments on the last day of each month in arrears (each such date to be known herein as an "Installment Payment Date"). Basic Rent for the first twenty (20) years of the term of this Lease shall be in the amount set forth on Schedule 1

annexed hereto, and thereafter Basic Rent shall be at fair market rental value computed pursuant to the procedure set forth in Article 8 of the Option Agreement.

The annual Basic Rent set forth above will be payable in equal monthly installments, payable in arrears, each in the amount equal to one-twelfth of the annual Basic Rent. The Basic Rent shall be payable in immediately available funds at the address set forth above.

(b) Additional Rent. All taxes, costs, expenses and charges relating to the Demised Premises, of whatsoever kind or character which may arise during the Term in accordance with the provisions hereof, including all costs associated with its condition, use, operation, maintenance, subletting and management or otherwise and all Impositions, taxes, charges, costs and expenses, which the Tenant assumes or agrees to pay pursuant to the provisions of this Lease, together with all interest, penalties, late charges and the like which may accrue on account thereof because the Tenant fails to pay these sums as they become due, and other damages, costs and expenses which the Landlord may suffer or incur by reason of such failure, and all other sums which may become due by reason of any default by Tenant or failure on the part of Tenant to fully comply with the provisions of this Lease shall be deemed to be "Additional Rent". Tenant shall pay to Landlord, or to whomever shall be entitled thereto, any and all Additional Rent upon demand therefor, subject only to Tenant's contest rights and Tenant's right to pay Impositions in installments, in each case as herein expressly provided for. If Tenant shall default beyond any permitted grace period in the payment of any Additional Rent, Landlord shall have the rights and remedies provided for herein or by law or in equity or otherwise for nonpayment of Basic Rent.

5. Use of Demised Premises. Tenant may use and occupy the Demised Premises for any use not prohibited by law.

6. Title. Landlord warrants that Landlord is the owner of good and marketable fee simple title in and to the Demised Premises, subject only to the Permitted Encumbrances, and subject to any other encumbrances imposed on the Demised Premises by or with the consent of Tenant.

All buildings, structures and improvements (the "Improvements") presently or hereafter on the Demised Premises are and shall be the property of Tenant during, and only during, the continuance of the term of this Lease and no longer. At all times during the term of this Lease the Improvements which are owned by Tenant shall not be conveyed, transferred or assigned (other than pursuant to a Leasehold Mortgage) unless such conveyance, transfer or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions of Article 22 (Assignment; Subletting) hereof, and at all such times the holder of the leasehold interest of Tenant under this Lease shall be the owner of said Improvements. Any attempted conveyance, transfer or assignment of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever unless such conveyance, transfer or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions of said Article 22. Similarly, so long as said Improvements or any part thereof shall remain on the Demised Premises,

any attempted transfer or assignment of the leasehold interest of Tenant under this Lease shall be void and of no effect whatever unless such transfer or assignment shall be to a person, corporation or other entity to whom said Improvements are being conveyed, transferred or assigned simultaneously therewith. Subject to the provisions of Article 8(H) hereof, unless the First Mortgage is outstanding, upon any termination of this Lease, if said Improvements or any part thereof shall then be on the Demised Premises, all of Tenant's right, title and interest therein shall cease and terminate and title to said Improvements shall vest in Landlord and said Improvements or the part thereof then within the Demised Premises shall be surrendered by Tenant to Landlord as provided in Article 40 (Surrender) hereof. No further deed or other instrument shall be necessary, to confirm the vesting in Landlord of title to said Improvements. However, upon any termination of this Lease, Tenant, upon request of Landlord, shall execute, acknowledge, and deliver to Landlord a deed confirming that all of Tenant's right, title and interest in said Improvements has expired and that title to said Improvements has vested in Landlord.

7. Fee Mortgages. Landlord will, on request of Tenant, subject Landlord's fee interest in the Demised Premises to the lien of a Mortgage for an amount which shall not exceed an amount equal to the costs and expenses incurred in connection with the placement of such Mortgage (not to exceed 10% of the amount of the financing) plus the greater of (A) the then outstanding principal amount of any existing Mortgage on the Demised Premises being refinanced and paid off by such new Mortgage and accrued interest and prepayment premium, if any, and (B) 95% of the fair market value of the Improvements then existing, and/or to be constructed on the Demised Premises or any part thereof which is to be encumbered by the Mortgage, at commercially reasonable rates, provided the following conditions are fulfilled by Tenant: (a) Tenant shall not then be in default hereunder, (b) there shall be no personal liability imposed upon Landlord for repayment of the loan secured to such Mortgagee nor shall Landlord incur any other liability in connection with the Mortgage or otherwise in connection with the loan, (c) the maturity date of such Mortgage shall not extend beyond the end of the Initial Term or the Extended Terms then exercised by Tenant, (d) any and all leases of the affected portion of the Demised Premises shall be on commercially reasonable terms, (e) such Mortgage must be fully amortized, on a level basis, by rentals projected to be paid under leases of the affected portion of the Demised Premises on or before the maturity date thereof, (f) the lien of such Mortgage shall be a first lien encumbering the affected portion of the Demised Premises, (g) the beneficiary of such Mortgage shall be an Institutional Lender (defined in Article I hereinabove) and (h) a copy of the Mortgage to be executed by Landlord, together with copies of all other documents to be executed in connection with the loan, shall be submitted to Landlord, solely for Landlord's review, no later than 15 days prior to the date of closing of the Mortgage loan. If Landlord and Tenant cannot agree upon what constitutes a commercially reasonable rate, a commercially reasonable rate shall be determined by appraisal as provided in Article 33(b) hereof.

8. Leasehold Mortgages. Tenant shall have the absolute right, without Landlord's prior consent, to Mortgage Tenant's leasehold interest hereunder by one or more Mortgages.

If Tenant shall Mortgage its leasehold interest hereunder and the Leasehold Mortgagee shall deliver to Landlord a copy of an executed counterpart of said Mortgage together with a notice setting forth the name and address of the Leasehold Mortgagee (and if the Mortgage is held by more than



one person, corporation or other entity, the name of the person to receive all notices), then, until the time, if any, that said Mortgage shall be satisfied of record or the Leasehold Mortgagee shall give to Landlord written notice that said Mortgage has been satisfied:

A. No action or agreement hereafter taken or entered into by Tenant to cancel, surrender, or modify this Lease shall be binding upon the Leasehold Mortgagee or affect the lien of said Mortgage, without the prior written consent of said Leasehold Mortgagee.

B. If Landlord shall give any notice to Tenant hereunder, Landlord shall at the same time give a copy of each such notice to the Leasehold Mortgagee at the address theretofore designated by the Leasehold Mortgagee. Such copies of any notice shall be sent by registered or certified mail, and shall be deemed given three (3) days after the same is deposited in a United States Post Office with postal charges prepaid, enclosed in a securely sealed envelope addressed to the Leasehold Mortgagee. No notice given by Landlord to Tenant shall be binding upon or affect said Leasehold Mortgagee unless a copy of the notice shall be given to the Leasehold Mortgagee pursuant to this Article 8. In the case of an assignment of said Mortgage or change in address of the Leasehold Mortgagee, said assignee or the Leasehold Mortgagee, by notice to Landlord as provided in Article 36 (Notices) hereof, may change the address to which such copies of notices are to be sent. Landlord shall not be bound to recognize any assignment of said Mortgage unless and until Landlord shall be given written notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the "Leasehold Mortgagee" under this Article 8.

C. The Leasehold Mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy and default by Tenant hereunder, and Landlord shall accept such performance by the Leasehold Mortgagee with the same force and effect as if furnished by Tenant; provided, however, that the Leasehold Mortgagee shall not thereby or hereby be subrogated to the rights of Landlord.

D. Tenant may delegate irrevocably to the Leasehold Mortgagee the authority to exercise any or all of Tenant's rights hereunder but no such delegation shall be binding upon Landlord unless and until either Tenant or the Leasehold Mortgagee shall give to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Leasehold Mortgage itself, in which case the service upon Landlord of an executed counterpart or certified copy of said Leasehold Mortgage in accordance with this Article 8, together with a notice specifying the provisions therein which delegate such authority to the Leasehold Mortgagee, shall be sufficient to give Landlord notice of such delegation.

E. In case of a default by Tenant in the performance or observance of any term, covenant, condition or agreement on Tenant's part to be performed under this Lease which is of such a nature that can practicably be cured by the Leasehold Mortgagee without taking possession of the Demised Premises, Landlord shall not serve a notice of election to terminate pursuant to Article 24 (Default: Termination) hereof or otherwise terminate the leasehold estate of Tenant hereunder until five (5) days after Landlord has the right, as against Tenant, to terminate this Lease, in the case of

a monetary default, and twenty (20) days after Landlord has the right, as against Tenant, to terminate this Lease, in the case of a non-monetary default.

In case of a default by Tenant in the performance or observance of any term, covenant, condition or agreement on Tenant's part to be performed under this Lease if such default is of such a nature that the same cannot practicably be cured by said Leasehold Mortgagee without taking possession of the Demised Premises or if such default is of such a nature that the same is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of election to terminate this Lease pursuant to Article 24 (Default: Termination) hereof, or otherwise terminate the leasehold estate of Tenant hereunder by reason of such default, if and so long as:

(1) in the case of a default which cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Demised Premises, the Leasehold Mortgagee shall deliver a written undertaking to accomplish such cure and proceed diligently to obtain possession of the Demised Premises as Mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such default; and

(2) in the case of a default which is not susceptible of being cured by the Leasehold Mortgagee, said Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime the Leasehold Mortgagee shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Leasehold Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as Mortgagee, of the Demised Premises pursuant to clause (1) above, or to continue to prosecute foreclosure proceedings pursuant to clause (2) above, if and when such default shall be cured. Nothing herein shall preclude Landlord from exercising any of its rights or remedies with respect to any other default by Tenant during any period of such forbearance, but in such event the Leasehold Mortgagee shall have all of the rights and protections hereinabove provided for. If the Leasehold Mortgagee, or its nominee, or a purchaser at a foreclosure sale, shall acquire title to Tenant's leasehold estate hereunder, and shall cure all defaults of Tenant hereunder which are susceptible of being cured by the Leasehold Mortgagee, or by said purchaser, as the case may be, then the defaults of any prior holder of Tenant's leasehold estate hereunder which are not susceptible of being cured by the Leasehold Mortgagee (or by said purchaser) shall no longer be deemed to be defaults hereunder.

