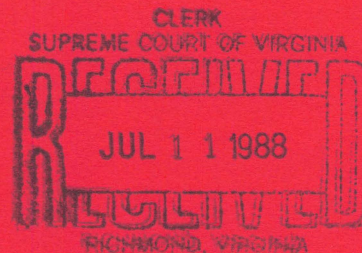


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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 870912

GREAT FALLS HARDWARE COMPANY OF RESTON,  
*Appellant,*

v.

SOUTH LAKES VILLAGE CENTER ASSOCIATES,  
LIMITED PARTNERSHIP,  
*Appellee.*

JOINT APPENDIX

John A. Keats, Esquire  
Richard J. Brownell, Esquire  
LAW OFFICES OF JOHN A. KEATS  
651 South Washington Street  
Alexandria, Virginia 22314

*Counsel for Appellant*

Robert E. Greenberg, Esquire  
Mitchell B. Weitzman, Esquire  
DESO & GREENBERG, P. C.  
1750 K Street, NW, Suite 400  
Washington, DC 20006

*Counsel for Appellee*



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VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED

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THE GREAT FALLS HARDWARE COMPANY OF RESTON )

Complainant, )

v. )

Chancery No. 92538

SOUTH LAKES VILLAGE CENTER ASSOCIATES )

LIMITED PARTNERSHIP )

South Lakes Village Center )

Reston, Virginia )

Serve: )

Herbert S. Miller, General Partner )

1204 Wisconsin Avenue, N.W. )

Washington, D.C. 20007 )

Defendants. )

BILL OF COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGES OF SAID COURT:

Your complainant, the Great Falls Hardware Company of Reston, a Virginia Corporation, respectfully represents as follows:

1. This is a suit for declaratory judgment and injunctive relief brought pursuant to the provisions of Section 8.01-184, et seq., of the Code of Virginia 1950, as amended, for the construction and interpretation of a lease dated May 17, 1983 between the Great Falls Hardware Company of Reston, a Virginia corporation, registered and licensed to do business in the Commonwealth of Virginia, your complainant herein, and South Lakes Village Center Associates Limited Partnership, a Virginia limited partnership, registered in Fairfax County in the Commonwealth of Virginia. A copy of said lease is attached

hereto as Exhibit No. I.

2. Section 5.02 of said lease contains a formula for calculating common area maintenance charges. The provision allows the landlord to recalculate at the end of each year the real amount paid by the landlord towards common area maintenance and to assess the tenant for the difference between that amount and that amount paid by the tenant. Section 5.02 also contains a sentence which provides "this provision shall be effective only so long as at least 95% of the other tenants of the shopping center are also required to comply with the terms and conditions as herein provided."

3. Puportedly, pursuant to this section, over the term of the lease the defendant, through its realty agent, has adjusted the rent and common area maintenance charges and submitted invoices for the same to the complainant.

4. On each occasion, after negotiation and discussion, your complainant tendered payment which was accepted by the defendant in satisfaction of complainant's obligation pursuant to defendant's adjustments. On June 3, 1986 defendant, through its agent, submitted an invoice dated May 15, 1986 alleging an arrearage of \$23,581.18 based in part on complainant's failure to pay common area maintenance (CAM) charges. A copy of this invoice and letter is attached hereto as Exhibit II. Thereafter, on June 25, 1986 a meeting was held between defendant's agent, complainant and complainant's counsel wherein defendant agreed to reassess its figures and reajust according to the lease. A question was raised at that time as to whether 95% of the other



tenants in the center were required to comply with the terms and conditions of that provision of the lease relating to common area maintenance as is set forth in complainant's lease.

5. Thereafter, on August 20, 1986 the complainant once again inquired as to whether 95% of the other tenants were required to comply with the same common area maintenance provision as is contained in complainant's lease. A copy of this letter is attached as complainant's Exhibit III.

6. On August 21, 1986 defendant's agent served on the complainant still another letter and another invoice alleging arrearages in the amount of \$21,956.27. A copy of this letter and invoice are attached hereto as complainant's Exhibit IV. On September 3, 1986 after a telephone conversation with the defendant's agent, complainant's counsel once again wrote a letter requesting clarification as to whether 95% of the other tenants were required to comply with the common area maintenance provision of complainant's lease. A copy of this letter is attached hereto as complainant's Exhibit V.

7. Finally, on September 5, 1986 defendant issued by certified mail a Notice of Default now claiming an arrearage of \$17,680.64 and demanding payment in five (5) days. This amount purportedly represents the amount defendant now claims is due after readjusting the common area maintenance charges back over the entire term of the lease.

8. The defendant is bound by the terms of the lease which it drafted, and that the defendant may not at this late date revise the figures at issue retroactively over the life of the lease.