F. In any instance when Tenant's right to elect to renew the term of this Lease shall have lapsed pursuant to Article 3 hereof (Term), and Tenant shall have failed to exercise said right to renew, said Leasehold Mortgagee may exercise said right to renew the term of this Lease by giving to Landlord, within thirty (30) days after Tenant's right to renew shall have lapsed pursuant to said Article 3, written notice of said Leasehold Mortgagee's election to exercise said right to renew. The exercise by said Leasehold Mortgagee of said right to renew the term of this Lease shall have the same force and effect as if Tenant had exercised said right to renew within the period provided in Article 3. If at any time said Leasehold Mortgagee gives to Landlord a written notice asking whether

Tenant shall have theretofore exercised a particular right of renewal pursuant to Article 3 hereof, then Landlord, within ten (10) days after receipt of such written inquiry, shall advise said Leasehold Mortgagee in writing whether or not such right of renewal has theretofore been exercised by Tenant.

G. Landlord shall not have the right to cancel or terminate this Lease for a default by Tenant pursuant to clauses (iii) or (iv) of Article 24 (Default: Termination) hereof if and so long as said Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion, or shall acquire Tenant's estate hereunder, either in Leasehold Mortgagee's own name or through a nominee, by assignment in lieu of foreclosure. If the Leasehold Mortgagee, or its nominee, or a purchaser at a foreclosure sale, shall acquire title to Tenant's leasehold estate hereunder, and shall cure all defaults of Tenant hereunder which are susceptible of being cured by the Leasehold Mortgagee, or by said purchaser, as the case may be, and if the Leasehold Mortgagee, or purchaser, shall not itself be subject to any bankruptcy or other proceedings which would entitle Landlord to terminate this Lease pursuant to clauses (iii) or (iv) of Article 24 (Default: Termination) hereof, then Landlord shall not have the right to terminate this Lease pursuant to said Article 24 by reason of the existence of bankruptcy or other proceedings relating to any prior holder of Tenant's leasehold estate hereunder.

H. Notwithstanding any other provision of this Lease to the contrary, if this Lease shall terminate pursuant to Article 24 (Default: Termination) hereof or shall otherwise terminate by reason of a default of Tenant hereunder, and if within thirty (30) days after such termination the Leasehold Mortgagee, by written notice to Landlord, shall request Landlord to enter into a new lease of the Demised Premises pursuant to this subdivision of Article 8, then Landlord shall enter into a new lease with the Leasehold Mortgagee (or its nominee), within thirty (30) days after the giving of said written notice by said Leasehold Mortgagee, if said Leasehold Mortgagee shall comply with the following provisions of this subdivision, said new lease shall commence, and rent and all obligations of the tenant under the new lease shall accrue, as of the date of termination of this Lease. The term of said new lease shall continue for the period which would have constituted the remainder of the term of this Lease had this Lease not been terminated, and shall be upon all of the terms, covenants, conditions and agreements contained herein which were in force and effect on the date of termination of this Lease. Said new lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of said new lease, and shall be free of any and all rights of Tenant hereunder. The provisions of the immediately preceding sentence shall be self-executing, and Landlord shall have no obligation to do anything, other than to execute said new lease as herein provided, to assure to said Leasehold Mortgagee or to the tenant under the new lease good title to the leasehold estate granted thereby. Each subtenant of space in the Demised Premises whose sublease was in force and effect immediately prior to the delivery of said new lease shall attorn to the tenant under the new lease, unless said tenant shall, at its option, elect to dispossess said subtenant or otherwise terminate the sublease held by said subtenant. Each subtenant who hereafter subleases space within the Demised Premises shall be deemed to have agreed to the provisions of this paragraph. The foregoing shall not be deemed to obligate Landlord to keep any such sublease in force and effect after the termination of this Lease, nor shall Landlord have any obligation to terminate any sublease or to dispossess any subtenant. The Leasehold Mortgagee shall, simultaneously with the delivery of the new lease, pay to Landlord (a) all rent and other sums of

money due under this Lease on the date of termination of this Lease and remaining unpaid: plus (b) all rent and other sums of money due under the new lease for the period from the date of commencement of the term thereof to the date of delivery of the new lease: plus (c) all costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by Landlord in connection with such termination, the recovery of possession of the Demised Premises, putting the Demised Premises in good condition and repair, and the preparation, execution and delivery of said new lease.

Simultaneously therewith, Landlord shall pay to said Leasehold Mortgagee any rentals, less costs and expenses of collection, received by Landlord between the date of termination of this Lease and the date of execution of said new lease, from subtenants or other occupants of the Demised Premises which shall not theretofore have been applied by Landlord towards the payment of rent or any other sum of money payable by Tenant hereunder or towards the cost of operating the Demised Premises and all Improvements thereon or performing the obligations of Tenant hereunder.

Any amount held by the Depository under this Lease at the time of delivery of the new lease shall continue to be held by the Depository under the new lease for the same purpose or purposes for which such moneys were held by the Depository under this Lease. If the Leasehold Mortgagee, within the thirty (30) day period shall give to Landlord written notice requesting a new lease, but shall then or thereafter fail to comply with the provisions of this subdivision H which would entitle it to the new lease, then all of said amounts held by the Depository shall be paid over to Landlord free of trust.

If in any instance more than one Leasehold Mortgagee exercises its right to obtain a new lease pursuant to this subdivision of this Article 8, then only the Leasehold Mortgagee holding the lien of highest priority shall be entitled to the new lease free and clear of the rights of all other lienors.

If a Leasehold Mortgagee holding the lien of highest priority shall exercise its right to obtain a new lease pursuant to this subdivision H, but shall fail to execute such a new lease when tendered by Landlord, or shall fail to comply with the other provisions of this subdivision H, the said Leasehold Mortgagee shall have no further rights to a new lease or any other rights under this subdivision H, and no other Leasehold Mortgagee shall have any further rights to a new lease or any other rights under this subdivision H.

Except as provided in this Article and Article 7 (Fee Mortgages) hereof and subject to any Mortgage made pursuant to Section 7 of the Option Agreement no Mortgage now or hereafter a lien upon this Lease shall extend to or affect the reversionary interest and estate of Landlord in and to the Demised Premises or in any manner attach to or affect the Demised Premises from and after any expiration or termination of this Lease.

9. Taxes. Tenant will, at Tenant's own cost and expense, bear, pay and discharge, on or before the last day upon which the same may be paid without interest or penalty for the late payment thereof, all taxes, assessments, assessments, sewer rents, water rents and charges, duties,

impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (collectively, referred to as "Impositions"), which shall pursuant to present or future law or otherwise, prior to or during the term hereby granted have been or be levied, charged, assessed or imposed upon, or grow or become due and payable out of or for, or become or have become a lien on, the Demised Premises, the Improvements or any part thereof, or the appurtenances thereto, or the sidewalks, streets or vaults adjacent thereto, or the rents and income received by Landlord hereunder or received by Tenant from subtenants of the Demised Premises, the Improvements or of any part or parts thereof, or any use or occupation of said Demised Premises; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all such Impositions, except income taxes assessed against Landlord, franchise, estate, succession, inheritance or transfer taxes of Landlord, or any tax or charge in replacement or substitution of the foregoing or of a similar character, provided, however, that if at any time during the term of this Lease the then prevailing method of taxation or assessment shall be changed so that the whole or any part of the Impositions theretofore payable by Tenant as above provided, shall instead be levied, charged, assessed or imposed wholly or partially on the rents received by Landlord from the Demised Premises, or shall otherwise be imposed against Landlord in the form of a franchise tax or otherwise, then Tenant shall pay all such levies, charges, assessments, impositions, taxes and other substituted charges, on or before the last day upon which the same may be paid without interest or penalty for the late payment thereof; provided further, however, that if the amount or rate of such substituted levy, charge, assessment or imposition, so levied, charged, assessed or imposed against the rents or income received by Landlord from the Demised Premises as a substitute in whole or in part for any of the Impositions theretofore payable by Tenant as above provided, shall be increased by reason of rents or income received by Landlord from property other than the Demised Premises, then Tenant shall be obligated to pay only such proportion of such levies, charges, assessments or impositions as shall be just and fair in the circumstances then prevailing.

Tenant shall pay all interest and penalties imposed upon the late payment of any Impositions which Tenant is obligated to pay hereunder. Impositions shall be apportioned between Tenant and Landlord as of the Commencement Date and the Termination Date. Impositions apportioned as of the Termination Date shall be paid within ten (10) days after the Termination Date.

Tenant may take the benefit of the provisions of any law or regulations permitting any assessment imposed more than one year prior to the date of expiration of the term of this Lease to be paid in installments; provided, however, that the amount of all installments of any such assessment which are to become due and payable after the expiration of the term of this Lease shall be paid by Tenant on or before the date which shall be one year immediately prior to the expiration of said term.

If Tenant shall fail, for ten (10) days after notice given to Tenant, to pay any Imposition on or before the last day upon which the same may be paid without the imposition of interest or penalties for the late payment thereof, then Landlord may pay the same with all interest and penalties lawfully imposed upon the late payment thereof and the amounts so paid by Landlord shall

thereupon be and become due and payable by Tenant to Landlord within ten (10) days after notice by Landlord to Tenant of such payment by Landlord.

Tenant at Tenant's own cost and expense may, if it shall in good faith so desire, contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof for such period as such contest shall be actively prosecuted and shall be pending undetermined, upon the conditions, however, that in the event of each such deferral of payment by Tenant:

(a) within thirty (30) days after the Imposition being contested shall become due, and from time to time thereafter until payment thereof shall be made or shall be determined not to be payable by the appropriate body having jurisdiction, Tenant shall deposit and thereafter maintain with the Depository an amount of money or other security reasonably satisfactory to Landlord sufficient to pay the item or items so contested or intended to be contested together with the interest and penalties thereon which shall accrue during the period of such contest, which amount of money shall be held by the Depository, and shall be applied, to the extent thereof, to the payment of such item or items contested together with the interest and penalties thereon, if any, when the amount or amounts thereof have been finally fixed and determined only if Landlord reasonably determines the same is necessary to preserve its interest in the Demised Premises; and

(b) no provision of this Lease shall be construed so as to require Landlord to allow any such items so contested or intended to be contested to remain unpaid for such length of time as shall permit the Demised Premises, or the lien thereon created by such item to be contested, to be sold by federal, state, county or municipal authority for the nonpayment thereof. If the amount of money so deposited with the Depository as aforesaid shall exceed the amount of all such items, if any, together with interest and penalties thereon, any excess of said money thereafter remaining in the Depository's hands after full payment of such items, together with interest and penalties thereon, shall be returned to Tenant. At any time prior to or during the pendency of any such contest Landlord, after giving notice to Tenant (and to the Depository, if Landlord is not the Depository) of Landlord's judgment in that respect, may pay out and apply (or direct the Depository to pay out and apply, if Landlord is not the Depository) the said money so deposited, or so much thereof as may be required, to the payment of any Imposition, or Impositions, together with interest and penalties, which, in Landlord's judgment, should be paid to prevent the sale of the Demised Premises or any part thereof or of the lien created by any such item, or to prevent the commencement of an action, either of foreclosure or otherwise, by the holder of any such lien. To the extent that the amount of money so deposited with the Depository shall be insufficient fully to satisfy and discharge any such Imposition, together with interest and penalties thereon, Landlord may pay the same and the deficiency so paid by Landlord shall be and become due and payable by Tenant to Landlord within ten (10) days of notice by Landlord to Tenant of such payment by Landlord.

An official certificate or statement issued or given by any sovereign or municipal authority, or any agency thereof, or any public utility, showing the existence of any Imposition, or interest or

penalties thereon, the payment of which is the obligation of Tenant as herein provided, shall be prima facie evidence for all purposes of this Lease of the existence, amount and validity of such Imposition.

From the occurrence of any default or other event under this Lease by Tenant which would give Landlord the right to terminate this Lease, all right, title and interest of Tenant in all refunds or rebates of taxes or assessments upon the Demised Premises whether paid or to be paid, are hereby assigned to Landlord, until such time that Landlord no longer has the right to terminate this Lease.

10. Repair. Tenant shall at all times during the term of this Lease, at Tenant's own cost and expense, keep the Demised Premises, the Improvements and all facilities and equipment thereon, and all sidewalks, curbs, vaults and vault spaces adjoining the Demised Premises in good repair and condition.

11. Compliance with Law. Tenant shall at all times during the term of this Lease, at Tenant's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the Demised Premises or the Improvements, and of any agency thereof, relating to the Demised Premises or the Improvements, or the facilities or equipment therein, or the streets, sidewalks, vaults, vault spaces, curbs and gutters adjoining the Demised Premises or the franchise and privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Demised Premises, replacements or repairs, extraordinary as well as ordinary, and Tenant shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

Tenant shall have the right, provided it does so with due diligence and dispatch, to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, rule, order, ordinance, regulation or requirement of the nature hereinabove referred to in this Article 11. Tenant may postpone compliance with such law, rule, order, ordinances, regulation or requirement until the final determination of such proceedings only so long as such postponement of compliance will not subject Landlord to any criminal or civil liability, and on the condition that, in the event of each such postponement of compliance by Tenant, Tenant shall, on demand of Landlord, deposit and thereafter maintain with the Depository provided for in Article 21 (Depository) hereof an amount of money and/or other security (including a policy of indemnity insurance, if required by Landlord) reasonably satisfactory to Landlord sufficient to pay for the costs of compliance with such law, rule, order, ordinance, regulation or requirement so postponed and to pay any lien, charge and other liability of any kind against the reversion of the Demised Premises or the Improvements which may arise by reason of postponement or failure of compliance with such law, rule, order, ordinance, regulation or requirement and also sufficient to indemnify, defend and hold Landlord harmless from and against any loss, cost, damage, liability, interest, reasonable attorneys' fees and other expenses arising by reason of such postponement or failure of compliance, which amount of money and other

security shall be held by the Depository, and shall be applied, to the extent thereof, to the payment of such costs of compliance if and when such costs are incurred by Tenant, Landlord or a Leasehold Mortgagee, and to the payment of any such lien, charge, liability, loss, cost, damage, interest, reasonable attorneys' fees and other expenses if and when the same arise. To the extent that the amount of money and other security so deposited with the Depository shall be insufficient to pay such costs of compliance in full and fully to satisfy and discharge any such lien, charge, liability, loss, cost, damage, interest, attorneys' fees and expenses which shall have arisen by reason of such postponement or failure of compliance, Landlord may pay the same and the deficiency so paid by Landlord shall be due and payable by Tenant to Landlord within ten (10) days of notice by Landlord to Tenant of Landlord's payment of the same. Upon the final determination of such proceedings and full compliance by Tenant with any such law, rule, order, ordinance, regulation or requirement so contested (to the extent, if any, that compliance is required after the termination of such proceedings), any moneys so deposited with the Depository as aforesaid and then remaining on deposit with the Depository shall be returned to Tenant if Tenant shall not then be in default hereunder. No provision of this Lease shall be construed so as to permit Tenant to postpone compliance with such law, rule, order, ordinance, regulation or requirement if any sovereign, municipal or other governmental authority shall commence a proceeding or other action pursuant to applicable law to carry out any work to comply with the same or to foreclose or sell any lien affecting all or any part of the Demised Premises or the Improvements which shall have arisen by reason of such postponement or failure of compliance.

Tenant covenants that (i) the Demised Premises shall, at all times during the term of this Lease, be free of contamination from any Hazardous Substances (hereinafter defined) which are in violation of any applicable Environmental Law (hereinafter defined), (ii) the Demised Premises shall not be used for the manufacture, storage, generation or disposal of any Hazardous Substance, except in the ordinary course of business and in compliance with all legal requirements, (iii) Tenant shall not be, and shall not permit any assignee or subtenant to be, involved in operations at or near the Demised Premises that could lead to the imposition on Landlord of liability, or the creation of a lien on the Demised Premises, under any legal requirement relating to Hazardous Substances, (iv) Tenant shall not cause or permit to exist any discharge, spillage, loss, seepage or filtration of oil, petroleum, chemical liquids or solids, liquid or gaseous products or any Hazardous Substance upon, under or within the Demised Premises, and (v) Tenant shall not permit to exist any underground or above-ground tanks for the storage of fuel oil, gasoline and/or other petroleum products or by-products. For purposes hereof "Hazardous Substances" shall mean and include those elements, wastes, materials, substances or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA") or the list of toxic pollutants adopted by any Requirement enacted by the United States Congress or the EPA or defined by any other federal, state or local Requirement regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereunder in effect (herein, "Environmental Laws"), including, without limitation, asbestos, pcbs, lead paint, radioactive substances, methane, volatile hydrocarbons and industrial solvents.



12. Alterations. Tenant may, at Tenant's expense, from time to time during the term of this Lease make alterations or additions to the Demised Premises and the Improvements.

13. Independence of Demised Premises. Tenant shall not by act or omission permit any building or improvement not demised hereunder to rely on the Demised Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and no Improvements on the Demised Premises shall rely on any premises not demised hereunder or any interest therein to fulfill any governmental or municipal requirement. Tenant shall not by act or omission impair the integrity of the Demised Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Tenant which would result in a violation of any of the provisions of this paragraph shall be void.

14. Liens. Landlord shall not be liable for any work performed or to be performed on the Demised Premises or on the Improvements for Tenant or any subtenant, or for any materials furnished or to be furnished at the Demised Premises for Tenant or any subtenant, and no mechanic's or other lien for such work or materials shall attach to the reversionary or other interest of Landlord. If, in connection with any work being performed by Tenant or any subtenant or in connection with any materials being furnished to Tenant or any subtenant, any mechanic's lien or other lien or charge shall be filed or made against the Demised Premises or the Improvements, or if any such lien or charge shall be filed or made against Landlord as owner, then Tenant, at Tenant's cost and expense, within thirty (30) days after such lien or charge shall have been filed or made, shall cause the same to be canceled and discharged of record by payment thereof or filing a bond or otherwise, and shall also defend any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages, costs and expenses, including reasonable attorneys' fees, suffered or incurred therein by Landlord, and shall satisfy and discharge any judgment entered therein within thirty (30) days from the entering of such judgment by payment thereof or filing of a bond, or otherwise. In the event of the failure of Tenant to discharge within the above-mentioned thirty (30) day period any lien, charge or judgment herein required to be paid or discharged by Tenant, Landlord may pay such items or discharge such liability by payment or bond or both, and Tenant will repay to Landlord, within ten (10) days of notice by Landlord to Tenant of such payment, any and all amounts paid by Landlord therefor, or by reason of any liability on any such bond, and also any and all incidental expenses, including reasonable attorneys' fees incurred by Landlord in connection therewith.