9. Defendant's acceptance of complainant's payments after bonafide disputes over the term of the lease constitute an accord and satisfaction and that the defendant is therefore estopped from revising its figures and claiming an arrearage.

10. Upon knowledge and belief, less than 95% of the other tenants in the center are required to comply with the common area maintenance provision as set forth in complainants lease.

11. The defendant in fact knew that less than 95% of the other tenants were required to comply with this provision of this lease and as such, defendant's invoice requiring payment of common area maintenance charges was known by defendant to be fraudulent.

12. Defendant has willfully withheld from the complainant the knowledge that less than 95% of the other tenants are required to comply with the terms of the lease and further, to this date defendant refuses to respond to request for authentication and verification of the leases held by the other tenants. Such information is solely within the knowledge and access of the defendant. Accordingly, the complainant is entitled to a refund of any common area maintenance charges paid by it at any time when less than 95% of the other tenants in the center were required to comply with the common area maintenance provision as set forth in complainant's lease.

13. Based on defendant's assertion of a \$17,680.64 arrearage, it is defenants's contention that the complainant is in breach of the lease and that if the full amount is not paid immediately then defendant will seek possession of the

complainant's premises.

14. There exists an actual controversy and an actual antagonistic assertion and denial of right concerning the proper construction, interpretation and effect of the lease dated November 28, 1978. Such dispute is within the purview of Section 8.01-194, et seq., of the Code of Virginia 1950, as amended. Furthermore, your complainant has a justiciable interest therein.

WHEREFORE, your complainant prays that the Court will take jurisdiction of this proceeding; that the Court construe and interpret the lease of May 17, 1983 so as to determine the rights of the parties named herein, to determine what arrearages there are, if any, under the terms of the lease, to determine whether or not complainant is entitled to a refund of common area maintenance charges paid over the term of the lease, to determine the precise amount due and owing the parties under the lease, to determine whether the defendant is barred by the doctrine of accord and satisfaction and estoppel from seeking to hold the complainant in breach of the lease, to enjoin the defendant from seeking possession of the premises or to otherwise interfere with plaintiff's rights of quiet enjoyment under the lease until this matter is resolved, and to order such further, consequential or incidental relief as may be necessary and proper.

THE GREAT FALLS HARDWARE COMPANY OF RESTON  
By Counsel



By

  
John A. Keats

William F. Krebs

KEATS, KREBS & LECKEY

651 South Washington Street

Alexandria, Virginia 22314

(703) 836-1003

Counsel for Complainant

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THE GREAT FALLS HARDWARE COMPANY OF RESTON )

Complainant, )

v. ) Chancery No. 98538

SOUTH LAKES VILLAGE CENTER ASSOCIATES )  
LIMITED PARTNERSHIP )

Defendants. )

ANSWER AND GROUNDS OF DEFENSE TO COUNTERCLAIM

COMES NOW complainant/counter-defendant the Great Falls Hardware Company of Reston, by counsel, and responds to the Counter Bill of Complaint of the defendant/counter-complainant hereby states as follows:

1. Allegations contained in paragraph 1 of the Counter Bill of Complaint are admitted.

2. Allegations contained in paragraph 2 of the Counter Bill of Complaint are admitted.

3. Allegations contained in paragraph 3 of the Counter Bill of Complaint require no response insofar as the provisions of said lease speak for themselves. Complainant admits said lease was attached to the Bill of Complaint previously filed herein.

4. Allegations contained in paragraph 4 of the Counter Bill of Complaint require no response insofar as the provisions of said lease speak for themselves.

5. Allegations contained in paragraph 5 of the Counter Bill of Complaint are denied.

6. Allegations contained in paragraph 6 of the Counter Bill of Complaint are denied.

7. Allegations contained in paragraph 7 of the Counter Bill of Complaint state legal conclusions as to which no response is required.

8. Allegations contained in paragraph 8 of the Counter Bill of Complaint are admitted only to the extent that Great Falls Hardware Company received a November 25, 1986 letter from Western Management Corporation; no further response is required insofar as the contents of the said letter are self-evident.

9. Allegations contained in paragraph 9 of the Counter Bill of Complaint are denied.

10. Allegations contained in paragraph 10 of the Counter Bill of Complaint state legal conclusions as to which no response is required.

#### AFFIRMATIVE DEFENSES

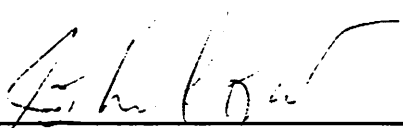
11. Counter defendant has substantially complied with Section 2.02 of the said lease.

12. Counter complainants have possession of said unaudited statements of the gross sales for Great Falls Hardware Company of Reston.