15. Net Lease. This Lease shall be deemed and construed to be a "net lease" and Tenant shall pay to Landlord, absolutely net throughout the Term, the Rent, free of any charges, assessments, impositions, or deductions of any kind and without abatement, deduction or set-off whatsoever, and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder. Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Demised Premises (except debt service on any indebtedness of Landlord) which may arise or become due or payable prior to, during or after (but attributable to a period falling within) the Term, including all recorded or unrecorded agreements, easements, declarations, restrictions or other matters affecting

the title to the Demised Premises, and Tenant hereby indemnifies Landlord against, and agrees to hold Landlord harmless from and against the same.

16. **Insurance.** (a) Tenant shall maintain or cause to be maintained during the term hereof, at its cost and expense, insurance of the following character:

(i) insurance against losses by fire and lightning and risks customarily covered by extended coverage endorsement, including loss by windstorm, hail, explosion, riot (including riot attending a strike), civil commotion, aircraft, vehicles, smoke damage, and vandalism and malicious mischief, in amounts not less than the full insurable value of all Improvements on the Demised Premises. The term "full insurable value" as used herein means actual replacement cost, including the costs of debris removal, but excluding the cost of constructing foundation and footings;

(ii) comprehensive general public liability insurance covering the legal liability of Landlord and Tenant against claims for bodily injury, death or property damage occurring on, in or about the Demised Premises and the adjoining land or occurring as a result of ownership of facilities located on the Demised Premises or as a result of the use of products or materials manufactured, processed, constructed or sold, or services rendered, on the Demised Premises, with such insurable limits as Landlord may from time to time require in respect of any one occurrence, accident or disaster or incidence of negligence, in respect of injuries to any one person and in respect of damage to property;

(iii) worker's compensation insurance, Tenant being required to comply with applicable worker's compensation laws of the state in which the Demised Premises are located and to maintain such insurance if and to the extent necessary for such compliance;

(iv) catastrophe excess -- single limit liability insurance in an amount as Landlord may from time to time require with respect to the risks referred to in clause (ii) of this paragraph (a) of Article 16; and

(v) such other insurance, in such amounts and against such risks, as is customarily maintained by operators of similar properties.

All insurance to be furnished by Tenant under this Article shall be written by a company or companies reasonably approved by Landlord and in form reasonably approved by Landlord and by policies which shall name as insured Landlord, Tenant and any fee Mortgagee and Leasehold Mortgagees, as their interests may appear, shall include a Mortgagee clause in standard form if there be a Mortgagee or Mortgagees, and shall provide that the loss, if any, shall be payable to the Depository provided for in Article 21 (Depository) hereof. Such policies may be blanket coverage insurance policies. All insurance proceeds received by the Depository shall be made available by the Depository, in accordance with Article 20 (Restoration after Fire or Condemnation) hereof, for application to the cost of demolition, restoration, repair, replacement and rebuilding of the damage which occasioned the payment of such proceeds. Certified copies of all policies of insurance, or

certificates thereof, together with receipts showing payment of the premiums thereon shall be delivered to and left in the possession of Landlord, and Tenant shall, within thirty (30) days prior to the expiration of any such insurance, deliver other original or duplicate policies or certificates of insurance evidencing the renewal of such insurance. Additional executed counterparts of the policies may be retained by Tenant and the Leasehold Mortgagees, if any.

Tenant shall comply with the terms of each insurance policy required by the terms of this Lease to be furnished by Tenant.

17. **Indemnity.** Tenant will indemnify, defend and save harmless Landlord from and against any and all liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims and judgments (to the extent that the same are not paid out of the proceeds of any policy of insurance furnished by Tenant to Landlord pursuant to Article 16 (Insurance) hereof) arising from injury, or claim of injury, during the term of the Lease to person or property of any and every nature, and from any matter or thing, growing out of the occupation, possession, use, management, improvement, construction, alteration, repair, maintenance or control of the Demised Premises and the Improvements, the facilities and equipment thereon, the streets, sidewalks, vaults, vault spaces, curbs and gutters adjoining the Demised Premises or the franchises and privileges connected therewith, or arising out of Tenant's failure to perform, fully and promptly, or Tenant's postponement of compliance with, each and every term, covenant, condition and agreement herein provided to be performed by Tenant. Tenant, at Tenant's own cost and expense, will defend by counsel selected or approved by Landlord any and all suits that may be brought, and claims which may be made, against Landlord, or in which Landlord may be impleaded with others, whether Landlord shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims and judgments and shall satisfy, pay and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant, or that may be filed against the Demised Premises or the appurtenances, or any interest therein, and in the event of the failure of Tenant to pay the sum or sums for which Tenant shall become liable as aforesaid, then Landlord may pay such sum or sums, with all interest and charges which may have accrued thereon, and the amounts so paid by Landlord shall be payable by Tenant to Landlord upon demand.

Tenant agrees to indemnify, defend and hold harmless Landlord from and against any and all losses, liabilities (including, without limitation, strict liability) suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including, without limitation, reasonable fees and disbursements of counsel and consultants for Landlord) which may be suffered or asserted against Landlord and which arise directly or indirectly out of or in connection with any applicable federal, state and local environmental statute or regulation relating to the Demised Premises and the Improvements, provided that such loss, liability, suit, obligation, fine, damage, judgment, penalty, claim, charge, cost or expense arises from an action occurring at, concerning, or affecting the Demised Premises or the Improvements after the expiration of the term of the Sublease, as such term may be extended.

18. Fire and Other Casualty. If all or any part of the Demised Premises or the Improvements shall be damaged or destroyed by fire or other casualty, then, irrespective of the cause and whether or not such damage or destruction shall have been insured, Tenant shall give prompt notice thereof to Landlord, and shall, except as hereafter provided in this Article 18, proceed with reasonable diligence to carry out any necessary demolition and to restore, repair, replace and rebuild such building and improvements at Tenant's own cost and expense. Such demolition, restoration, repair, replacement and rebuilding shall be performed by Tenant in accordance with the provisions of Article 20 (Restoration after Fire or Condemnation) hereof. If any insurance proceeds shall have been paid by reason of such damage or destruction, Tenant shall be entitled to such proceeds to the extent and at the time or times provided in said Article 20. If at any time Tenant shall fail or neglect to supply sufficient workmen or sufficient materials of proper quality, or fail in any other respect to prosecute such work of demolition, restoration, repair, replacement or rebuilding with diligence and promptness, then Landlord may give to Tenant written notice of such failure or neglect, and if such failure or neglect continues for sixty (60) days after such notice, then Landlord, in addition to all other rights which Landlord may have, may enter upon the Demised Premises, provide labor and/or materials, cause the performance of any contract and/or do such other acts and things as Landlord may deem advisable to prosecute such work, in which event Landlord shall be entitled to reimbursement of its costs and expenses out of any insurance proceeds and any other moneys held by the Depository for application to the cost of such work, in accordance with Article 20 (Restoration after Fire or Condemnation) hereof. All costs and expenses incurred by Landlord in carrying out such work for which Landlord is not reimbursed out of insurance proceeds or other moneys held by the Depository, shall be borne by Tenant and shall be payable by Tenant to Landlord within ten (10) days of demand, which demand may be made by Landlord from time to time as such costs and expenses are incurred, in addition to any or all damages to which Landlord shall be entitled hereunder.

Rent shall not abate hereunder by reason of any damage to or of the Demised Premises and Tenant shall continue to perform and fulfill all of Tenant's obligations, covenants and agreements hereunder notwithstanding any such damage or destruction.

Notwithstanding anything to the contrary contained herein, if at any time Tenant shall reasonably determine that all or any portion of the Demised Premises has been completely or substantially destroyed by fire or other casualty, Tenant may give written notice to Landlord within one year after such casualty of Tenant's intention to terminate this Lease with respect to such affected portion of the Demised Premises and Tenant shall have no obligation to restore, repair, replace or rebuild that portion of the Demised Premises affected by such fire or other casualty. Tenant's notice to Landlord shall (i) contain a brief description of the casualty and (ii) specify a termination date, which shall be the Installment Payment Date first occurring at least 180 days after such notice is given. On such termination date, the term of this Lease shall cease, terminate and expire (with respect to that portion of the Demised Premises affected) as fully as if such termination date were the date fixed herein for the end and expiration of this Lease and the term hereof.

19. Condemnation. A. Entire Condemnation. If at any time during the term of this Lease all or substantially all of the Demised Premises shall be taken in the exercise of the power of

eminent domain by any sovereign, municipality or other public or private authority, then this Lease shall terminate on the date of vesting of title in such taking and any prepaid rent shall be apportioned as of said date. Substantially all of the Demised Premises shall be deemed to have been taken if the remaining portion of the Demised Premises shall not be of sufficient size to permit the construction and operation of a building thereon on an economically feasible basis under the provisions of this Lease. If the parties hereto do not agree on whether all or substantially all of the Demised Premises shall have been taken, within the meaning of this Lease, then their dispute shall be settled by arbitration, and the question to be determined by the arbitrators shall be: "Has all or substantially all of the Demised Premises been taken within the meaning of this Lease?" The entire award or awards for any such taking of all or substantially all of the Demised Premises shall be paid to the Depository and the Depository shall pay out such award or awards as follows:

i. There shall be paid to Tenant the value, immediately prior to such taking, of Tenant's leasehold interest, including renewal rights, in and to the Demised Premises, plus, the value, immediately prior to such taking, of Tenant's interest in any Improvements then on the Demised Premises and which were on the Demised Premises on the date of commencement of this Lease, but in no event shall this amount be less than the amount outstanding under any Mortgage or Mortgages upon the leasehold interest created by this Lease upon the Demised Premises or outstanding under any fee Mortgages upon the Demised Premises; and

ii. The remainder if any, of said award or awards shall be paid to Landlord.