13. Counter complainants are equitably estopped by seeking relief contained herein by their own wrongful conduct and their unclean hands.

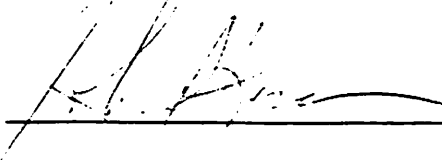
THE GREAT FALLS HARDWARE COMPANY OF RESTON  
By Counsel



  
\_\_\_\_\_  
John A. Keats  
KEATS, KREBS & LECKEY  
651 South Washington Street  
Alexandria, Virginia 22314  
(703) 836-1003

CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the Answer to Counterclaim was mailed, postage prepaid to James P. Wheeler, Esquire, Deso, Greenberg & Thomas, 1750 K Street, N.W., Suite 400, Washington, D.C. 20006 this 7<sup>th</sup> day of April, 1987.

  
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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

APR 15 1987

CLERK OF CIRCUIT COURT  
FAIRFAX COUNTY, VA.

----- x

GREAT FALLS HARDWARE

COMPANY OF RESTON,

Complainant,

-vs-

IN CHANCERY NO. 98538

SOUTH LAKES VILLAGE

CENTER ASSOCIATES

LIMITED PARTNERSHIP,

Defendants.

----- x

Circuit Courtroom 4G  
Fairfax County Courthouse  
Fairfax, Virginia

Monday, April 13, 1987

The above-entitled cause came on to be heard before  
the HONORABLE QUINLAN H. HANCOCK, Judge, in and for the  
Circuit Court of Fairfax County, in the Courthouse, Fairfax,  
Virginia, commencing at 10:01 o'clock a.m.

APPEARANCES:

On Behalf of the Complainant:

JOHN A KEATS, ESQUIRE

1 ninety-five percent of the other tenants were required to  
2 comply with the terms and conditions as provided in our  
3 lease. We never got an answer.

4 Finally, there was a registered letter sent  
5 on September 5th claiming that Mr. Gaul and Great Falls  
6 Hardware Store were in default in an arrearage in the  
7 amount of \$17,686.64, demanding payment within five days.

8 At this point, because there had been so many  
9 different figures submitted to Great Falls Hardware Store  
10 and because of the fact that we had never received an  
11 answer as to whether or not there had been ninety-five  
12 percent compliance, this suit was filed.

13 Basically, our case is that if ninety-five  
14 percent of the other tenants are required to comply with  
15 the same conditions that Mr. Gaul has in his lease as it  
16 says, 'herein provided', then Mr. Gaul owes the money.  
17 On the other hand, if ninety-five percent are not required  
18 to -- resulting in the economic disadvantage to Great  
19 Falls Hardware Store -- not only is Mr. Gaul not required  
20 to pay that arrearage, but additionally, he should be  
21 recompensed for the common area maintenance charges that he  
22 has paid over the terms of the lease at times when ninety-  
23 five percent were not in compliance.



1 We will show Your Honor a map indicating --  
2 a plat that will indicate the stores in the center, the  
3 number of tenants and so forth.

4 Pursuant to a discovery request that we made,  
5 we were finally provided -- Your Honor may remember the  
6 day we had the argument, we were provided only those  
7 sections of the leases which dealt with common area mainte-  
8 nance and -- Your Honor will have to excuse me for huffing  
9 and puffing -- I've got a cracked rib. We were only  
10 provided with those sections of the leases dealing with  
11 common area maintenance so as to compare the provision  
12 dealing with common area maintenance.

13 We will show the Court that there are approximately  
14 twenty-seven tenants in the center -- that at least thirty  
15 percent are not required to comply with the terms and  
16 conditions as provided herein in our lease. And, that  
17 therefore Mr. Gaul should not be responsible for that common  
18 area maintenance charge; that, secondly, in addition he  
19 should be entitled to a refund of the common area mainte-  
20 nance charges that he has made over the period of time  
21 when only thirty percent or more -- up to ninety-five  
22 percent were required to pay that common area charge.

23 ~~Your Honor, I have some cases that I will be~~

~~\* \* \*~~

1 really makes no difference at all because based on that  
2 report he owes no percentage rent.

3 Thank you.

4 THE COURT: Mr. Wheeler.

5 MR. WHEELER: Your Honor, this is a relatively  
6 simple case. The evidence will indicate that the parties  
7 entered into a lease agreement back in 1983 and that the  
8 agreement provided for payments of various amounts.

9 There was rent in the form of minimum rent and  
10 there were also additional rent charges in the form of  
11 cam charges -- central area maintenance, real estate taxes,  
12 percentage rent and various promotional charges.

13 The evidence will indicate that the tenant,  
14 Great Falls Hardware, paid these charges initially and I  
15 refer to the additional rent charges. The evidence will  
16 indicate that they have been paying their minimum rent --  
17 at least up until this past month. And, the evidence will  
18 also indicate that they are in default right now because  
19 they have not made that payment.

20 There came a time when they stopped paying  
21 these minimum rent charges. They had various purported  
22 reasons -- I think those are set forth in their bill of  
23 complaint. These, if I could just summarize are that:

1 a) The landlord cannot revise various amounts of these  
2 figures retroactively. We will show that the various  
3 terms of the lease provide explicitly that there can be  
4 a retroactive calculation. In fact, there has to be  
5 because they're initially billed based on estimated amounts  
6 and then at the end of the year when the actual amounts --  
7 for instance, the actual real estate taxes, the actual  
8 maintenance charges are computed then the landlord goes  
9 back and revises the figure either up or down so the  
10 tenant either gets a credit or there is an arrearage which  
11 has to be paid just based on the difference between actual  
12 and the calculated amount. Again, this is spelled out  
13 specifically in the lease.

14 The main provision that we're concerned with  
15 here is a clause in the cam and the real estate section  
16 which has to do with a ninety-five percent compliance.  
17 Now, these sections are effective, we would submit the  
18 evidence will show in that there is one hundred percent  
19 compliance. The term specifically refers to their ninety-  
20 five percent compliance with the terms in the lease while  
21 the terms and conditions in the lease have to do with  
22 payment of the additional rent charges -- payment of the  
23 cam, payment of the real estate. It doesn't refer to

1 ninety-five percent have to pay according to a specific  
2 formula. Rather, the phrase specifically says ninety-five  
3 percent compliance not with how they're paid. And, we  
4 would submit that the evidence will show that one hundred  
5 percent -- actually, it is somewhat less than a hundred  
6 percent simply because Great Falls Hardware is not complying  
7 with the terms and conditions, but that's why we're here.  
8 Other than that, one hundred percent do comply with the  
9 terms and conditions.

10 We would submit that in looking at the plain  
11 language of the lease and the intent of the parties we  
12 will show that this is how that phrase should be construed.  
13 We would submit that there is no ambiguity in the terms  
14 of the lease. It says specifically at least ninety-five  
15 percent compliance. But even if this Court were to find  
16 that there is an ambiguity, we would submit that the  
17 ambiguity be resolved in favor of the landlord based on  
18 the intent of the parties. And, we will show that the  
19 intent of the parties was that ninety-five percent to a  
20 hundred percent of the tenants comply so that there would  
21 not be inequities in that only a couple of the tenants  
22 pay for the central area charges and that the landlord  
23 actually enforce to a ninety-five percent to one hundred

1 percent degree the payment of these charges so that the  
2 tenants -- so that the center will not deteriorate.

3 Now, I also will be relying on some cases.  
4 Those are specifically Taylor v. Taylor 11 S.E. 2d 587;  
5 Bell v. Hagmann 107 S.E. 2d 426; and, Kiser v. Amalgamated  
6 Clothing Workers which is 194 S.E. 724. And, I have copies  
7 of those for the Court at this time.

8 (Mr. Wheeler handed documents to the Bailiff.)

9 And, just to conclude, Your Honor, this does  
10 come down to basically how this provision and various  
11 other provisions of the lease should be interpreted. And,  
12 we would submit that there is no ambiguity and as a matter  
13 of law, the Court should rule that these additional rent  
14 charges should be paid to the landlord.

15 Thank you.

16 THE COURT: Let me be sure, gentlemen.

17 Is there any dispute about the alleged amount  
18 or not?

19 MR. KEATS: No, sir. At this point there is not.  
20 That was the bond we posted, Your Honor.

21 THE COURT: All right.

22 Do you agree?

23 MR. WHEELER: That was the amount that was owing

\* \* \*

1 like to see one order.

2 (The Bailiff handed a document to Mr. Keats.)

3 MR. KEATS: Thank you.

4 (Pause.)

5 MR. KEATS: Your Honor, I would point out that  
6 in the restraining order that was signed by Your Honor in  
7 September 12, 1986, Your Honor made that decree contingent  
8 upon the Complainant's continuing to pay the base monthly  
9 rent as those charges become due and owing. And, there is  
10 also a phrase that says, 'exclusive of cam charges'.

11 Call Ms. Newell, please.

12 Whereupon,

13 DEBORAH NEWELL

14 a witness, was called for examination by counsel on behalf  
15 of the Complainant, and, after having been duly sworn by  
16 the Clerk of the Court, was examined and testified, as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. KEATS:

20 Q Ms. Newell, will you please state your name  
21 and your occupation?

22 A My name is Deborah Newell. I'm property manager  
23 for Western Management Corporation.

1 Q And, do you operate a shopping center for  
2 South Lakes Village Center?

3 A We are the management company for South Lakes  
4 Village.

5 Q Are you familiar with the lease that South Lakes  
6 Center has with the Great Falls Hardware Company of Reston,  
7 Virginia?