B. Partial Condemnation. If less than all or substantially all of the Demised Premises shall be taken in the exercise of the power of eminent domain by any sovereign, municipality or other public or private authority, then this Lease shall continue in force and effect as to the Demised Premises and Tenant shall proceed with reasonable diligence to carry out any necessary repair and restoration so that the remaining buildings, improvements and appurtenances shall constitute a complete structural unit or units which can be operated on an economically feasible basis under the provisions of this Lease. All of such repair and restoration shall be carried out by Tenant in strict accordance with the provisions of Article 20 (Restoration after Fire or Condemnation) hereof, and if, pursuant to Article 20, the Depository shall hold any condemnation award or awards, which are to be applied to the cost of such repair or restoration, then Tenant shall be entitled to said award or awards to the extent and at the time or times provided in Article 20 hereof. If Tenant shall fail or neglect to supply sufficient workmen or sufficient materials of proper quality, or shall fail in any other respect to prosecute such work of repair or restoration, with diligence and promptness, then Landlord may give to Tenant written notice of such failure or neglect, and if such failure or neglect continues for sixty (60) days after such notice, then Landlord, in addition to all other rights which Landlord may have, may enter upon the Demised Premises and any Improvement thereon, provide labor and/or materials, cause the performance of any contract and/or do such other acts and things as Landlord may deem advisable to prosecute such work, in which event Landlord shall be entitled to reimbursement of its costs and expenses out of any condemnation award or awards and any other moneys held by the Depository for application to the cost of such work, in accordance with Article 20 hereof. All costs and expenses incurred by Landlord in carrying out such work for which

Landlord is not reimbursed out of any condemnation award or awards or other moneys held by the Depository, shall be borne by Tenant and shall be payable by Tenant to Landlord upon demand, which demand may be made by Landlord from time to time as such costs and expenses are incurred, in addition to any or all damages to which Landlord may be entitled hereunder.

The entire award or awards for any partial taking shall be paid to the Depository, and the Depository shall hold and/or pay out such award or awards as follows:

i. That portion of the award or awards which represents compensation for damage to Improvements on the Demised Premises demised hereunder but not taken, plus that portion of said award or awards which is equal to the value, immediately prior to such taking of Tenant's leasehold interest in and to that portion of the Demised Premises which shall have been taken, plus that portion of said award or awards paid for the taking of Tenant's interest in any Improvements then on the Demised Premises and which were on the Demised Premises on the date of commencement of this Lease, shall be held by the Depository and applied, in accordance with Article 20 (Restoration after Fire or Condemnation) hereof, to the cost of repair and restoration required to be carried out by Tenant pursuant to this Section B of Article 19, and after completion by Tenant of such repair and restoration in accordance with the terms of this Lease, the balance of any amounts then held by the Depository under this clause shall be paid out by the Depository to Tenant.

ii. The remainder, if any, of said award or awards shall be paid to Landlord.

The annual Basic Rent shall, as of the date of vesting of title in such taking, be decreased by an amount equal to that proportion of such rent which the value of the Demised Premises so taken shall bear to the value of all of the Demised Premises, exclusive of Improvements, demised hereunder immediately, prior to such taking. In the interim following the date of vesting of title in such property taken until the time when the amount of the abatement of Basic Rent shall be determined either by agreement of the parties or by arbitration, the abatement of Basic Rent shall be deemed to be equal to an amount bearing the same proportion to the annual Basic Rent rate in effect immediately prior to such taking which the square foot area of the land taken bears to the square foot area of all of the land within the Demised Premises immediately prior to such taking. When the amount of the abatement is finally determined, the Basic Rent for said interim period shall be recomputed and Tenant shall pay any excess to Landlord immediately within ten (10) days of demand, or Landlord shall refund such excess to Tenant, as the case may be.

C. Temporary Taking. If the temporary use of the whole or any portion of the Demised Premises or the Improvements shall be taken at any time during the term of this Lease in the exercise of the power of eminent domain by any sovereign, municipality or other authority, the term of this Lease shall not be reduced or affected in any way and Tenant shall continue to pay in full the rent, Additional Rent and other sum or sums of money and charges herein reserved and provided to be paid by Tenant, and the entire award for such taking shall be paid to the Depository, to be applied and disposed of as hereafter provided in this Section C. The Depository shall pay to Tenant that portion of said award paid for use and occupancy of the Demised Premises and the Improvements

during any period prior to the expiration of the term of this Lease and shall pay to Landlord any portion of said award paid for use and occupancy of the Demised Premises following termination of this Lease. That portion of such award which represents physical damage to the Demised Premises or the Improvements thereto occasioned by such taking shall be held by the Depository in trust, and used to reimburse Tenant for costs of restoration and repair of the buildings, improvements and appurtenances so damaged. Tenant shall perform all of such restoration and repair in accordance with Article 20 (Restoration after Fire or Condemnation) hereof.

D. Interest. Interest upon any award paid for a taking of the type referred to in Section A, Section B or Section C of this Article 19 shall be paid to the Depository, and shall be paid out by the Depository to those persons entitled to the award upon which such interest shall have been paid, in proportion to the respective amounts received by, or applied for the account of such persons.

E. Personal Property and Moving Expenses. Any award or part of an award paid as compensation for the taking of personal property owned by Tenant or a subtenant or for moving expenses of Tenant or a subtenant, shall be payable to Tenant, or such subtenant, as the case may be.

F. Arbitration. In any instance when the respective portions of any award which are to be paid out by the Depository in accordance with the provisions of this Article 19 shall not be fixed in the taking proceedings which give rise to such award and if the parties hereto shall not agree in writing on such respective portions within thirty (30) days after the date of final determination of the amount of such award or if the parties hereto do not agree in writing on the amount of any decrease in rent under Section B of this Article 19 within thirty (30) days after the date of vesting of title in the taking authority, then their dispute shall be settled by arbitration in accordance with Article 33 (Arbitration) hereof. Any allocation of an award by the arbitrators shall be in accordance with the priorities and categories herein provided and the arbitrators shall have no power to alter said priorities or categories.

20. Restoration after Fire or Condemnation. Whenever Tenant shall be required to carry out any work of demolition, restoration, repair, replacement or rebuilding pursuant to Article 18 (Fire and Other Casualty) or Article 19 (Condemnation) hereof, Tenant, prior to the commencement of such work, shall comply with the following requirements (except when the cost of such work does not exceed Five Hundred Thousand Dollars (\$500,000):

1. Tenant shall furnish to Landlord complete plans and specifications for such work, for Landlord's approval, which approval shall not be unreasonably withheld. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Landlord (the "Architect"), and shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the work encompassed by said plans and specifications. Tenant shall not commence any demolition, restoration, repair, replacement or rebuilding until Tenant shall have obtained Landlord's written approval of said plans and specifications and said cost estimate.

2. Tenant shall furnish to Landlord certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of such work.

Tenant shall not commence any of said demolition, restoration, repair, replacement or rebuilding work until Tenant shall have complied with the above requirements, and thereafter Tenant shall carry out such work diligently and in good faith in accordance with the plans and specifications referred to in subdivision 1 above.

If the Depository shall hold insurance proceeds, condemnation award or awards or other moneys which are to be applied to the cost of carrying out demolition, restoration, repair, replacement or building and if such work shall be carried out by Tenant (or by a Leasehold Mortgagee pursuant to the provisions of Article 8 (Leasehold Mortgages) hereof) in accordance with the provisions of this Lease, then the Depository shall disburse said insurance proceeds, condemnation award or awards and or other moneys to Tenant (or said Leasehold Mortgagee, as the case may be) from time to time during the course of such work in accordance with the provisions hereafter set forth in this Article 20. The Depository shall not be required to make disbursements more often than at thirty (30) day intervals. Tenant, or said Leasehold Mortgagee, as the case may be, shall make written request for each disbursement at least seven (7) days in advance, and shall comply with the following requirements in connection with each disbursement:

A. Tenant, or said Leasehold Mortgagee, as the case may be, shall deliver to the Depository (with a copy to Landlord if Landlord shall be not the Depository), at the time of request for a disbursement, a certificate of the Architect, dated not more than ten (10) days prior to the application for withdrawal of funds, setting forth the following:

(i) That the sum then requested to be withdrawn either has been paid by Tenant or said Leasehold Mortgagee and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(ii) That no part of the cost of the services and materials described in the foregoing paragraph (i) of this Clause A has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(iii) That, except for the amounts, if any specified in the foregoing paragraph (i) of this Clause A to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the work which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Demised Premises or any part thereof.

B. Tenant, or said Leasehold Mortgagee, as the case may be, shall deliver to the Depository, satisfactory evidence that the Demised Premises and all materials and all property described in the certificate furnished pursuant to paragraph (i) of the foregoing Clause A, are free



and clear of all Mortgages, liens, charges or encumbrances, except (a) encumbrances, if any, securing indebtedness due to persons, whose names and addresses and the several amounts due to them shall be stated, specified in the certificate furnished pursuant to paragraph (i) of the foregoing Clause A, which encumbrances will be discharged upon payment of such indebtedness and (b) Permitted Encumbrances, and (c) any other encumbrances caused by or consented to by Landlord. The Depository shall accept as satisfactory evidence under this Clause B a certificate of a title insurance company acceptable to Landlord, dated as of the date of the making of the disbursement, confirming the foregoing.