8 A Yes. I am.

9 Q And, how are you familiar with that?

10 A I am property manager for the center. I'm  
11 familiar with all the leases of the tenants in the center.

12 Q Okay.

13 I'm going to show you -- which I'd like to have  
14 marked as Exhibit No. 1 -- and ask if you can identify it?

15 (The document referred to above  
16 was marked Complainant's  
Exhibit No. 1 for identification.)

17 (Mr. Keats handed a document to the witness for  
18 her examination.)

19 A That is the lease between Great Falls Hardware  
20 and South Lakes Village Center Associates.

21 BY MR. KEATS:

22 Q Now, I'm going to ask you to turn from that lease  
23 to section 5.01 -- strike that. 5.01 and 5.02.



1 A (The witness complied with the request.)

2 MR. KEATS: The reason I'm doing this Your  
3 Honor is because the copies that we've been able to  
4 obtain are somewhat less than legible.

5 BY MR. KEATS:

6 Q There is a line at the end of the common area  
7 maintenance provision which takes it down to a footnote;  
8 is there not?

9 A Yes. There is.

10 Q And, that footnote given to that provision says  
11 that, 'This provision shall be effective only so long as  
12 at least ninety-five percent of the other tenants of the  
13 shopping center are also required to comply with the terms  
14 and conditions as herein provided.'; does it not?

15 A Yes. It does.

16 Q Ms. Newell, were you present when this lease  
17 was negotiated?

18 A No. I was not.

19 Q Who was?

20 A I cannot answer that question because I wasn't  
21 even with the company at that time.

22 ~~Q I'm going to show you what we'd like to have~~  
23 ~~marked as Exhibit No. 2 and ask if you can identify this?~~

(The document referred to above  
was marked Complainant's  
Exhibit No. 2 for identification.)

(Mr. Keats handed a document to the witness for  
her examination.)

A That is a leasing plan for South Lakes Village.

BY MR. KEATS:

Q Does that indicate the location and the stores  
in the center, itself?

A Yes. It does.

MR. KEATS: Your Honor, I'm going to move the  
admission of Exhibits No. 1 and 2 so the Court can see them.

MR. WHEELER: No objection, Your Honor.

THE COURT: To be received.

(The documents heretofore marked  
Complainant's Exhibits No. 1  
and No. 2 were received in evidence.

BY MR. KEATS:

Q Ms. Newell, I'm now going to show you an Exhibit  
I'd like to have marked as Exhibit No. 3 and 3A, I suppose.  
It's a letter dated June 3, 1986 and an invoice.

(The documents referred to above  
were marked Complainant's  
Exhibits No. 3 and No. 3A for  
identification.)

(Mr. Keats handed documents to the witness for

1 her examination.)

2 BY MR. KEATS:

3 Q Are you the author of that letter, ma'am?

4 A Yes. I am.

5 Q Could you tell us what the purpose of that  
6 letter was?

7 A The purpose of the letter was to do an analysis  
8 of the account to list the payments, the charges and finding  
9 any arrearages that were owed by Great Falls Hardware.

10 Q And, in that letter you list an arrearage of  
11 what?

12 A \$23,581.18.

13 Q Was that figure a correct one?

14 A At the time, we believed it to be a correct  
15 figure.

16 Q You believed it to be a correct figure?

17 A Our records indicated as such when it was  
18 prepared.

19 Q When you checked with Mr. Gaul, did you not find  
20 that that was an incorrect figure, that there had been  
21 payments made?

22 A We found that there were some payments that had  
23 not been properly applied.

1           Q       I'll show you, then, the next Exhibit -- and I  
2       guess that would be 4 -- 4 and 4A.

3                               (The documents referred to above  
4                               were marked Complainant's  
5                               Exhibits No. 4 and No. 4A for  
6                               identification.)

7                               (Mr. Keats handed documents to the witness for  
8       her examination.)

9                               MR. KEATS: First of all, I'll move 3 and 3A  
10       into evidence, if I may, Your Honor.

11                              MR. WHEELER: No objection.

12                                       (The documents heretofore marked  
13                                       Complainant's Exhibits No. 3  
14                                       and No. 3A were received in  
15                                       evidence.)

16                              BY MR. KEATS:

17           Q       Can you tell us what No. 4 and 4A are?

18           A       That is the revised invoice that was prepared  
19       on August 20th.

20           Q       Now, that revised invoice was prepared as a  
21       result of discussions with Mr. Gaul; is it not?