C. Tenant, or said Leasehold Mortgagee, as the case may be, shall deliver to the Depository, (with a copy to Landlord if Landlord shall be not the Depository) a survey of the Demised Premises dated as of a date within ten (10) days prior to the making of the advance (or revised to a date within ten (10) days prior to the advance) showing no encroachments other than those, if any, acceptable to Landlord. Said surveys need not be furnished if the work being carried out does not touch or extend beyond the perimeter of the Demised Premises or the perimeter of any building within the Demised Premises and is otherwise of such a nature so that the same would not affect any facts shown on a survey of the Demised Premises.

D. There shall be no default by Tenant under the terms of this Lease, other than a default which Tenant or said Leasehold Mortgagee is diligently engaged in curing, provided, however, that if the withdrawal of funds is being made by said Leasehold Mortgagee rather than by Tenant, and if such default is not susceptible of being cured by said Leasehold Mortgagee, it shall be sufficient if said Leasehold Mortgagee shall be diligently engaged in prosecuting foreclosure proceedings. At the time of each disbursement, Tenant, or said Leasehold Mortgagee, shall deliver to the Depository (with a copy to Landlord if Landlord shall be not the Depository) a certificate signed by Tenant, or said Leasehold Mortgagee, as the case may be, certifying to the fulfillment of the conditions of this Clause D. The Depository may rely on said certificate as being accurate unless, prior to the disbursement then being made, the Depository (where other than Landlord) shall have received a written notice from Landlord, referring to this Clause D, containing statements contrary to those set forth in said certificate.

Upon compliance with the foregoing provisions of this Article 20, the Depository shall, out of the moneys so held by it, pay or cause to be paid to the persons named in the certificate furnished pursuant to the foregoing paragraph (i) of Clause A of this Article 20, the respective amounts stated in said certificate to be due them, and shall pay to Tenant, or said Leasehold Mortgagee, as the case may be, the amounts stated in said certificate to have been paid by them. If, after all of said work shall be completed in accordance with the terms of this Lease, and all municipal and governmental approvals required on completion of said work shall have been obtained, there shall be moneys held by the Depository for application to the cost of such work over and above the amounts withdrawn pursuant to the provisions of this Article 20, and if Tenant shall not be in default under this Lease, then such moneys shall be paid over by the Depository free of trust to Tenant, or to said Leasehold Mortgagee, if said Leasehold Mortgagee shall have completed such work.

If, after a default by Tenant, Landlord shall carry out any of such work, then Landlord shall be entitled to withdraw moneys held by the Depository, for application to the cost of such work. In withdrawing such moneys Landlord need not comply with any of the requirements set forth above in this Article 20, and need comply with those requirements hereafter set forth in this paragraph. If Landlord is not the Depository, such withdrawals shall be made not more often than at thirty (30) days intervals. At the time of each request for a withdrawal of funds, Landlord shall deliver to the Depository, or to itself if Landlord be the Depository, a certificate of either the Architect or another reputable architect selected by Landlord, stating that the sum then requested to be withdrawn either has been paid by Landlord, and/or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the respective amounts so paid or due to each of said persons in respect thereof. Such certificate shall also state that no part of the cost of the services or materials described in said certificate has been or is being made the basis of the withdrawal of any funds in any previous or then pending application of Landlord.

Tenant shall obtain and furnish to Landlord all permits and approvals required by law in connection with the commencement and carrying out of such work. Upon the completion of such work, and approval thereof by all municipal and governmental authorities whose approval is required, the Depository shall pay over the insurance proceeds or condemnation award or awards, as the case may be, which are held by it for application to the costs of such work, to Tenant, if Tenant shall have completed such work, or to said Leasehold Mortgagee, if said Leasehold Mortgagee shall have completed such work, or to Landlord, if Landlord shall have completed such work following a default by Tenant and the giving of notice of such default as herein elsewhere provided.

21. Depository. In any instance when a Depository is to serve under this Lease. Tenant, at its Option, may select one of the following:

- (1) A Mortgagee;
- (2) Landlord;
- (3) Leasehold Mortgagee; or

(4) a bank or trust company, authorized to do business in the state in which the Demised Premises are located and having a net worth of \$100,000,000 or more. Upon the selection of such Depository, Tenant shall give to Landlord notice of the name of such Depository. If Tenant shall not select a Depository pursuant to this Clause for ten (10) days after notice by Landlord requesting Tenant to select such Depository then Landlord may select such Depository, which shall be a bank or trust company.

All interest paid or received by the Depository on the moneys so held in trust shall be added to the moneys so held in trust by the Depository.

Moneys received by the Depository pursuant to any of the provisions of this Lease shall not be commingled with the Depository's own funds and shall be held by the Depository in trust, either separately or with other trust funds, for the uses and purposes provided in this Lease.

The Depository may rely conclusively on any Architect's certificate furnished to the Depository in accordance with the provisions of Article 20 (Restoration after Fire or Condemnation) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate.

No contractor, mechanic, materialman, laborer or any other person whatsoever, other than Landlord, Tenant and the holder or holders of a Mortgage covering the fee title of all or a part of the Demised Premises or covering the leasehold interest of Tenant hereunder, shall have any interest in or rights to any funds held by the Depository. Landlord, Tenant and said holders, by agreement among themselves, may at any time provide for a different disposition of funds than that provided for in this Lease, without the necessity of obtaining the consent of any contractor, mechanic, materialman, laborer or any other person whatsoever. If, at any time, Landlord, Tenant and said holders shall jointly instruct the Depository with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse said funds in accordance with said instructions, and the Depository shall have no liability and shall not be accountable to anyone by reason of having so disbursed said funds in accordance with said instructions.

22. Assignment; Subletting. Tenant may freely assign Tenants' leasehold estate hereunder without obtaining Landlord's consent to such assignment. If all of the leasehold estate of Tenant hereunder shall be unconditionally assigned, and if the assignee thereof shall deliver to Landlord an instrument in form proper for recording wherein said assignee shall accept said assignment and unconditionally assume and agree to be bound by, comply with, and perform, all of the terms, covenants, conditions and agreements of this Lease binding upon, or to be complied with, or performed by, Tenant, together with a fully executed counterpart, in form proper for record, of each instrument effecting said assignment, then the assignor shall be and hereby is entirely freed and relieved of all covenants and obligations of Tenant hereunder thereafter to be complied with or performed, provided, however, that said assignor shall in no event be freed or relieved of the covenants and obligations of Tenant hereunder theretofore to be complied with or performed.

If Tenant at any time be a corporation, limited liability company, partnership or other entity, any transfer of an interest in such corporation, limited liability company, partnership or other entity shall be deemed an assignment of an interest in this Lease for the purposes of this Article 22.

Tenant may make any sublease of all or any part of the Demised Premises without obtaining Landlord's consent to such sublease. All references in this Lease to a sublease shall be deemed to include all arrangements for occupancy or other use by any person or entity of all or any part of the Demised Premises, and all references in this Lease to a subtenant shall include any occupant or other user of all or any part of the Demised Premises.

Subject to the rights of any Leasehold Mortgagee, Tenant hereby assigns to Landlord the right, following any default by Tenant hereunder, to collect from any or all subtenants all rents and other sums payable by them, and to apply the same to the payment of Basic Rent, Additional Rent and all other amounts payable by Tenant hereunder, and any balance shall be paid over to Tenant, but no exercise by Landlord of rights under this paragraph shall be deemed a waiver by Landlord of any other rights hereunder or be deemed an acceptance by Landlord of such subtenant or an acquiescence by Landlord to the occupancy of any part of the Demised Premises by such subtenant or a release of Tenant from the performance of any of the obligations of Tenant hereunder.

23. The Sublease. Notwithstanding any other provision of this Lease to the contrary (including, without limitation, Article 24 (Default Termination) hereof, as long as the Sublease has not been terminated, to the extent that any term, condition or covenant contained in this Lease is inconsistent with any term, condition or covenant contained in the Sublease, the terms, conditions and contained in the Sublease shall govern as though such terms, conditions and covenants were contained herein, and compliance with the terms, covenants and conditions of the Sublease by Subtenant shall be deemed to constitute full compliance with the terms, conditions and covenants contained in this Lease, so that no default of Tenant shall exist hereunder so long as the Sublease has not been terminated (provided that Rent is being currently paid hereunder); and any proceeds of insurance resulting from a casualty and any condemnation awards received in connection with any portion of the Demised Premises shall be disbursed and paid in accordance with the terms of the Sublease. If the Sublease shall terminate for any reason, Tenant shall have a reasonable opportunity to cure any defaults of the obligations to be performed by the Tenant hereunder which arise or exist as of the termination of the Sublease.

24. Default: Termination. If at any time during the term of this Lease (i) Tenant shall default in the payment of any Basic Rent or Additional Rent or any other sum of money whatsoever which Tenant shall be obligated to pay under the provisions of this Lease for fifteen (15) days after notice but only once within any twelve month period, or thereafter during such twelve month period if Tenant shall default in making such payment when due, with or without notice, or (ii) Tenant shall default in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease for sixty (60) days after notice, or if such default shall be of such a nature that the same cannot practicably be cured within said sixty (60) day period and Tenant shall not within said sixty (60) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, if Tenant shall within said sixty (60) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement, and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or (iii) there shall be filed by or against Tenant in any court or other tribunal pursuant to any statute or other rule of law, either of the United States or of any State or of any other authority now or hereafter exercising jurisdiction, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, unless such petition be filed against Tenant and if in good faith Tenant shall promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition, or (iv) if Tenant makes an assignment for the benefit of creditors, then

and in any such case, Landlord, at Landlord's option, may elect to (a) re-enter the Demised Premises, without notice, and remove all persons and property therefrom, either by summary proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and may have, hold and enjoy the Demised Premises, together with the buildings and improvements thereon and appurtenances thereto, and/or (b) terminate this Lease at any time by giving thirty (30) days' notice in writing to Tenant, electing to terminate this Lease, and the Term of this Lease shall expire by limitation at the expiration of said last mentioned thirty (30) days' notice as fully and completely as if said date were the date herein originally fixed for the expiration of the Term hereby granted, and Tenant shall thereupon quit and peacefully surrender the Demised Premises to Landlord, and appurtenances thereto, without any payment therefor by Landlord, and Landlord, upon the expiration of said mentioned thirty (30) days' notice, or at any time thereafter, may re-enter the Demised Premises as provided in the preceding clause (a).

In case of any such re-entry, termination and/or dispossession by summary proceedings or otherwise as provided in the immediately preceding paragraph: (a) the Basic Rent and Additional Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, together with such expenses, including reasonable attorneys' fees, as Landlord shall incur in connection with such re-entry, termination and/or dispossession by summary proceedings or otherwise; (b) Landlord may in good faith relet the Demised Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may, at Landlord's option, be equal to or less than or exceed the period which would otherwise have constituted the balance of the term of this Lease; (c) Tenant or Tenant's legal representative also shall pay to Landlord the proportionate share of such expenses as Landlord may incur in connection with reletting for the balance of the Term or Extended Term, as the case may be, such as, without limitation, legal expenses, reasonable attorneys' fees, brokerage commissions and expenses incurred in altering, repairing and putting the Demised Premises in good order and condition and in preparing the same for reletting which expenses shall be paid by Tenant as they are incurred by Landlord; (d) Tenant or Tenant's legal representatives also shall pay to Landlord the amount by which the Basic Rent and the Additional Rent reserved in this Lease and/or covenanted to be paid exceeds the net amount, if any, of the rents collected on account of the leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the Term of this Lease (excluding unexercised Extended Terms), which amounts shall be paid in monthly installments by Tenant on the rent days specified in this Lease, and any suit brought to collect said amounts for any month or months shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar action or proceeding; or (e) at the option of Landlord exercised at any time, Landlord forthwith shall be entitled to recover from Tenant, in addition to any other proper claims, but in lieu of and not in addition to any amount which would thereafter become payable under the preceding clause (d), a sum equal to the amount by which the Basic Rent and Additional Rent reserved in this Lease and or covenanted to be paid for the remainder of the Initial Term or Extended Term, as the case may be (compound discounted at the rate of 6% per year to their then present worth), exceeds the net rental value of the Demised Premises (compound discounted at the rate of 6% per year to its then present worth), for such remainder of the Term or Extended Term, as the case may be. In determining said net rental value of the Demised Premises, the rent realized by

any reletting of the Demised Premises, if such reletting is upon terms (other than rental amounts) generally comparable to the terms of this Lease, shall be deemed to be said net rental value.

25. Lease Termination: Sums Held by Depository. Subject to the rights of any Leasehold Mortgagee, if Landlord shall terminate this Lease pursuant to Article 24 (Default: Termination) hereof, or if the term of this Lease shall otherwise terminate by reason of a default by Tenant hereunder, then after the expiration of thirty (30) days following the date of such termination, the Depository named in Article 21 (Depository) hereof shall pay over to Landlord free of trust all sums then held by the Depository pursuant to any of the provisions of this Lease, unless, within said thirty (30) day period, a Leasehold Mortgagee shall have exercised its right to obtain a new lease pursuant to Article 8 (Leasehold Mortgages) hereof. In the interim following such termination until the payment of said sums to Landlord free of trust (or pending execution and delivery of a new lease to a Leasehold Mortgagee, as the case may be) said sums held by the Depository shall be available to Landlord (but not to Tenant) pursuant to and for the purposes provided in Article 9 (Taxes), Article 11 (Compliance with Law), Article 16, (Insurance), Article 18 (Fire and Other Casualty), Article 19 (Condemnation) and Article 20 (Restoration after Fire or Condemnation) hereof.

26. Landlord's Right to Cure Tenant's Defaults. Whenever and as often as Tenant shall fail or neglect to comply with and perform any term, covenant, condition or agreement to be complied with or performed by Tenant hereunder, then, upon thirty (30) days' prior notice to Tenant (or upon shorter notice, or with no notice at all, if necessary to meet an emergency situation or a governmental or municipal time limitation), Landlord at Landlord's option, in addition to all other remedies available to Landlord, may perform, or cause to be performed, such work, labor, services, acts or things and take such other steps, including entry into the Demised Premises as Landlord may deem advisable to comply with and perform any such term, covenant, condition or agreement which is in default, in which event Tenant shall reimburse Landlord within ten (10) days after notice and from time to time for all costs and expenses suffered or incurred by Landlord in so complying with or performing such term, covenant, condition or agreement. The commencement of any work or the taking of any other steps or performance of any other act by Landlord pursuant to the immediately preceding sentence shall not be deemed to obligate Landlord to complete the curing of any term, covenant, condition or agreement which is in default. Tenant hereby waives any claim and releases Landlord and Landlord's agents, contractors and employees from all liability for damage occasioned by any action taken by Landlord pursuant to this Article.

27. Tenant's Expenses. Landlord shall reimburse Tenant within ten (10) days of demand for all reasonable expenses, including reasonable attorneys' fees, incurred by Tenant in connection with any litigation to enforce any obligation of Landlord which is in default hereunder. If the interest of Landlord hereunder shall hereafter be held by more than one person, corporation, or other entity and if litigation shall arise by reason of a dispute among such persons, corporations or other entities, and if Tenant is made a party to such litigation without Tenant's consent, then Landlord shall reimburse Tenant upon demand for all reasonable expenses, including reasonable attorneys' fees, incurred by Tenant in connection with any such litigation.

28. Landlord's Expenses. Tenant shall reimburse Landlord within ten (10) days of demand for all reasonable expenses, including reasonable attorneys' fees, incurred by Landlord in connection with the collection of any Basic Rent or Additional Rent in default hereunder, or the termination of this Lease by reason of the default of Tenant, or the enforcement of any other obligation of Tenant which is in default hereunder or the protection of Landlord's rights hereunder, or any litigation or dispute in which Landlord becomes a party or otherwise becomes involved, without fault on its part, relating to the Demised Premises or Landlord's rights or obligations hereunder. If the leasehold interest of Tenant hereunder shall hereafter be held by more than one person, corporation or other entity, and if litigation shall arise by reason of a dispute among such persons, corporations or other entities, and if Landlord is made a party to such litigation without Landlord's consent, then Tenant shall reimburse Landlord within ten (10) days of demand for all reasonable expenses, including reasonable attorneys' fees, incurred by Landlord in connection with any such litigation..

29. Waiver of Trial by Jury. To the extent permitted by law Landlord and Tenant hereby waive trial by jury in any litigation brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease or the Demised Premises.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of the holder of any Mortgage upon this Lease, merge with any interest, estate or rights of Landlord in or to the Demised Premises, it being understood that such leasehold interest, estate and rights of Tenant hereunder, and of the holder of any Mortgage upon this Lease, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Demised Premises, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

31. Attornment. In the event of any conveyance or other divestiture of title to the reversionary estate of Landlord in and to the Demised Premises, the grantor or the person or persons, corporation or corporations or other entity or entities which are divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder, and the grantee or the person or persons, corporation or corporations or other entity or entities which otherwise succeeds or succeed to title shall be deemed to have assumed the covenants and obligations of Landlord thereafter accruing hereunder, and until the next conveyance or divestiture of title Tenant shall look solely to said grantee or successor for the observance and performance of the covenants and obligations of Landlord hereunder so assumed by said grantee or successor. Tenant agrees to attorn to any such grantee or successor. The terms of this Article 31 shall be self-operative and shall not require any further writing.

32. Quiet Enjoyment. Landlord covenants that at all times during the term of this Lease, so long as Tenant is not in default hereunder, Tenant's quiet enjoyment of the Demised Premises or any part thereof shall not be disturbed by any act of Landlord, or of anyone acting by, through or under Landlord.

33. **Arbitration.** If a dispute shall arise between the parties hereto, and if, pursuant to any provision of this Lease, such dispute is to be settled by arbitration or appraisal pursuant to this Article 33, then either party hereto may serve upon the other party a written notice demanding that the dispute be resolved pursuant to this Article 33.

(a) With regard to matters requiring settlement by arbitration pursuant to the terms of this Lease, within thirty (30) days after the giving of the above-mentioned notice, each of the parties hereto shall nominate and appoint an arbitrator and shall notify the other party in writing of the name and address of the arbitrator so chosen. Upon the appointment of the two arbitrators as hereinabove provided, said two arbitrators shall forthwith, and within fifteen (15) days after the appointment of the second arbitrator and before exchanging views as to the question at issue, appoint in writing a third arbitrator and give written notice of such appointment to the parties hereto. In the event that the two arbitrators shall fail to appoint or agree upon such third arbitrator within said fifteen (15) day period, a third arbitrator shall be selected by the parties themselves if they so agree upon a third arbitrator within a further period of ten (10) days. If any arbitrator shall not be appointed or agreed upon within the time herein provided, then either party on behalf of both may request such appointment by the American Arbitration Association (or a successor or similar organization if the American Arbitration Association is no longer in existence). Said arbitrators shall be sworn faithfully and fairly to determine the question at issue. The three arbitrators shall afford to Landlord and Tenant the privilege of cross-examination, on the question at issue, and shall, with all possible speed, make their determination in writing and shall give notice to the parties hereto of such determination. The concurring determination of any two of said three arbitrators shall be binding upon the parties hereto, or, in case no two of the arbitrators shall render a concurring determination, then the determination of the third arbitrator appointed shall be binding upon the parties hereto. Each party shall pay the fees of the arbitrator appointed by it, and the fees of the third arbitrator shall be divided equally between Landlord and Tenant.