22           A       That's correct.

23           Q       And, isn't it a fact that during the course of  
24       that discussion an inquiry was made as to whether or not  
25       ninety-five percent of the tenants of the center were  
26       required to comply with the same terms and conditions of

1 the common area maintenance provision as contained in  
2 Mr. Gaul's lease?

3 A That was asked.

4 Q And, what was the response?

5 A The response was that ninety-five percent of the  
6 tenants do comply and pay cam at South Lakes.

7 Q Well, isn't it a fact that the statement was that  
8 they just pay common area maintenance charges?

9 A That's correct.

10 Q You didn't allege that they comply to the same  
11 terms and conditions that Mr. Gaul did; did you?

12 A There was no allege of -- of made.

13 Q Now, what was the figure in 4A -- the cam figure  
14 you put forth in that one?

15 A The cam figure?

16 Q Yes, ma'am -- or the arrearages. I'm sorry.

17 A The arrearage was \$21,956.27.

18 Q Was that correct?

19 A Yes. It was.

20 Q Now, I'm going to show you -- which I will mark  
21 as Exhibit No. 5 --

22 (The document referred to above  
23 was marked Complainant's  
Exhibit No. 5 for identification.)

1 (Mr. Keats handed a document to the witness for  
2 her examination.)

3 BY MR. KEATS:

4 Q Can you tell me what that is?

5 A That is a letter from your office concerning  
6 the common area maintenance provisions of Great Falls  
7 Hardware's lease.

8 Q And, does that letter not ask you again as to  
9 whether ninety-five percent of the other tenants comply?

10 A It states a question if ninety-five percent of  
11 the tenants are required to comply with the specific  
12 provision.

13 Q Did you respond to that letter?

14 A I really don't remember. I believe it was sent  
15 to our counsel.

16 Q Now -- at any rate you did not respond?

17 A As I say, I don't remember.

18 Q How many tenants are there in the Great Falls --  
19 strike that -- the South Lakes Center?

20 A I don't have an exact count. I would say approxi-  
21 mately thirty.

22 Q Would twenty-seven be more like it?

23 A Possibly.

\* \* \*

1 MR. KEATS: If Your Honor would indulge me for  
2 just a moment.

3 (Pause.)

4 BY MR. KEATS:

5 Q I'll show you now what we'd like to mark as  
6 Defendant's -- Plaintiff's Exhibit No. 7.

7 (The document referred to above  
8 was marked Complainant's  
9 Exhibit No. 7 for identification.)

10 (Mr. Keats handed a document to the witness for  
11 her examination.)

12 BY MR. KEATS:

13 Q Could you tell me what that is?

14 A It is the cam section from the Modern Athlete  
15 lease -- who is a tenant at South Lakes.

16 MR. KEATS: Your Honor, I'd like to have that  
17 Exhibit and the last Exhibit marked -- entered into evidence.

18 THE COURT: All right.

19 (The documents heretofore marked  
20 Complainant's Exhibits No. 6  
21 and No. 7 were received in  
22 evidence.)

23 MR. WHEELER: Your Honor, if I may?

I believe I can -- if Mr. Keats is going to go  
down the path that I think he is, I can shorten this



1 significantly. If he's going to go through all the leases  
2 and demonstrate that less than ninety-five percent pay under  
3 the exact same formula as Great Falls Hardware, we'll  
4 stipulate that there are approximately three or four  
5 different ways that cam real estate can be calculated.  
6 There's different formulas and those are individually  
7 negotiated.

8 We do admit that less than ninety-five percent  
9 pay precisely the way Great Falls Hardware does. All we're  
10 saying is the ninety-five percent has to do with compliance  
11 -- whether or not ninety-five to a hundred percent comply  
12 with their various cam and real estate sections. And, I  
13 don't know if we need to go through each one of the leases.

14 THE COURT: Do you accept the stipulation?

15 MR. KEATS: Your Honor, I will accept the  
16 stipulation. I'd like to enlarge upon it. I'm prepared

17 to show that there are approximately seven of the tenants  
18 in place who pay pursuant to different formulas resulting  
19 in a difference of approximately a dollar per square foot  
20 for those seven people. And, if they're willing to accept  
21 that, certainly. I'll go through the list of who they are.

22 That would be the Hair Cuttery, Peoples Drug  
23 Store, First Virginia Bank, Crown Books, Harvest Trading,

\* \* \*

1 for her examination.)

2 A This one is for Modern Athlete.

3 BY MR. KEATS:

4 Q I'll ask you to compare that to Mr. Gaul's  
5 lease which is Exhibit No. 1, if I may.

6 (The Bailiff handed a document to the witness  
7 for her examination.)

8 A The Modern Athlete lease is calculated on the  
9 basis of grossed -- gross lease and occupied area.

10 Q And, that of course, is not the calculation of  
11 Mr. Gaul's lease -- or the formula in Mr. Gaul's lease?

12 A Mr. Gaul's lease is calculated on the net.

13 Q That is a difference in the terms and conditions.

14 A It's a difference in the calculation.

15 Q It also has different language; does it not?

16 A There is language that is struck out of the  
17 Modern Athlete lease.

18 Q And, language that is put in?

19 A There is some language that is put in.

20 Q And, that results in a difference of about a  
21 dollar per square foot between Mr. Gaul and Modern Athlete;  
22 does it not?

23 A I don't see a calculation in front of me. I can't

1 answer that.

2 Q I'll ask you to look at this one. This would  
3 be -- I'm sorry, I've lost track of numbers.

4 THE CLERK: Number eight.

5 MR. KEATS: Number eight?

6 THE CLERK: Yes, sir.

7 (The document referred to above  
8 was marked Complainant's  
Exhibit No. 8 for identification.)

9 (The Bailiff handed a document to the witness  
10 for her examination.)

11 BY MR. KEATS:

12 Q Can you tell me what that is?

13 A This is the Hair Cuttery.

14 Q Okay.

15 And, I'd like you to compare that lease with  
16 that provision -- the cam provision there with the cam  
17 provision of Mr. Gaul's lease and ask you if they are the  
18 same or are they different?

19 (Pause.)

20 A This appears to be a net lease.

21 Q In Mr. Gaul's lease under the cam, there is a  
22 management fee requirement; is there not?

23 A Yes. There is.

1 Q Is there one in the Hair Cuttery?

2 A It does not specifically state a management fee.

3 Q But Mr. Gaul's does; does it not?

4 A Yes. It does.

5 Q Now, I'm going to show you -- which we'll ask

6 to have marked as No. 9.

7 (The document referred to above  
8 was marked Complainant's  
Exhibit No. 9 for identification.)

9 (The Bailiff handed a document to the witness  
10 for her examination.)

11 BY MR. KEATS:

12 Q Can you tell me what that is?

13 A This is the section for Peoples Drug Stores.

14 Q Okay.

15 Compare the provision for common area maintenance  
16 in Peoples Drug Store to that of Mr. Gaul, please -- or  
17 Great -- strike that. Great Falls Hardware.

18 (Pause.)

19 A This is calculated on a gross basis.

20 Q There's also a locked twelve percent increase  
21 per year; is there not?

22 A Yes. There is.

23 Q And, there also is no management fee required;

1 is there?

2 A That is correct.

3 Q And, would it be fair to say that based on  
4 calculations contained in that lease that there is a  
5 difference of about a dollar per square foot between that  
6 and Mr. Gaul's?

7 A I can't answer that without seeing the calcula-  
8 tions.

9 Q I'll ask you to look at Exhibit No. 10.

10 (The document referred to above  
11 was marked Complainant's  
Exhibit No. 10 for identification.)

12 (The Bailiff handed a document to the witness  
13 for her examination.)

14 BY MR. KEATS:

15 Q Can you tell us what that is?

16 A This is First Virginia Bank.

17 Q The provision relating to common area maintenance;  
18 right?

19 A Right. That's correct.

20 Q And, I'd ask you to compare that with the lease  
21 for South Lakes -- strike that. Great Falls Hardware.

22 (Pause.)

23 A This is also done on a gross basis.

1 Q And, that is a difference -- Mr. Gaul's lease  
2 which is a net basis; is it not?

3 A Uh-huh. That's correct.

4 Q And, do you accept our calculation that causes  
5 a difference of a dollar?

6 MR. WHEELER: Your Honor, I object to Mr. Keat's  
7 continually saying that there's a difference of a dollar.  
8 He's putting no evidence that there is.

9 MR. KEATS: I've put in evidence.

10 THE COURT: Well, he's asking her a question.  
11 She --

12 MR. WHEELER: And, she keeps saying that she  
13 doesn't have the figures in front of her.

14 THE COURT: Well, I understand that.

15 BY MR. KEATS:

16 Q I'll show you Exhibit No. 11.

17 (The document referred to above  
18 was marked Complainant's  
Exhibit No. 11 for identification.)

19 (Mr. Keats handed a document to the witness  
20 for her examination.)

21 A This is the section for the Crown Books lease.

22 BY MR. KEATS:

23 Q Is that different from the lease for Great Falls

1 Hardware?

2 A This is calculated also on a gross basis.

3 Q And, there is no management fee required there;  
4 is there?

5 A No. There is not.

6 Q I'd like you to look at No. 12.

7 (The document referred to above  
8 was marked Complainant's  
Exhibit No. 12 for identification.)