(b) If any matter is to be settled by appraisal pursuant to the terms of this Lease, Landlord and Tenant shall each appoint a member in good standing for at least five (5) years of the American Institute of Real Estate Appraisers, or any organization of similarly recognized national standing, having experience appraising commercial properties of a nature and type similar to that of the Demised Premises. Within forty-five (45) days of the appointment, if the two appraisers so appointed agree upon the amount or rate in question, the agreed amount or rate shall be the amount or rate. If the two appraisers so appointed are unable to agree upon the amount or rate in question, said amount or rate shall be the average of the amount or rates determined by the appraisers, provided that the greater of such amount or rate is no more than 110% of the lesser of such amount or rate. If the greater of such amount or rate exceeds 110% of the lesser of such amount or rate, a determination shall be made by a third appraiser, who shall be selected within ten (10) days after the expiration of said forty-five (45) day period by the two appraisers appointed by the parties hereto. Such determination shall be made by the third appraiser within thirty (30) days of his appointment. In such event, the amount or rate shall be the average of the two closest appraised amounts



or rates. Each party agrees that it shall bear all costs associated with its appraiser and one-half the costs, if any, of the third appraiser.

In the event that any arbitrator or appraiser appointed as aforesaid shall thereafter die or become unable or unwilling to act, his successor shall be appointed in the same manner provided in this Article 33 for the appointment of the arbitrator or appraiser so dying or becoming unable or unwilling to act.

The holder of a first Mortgage covering Tenant's estate under this Lease who shall be entitled to the benefits of Article 8 (Leasehold Mortgage) hereof, and the holder of a first Mortgage covering Landlord's reversionary estate in the Demised Premises, may appear and participate in said arbitration proceedings.

Notwithstanding any other provision of this Lease to the contrary, no Leasehold Mortgagee shall be required to arbitrate any dispute under this Lease without its written consent, which consent may be withheld in its sole and absolute discretion. In the event any particular Leasehold Mortgagee shall withhold its consent to arbitration with regard to any dispute under this Lease, such Leasehold Mortgagee shall not thereafter be entitled to require Landlord to arbitrate any other dispute under this Lease without the Landlord's written consent, which consent may be withheld in its sole and absolute discretion.

34. Intentionally Deleted

35. Landlord's Right of Entry. Landlord and Landlord's authorized agents and employees shall have the right from time to time, to enter and pass through the Demised Premises and the Improvements thereon during business hours to examine the same and to show them to prospective purchasers, fee Mortgagees and others, but this shall not obligate Landlord to make any such entry or examination.

36. Notices. All notices and other instruments given or delivered pursuant to this Lease shall be in writing, and the giving of such notice or other communication shall be deemed to have been completed on (i) the earlier of receipt or refusal by the addressee to accept delivery when delivered by hand, (ii) the earlier of receipt or refusal by the addressee to accept delivery after being sent by first class registered or certified mail, postage prepaid, return receipt requested, (iii) the earlier of receipt or refusal by the addressee to accept delivery when sent by a nationally recognized overnight courier or (iv) receipt when sent by facsimile with written confirmation of transmission of such facsimile. Copies of notices must be sent to all of the parties listed below. Landlord and Tenant shall each have the right to specify, from time to time, as its address for purposes of this Lease, any address and any addressee, in the continental United States, upon giving fifteen (15) days' written notice thereof to the other party, provided that the total number of parties to which notices must be sent may not be increased. The addresses of Landlord and Tenant for purposes of this Lease, until notice has been given as above provided, shall be as follows:

If to Tenant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If to Landlord: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

37. Estoppel Certificates. Each party hereto agrees that at any time and from time to time during the term of this Lease, within fifteen (15) days after request by the other party hereto, it will execute, acknowledge and deliver to such other party or to any assignee, Mortgagee or prospective purchaser designated by such other party, a certificate stating (a) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) the date to which Rent has been paid, (c) whether or not there is any existing default by Tenant in the payment of Rent or other sum of money hereunder, and whether or not there is any other existing default by either party hereto with respect to which a notice of default has been served, and, if there is any such default, specifying the nature and extent thereof, and (d) whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party executing such certificate.

38. Rights Cumulative. All the rights and remedies of Landlord under this Lease or pursuant to present or future law shall be deemed to be separate, distinct and cumulative and no one or more of them, whether exercised or not, nor any mention of or reference to, any one or more of them in this Lease, shall be deemed to be in exclusion of, or a waiver of, any of the others or of any of the rights or remedies which Landlord may have, whether by present or future law or pursuant to this Lease and Landlord shall have, to the fullest extent permitted by law, the right to enforce any rights or remedies separately and to take any lawful action or proceedings to exercise or enforce any right or remedy without thereby waiving or being barred or estopped from exercising and enforcing any other rights and remedies by appropriate action or proceedings.

39. Overdue Interest. If Tenant shall fail to make any payment of Basic Rent in the amount provided for herein on the date provided for herein, Tenant shall be liable for interest at the Prime Rate plus two percent (2%) per annum. The "Prime Rate" shall mean the per annum rate of interest publicly announced from time to time, by Citibank, N.A., at its main office in New York City, New York as its base rate, and if such rate is not publicly available, a substitute rate as selected by, Landlord in its reasonable discretion.

39A. Non-Waiver. No waiver by Landlord or Tenant of any breach of any term, covenant, condition or agreement herein and no failure by Landlord or Tenant to exercise any right or remedy in respect of any breach hereunder, shall constitute a waiver or relinquishment for the future of any such term, covenant, condition or agreement or of any subsequent breach of any such term, covenant, condition or agreement, nor bar any right or remedy of Landlord or Tenant in respect of any such subsequent breach, nor shall the receipt of any Rent, or any portion thereof, by Landlord, operate as

a waiver of the rights of Landlord to enforce the payment of any other Rent then or thereafter in default, or to terminate this Lease, or to recover the Demised Premises or to invoke any other appropriate remedy which Landlord may select as herein or by law provided.

40. Surrender. Tenant shall, on the last day of the term of this Lease or upon any termination of this Lease pursuant to Article 24 (Default: Termination) hereof or upon any other termination of this Lease, surrender and deliver up the Demised Premises and the Improvements into the possession and use of Landlord, without delay and in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than Permitted Encumbrances or any encumbrance or lien Landlord may have put or caused or consented to be put on the Demised Premises and the Improvements, without any payment or allowance whatever by Landlord on account of or for any buildings and improvements erected or maintained on the Demised Premises at the time of the surrender, or for the contents thereof or appurtenances thereto. All fixtures, trade fixtures, personal property and other belongings of Tenant or of any subtenant or other occupant of space in the Demised Premises and the Improvements left upon the Demised Premises or the Improvements at the time of such surrender shall be deemed to have been abandoned by Tenant, or by such subtenant or other occupant, as the case may be. Notwithstanding the foregoing, if the First Mortgagee shall succeed to the interest of Tenant hereunder as a result of or in connection with a default or event of default of Tenant under the First Mortgage, the First Mortgagee, upon the payment of all indebtedness secured by the First Mortgage and the satisfaction of the First Mortgage, shall surrender to Landlord the Demised Premises and the Improvements in its then existing AS IS condition without any representations or warranties whatsoever.

41. Memorandum of Lease. Each of the parties hereto will, promptly upon request of the other, execute in recordable form, a memorandum of this Lease in accordance with applicable statutory requirements for recording to place third parties on notice of the existence of this Lease and Landlord's and Tenant's respective rights and obligations hereunder.

42. No Partnership. Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease or any action taken under this Lease, a partner of Tenant, in Tenant's business or otherwise, or a member of any joint enterprise with Tenant.

43. No Oral Changes. None of the provisions of this Lease may be changed, waived, modified or terminated except by instrument in writing executed, with the consent of each Leasehold Mortgagee, by the Landlord and the Tenant delivered by each to the other.

44. Bind and Inure. The terms, covenants, conditions and agreements of this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of Article 6 (Title) and Article 22 (Assignment: Subletting) hereof.

45. Perpetuities Savings Clause. If any option or other provision under this Lease would, in the absence of the limitation imposed by this Article 45, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in property or the suspension of the power of alienation of property, then such option or other

provision shall be exercisable only during the period which shall end 20 years and six months after the date of death of the last survivor of the descendants of Joseph P. Kennedy (deceased father of the late President, John F. Kennedy) alive on the date of the execution and delivery of this Lease.

46. Governing Law. This Lease and the rights and obligations in respect hereof shall be governed by, and construed and interpreted, in accordance with the laws of the State in which the Demised Premises is located.

47. Attorneys' Fees. As used in this Lease, the terms "attorney's fees" and "reasonable attorneys' fees" shall mean fees based upon time actually spent and based upon normal hourly rates for similar matters charged by attorneys in the city where the attorney charging such fee is located.

[Any additional or substitute provisions required by the law of the state in which the Demised Premises is located which are reasonably necessary to cause this Lease (i) to create the leasehold interest intended to be created hereby, and (ii) to constitute a legal, valid and binding obligation of the parties hereto in accordance with its intended terms.]

[END OF TEXT]

STOP



IN WITNESS WHEREOF, Landlord and Tenant hereto have each caused this Lease to be duly executed, and delivered in their respective names and behalves, as of the date first set forth above.



Pool III - 369

SCHEDULE 1

Annual Base Rent: \$2,701.00