9 (Mr. Keats handed a document to the witness  
10 for her examination.)

11 A This is Harvest Trading Company.

12 Q May I ask you to compare that with Great Falls  
13 Hardware Store?

14 (Pause.)

15 A This is also calculated on a gross basis.

16 Q And, I'm sure again you cannot tell us what  
17 difference that makes economically with Mr. Gaul?

18 A No. I can't.

19 Q But it is different in terms of the terms and  
20 conditions in the lease, itself?

21 A The calculations are different.

22 Q They are different terms and different conditions;  
23 are they not?



1 A That's a matter of interpretation.

2 Q Thank you.

3 Q I'll show you No. 13.

4 (The document referred to above  
5 was marked Complainant's  
6 Exhibit No. 13 for identification.)

7 (Mr. Keats handed a document to the witness  
8 for her examination.)

9 A This is the lease for Village Classics.

10 BY MR. KEATS:

11 Q Can you tell us if there is a difference between  
12 Village Classics?

13 A This is also computed on a gross basis.

14 Q No. 14?

15 (The document referred to above  
16 was marked Complainant's  
17 Exhibit No. 14 for identification.)

18 (Mr. Keats handed a document to the witness  
19 for her examination.)

20 A This is the section for Perpetual American Bank.

21 BY MR. KEATS:

22 Q Okay.

23 Is there a difference between that cam provision  
and the one in Mr. Gaul's lease -- of Great Falls Hardware?

(Pause.)

1           A       It's also calculated on a gross basis.

2           MR. KEATS:  If Your Honor would indulge me for  
3 just a moment.

4                   (Pause.)

5           BY MR. KEATS:

6           Q       Now, is it your testimony, ma'am, that you have  
7 not looked at these individual cam provisions and made  
8 calculations to determine the square footage in each of  
9 those cases?

10          A       Not -- not presently.

11          Q       Do you have any independent recollection of what  
12 the cam provision per square foot is either for Exhibit  
13 No. 7 through 14?

14          A       I couldn't really say.

15          MR. KEATS:  If Your Honor would indulge me for  
16 just a moment.

17                   (Pause.)

18          MR. KEATS:  I have no further questions, Your  
19 Honor.  I'll ask if the Exhibits No. 7 through No. 14 be  
20 introduced into evidence.

21                               (The documents heretofore marked  
22 Complainant's Exhibit Nos. 8  
23 through 14, inclusive, were  
received in evidence.)

1 THE COURT: Cross examine?

2 MR. WHEELER: Your Honor, I've no questions on  
3 cross examination right now. I would like to reserve the  
4 right to call Ms. Newell as my witness in my case in chief.

5 THE COURT: All right.

6 Thank you, Ms. Newell. If you'll be kind enough  
7 to step down, please. If you'll wait in the witness room,  
8 please.

9 (The witness stood aside.)

10 MR. KEATS: Mr. Gaul, would you please take the  
11 stand?

12 Whereupon,

13 JOHN GAUL

14 the Complainant, was called for examination by counsel on  
15 his own behalf, and, after having been duly sworn by the  
16 Clerk of the Court, was examined and testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. KEATS:

19 Q Would you please state your name and your  
20 occupation, sir?

21 A My name is John B. Gaul and I'm president and  
22 owner of Great Falls Hardware Company of Reston.

23 Q Were you the person who entered into a lease

1       which is the subject of this lawsuit?

2           A       That's correct, sir.

3           Q       You are familiar with the cam provisions in that  
4       lease?

5           A       Yes, sir.

6           Q       And, there is a provision in that lease directly  
7       below the cam provisions as printed which states, 'This  
8       provision shall be effective only so long as at least  
9       ninety-five percent of the other tenants of the shopping  
10      center are also required to comply with the terms and  
11      conditions as herein provided.'

12          A       That's correct.

13          Q       Did you negotiate that, sir?

14          A       Yes, sir. I did.

15          Q       Who did you negotiate that with?

16          A       The leasing agent at the particular time which  
17      was Dennis Galanis and with my attorney, at that particular  
18      time, Larry Shullman.

19          Q       What was your reason for doing that, Mr. Gaul?

20          A       The -- basically, it's to protect the company  
21      from paying more than its fair share of common area  
22      maintenance, knowing that different arrangements could be  
23      made with other tenants.

1 Q Now, did there come a time, sir, when you were  
2 asked to compare the common area provisions in Modern  
3 Athlete, Hair Cuttery, Peoples, First Virginia Bank, Crown  
4 Books, Harvest Trading, Village Classics and Perpetual  
5 American Bank with the provisions contained in your lease?

6 A No, sir. Not until this -- the current trial.

7 Q That's what I'm asking, sir.

8 A Yes.

9 Q Did I not ask you to do that?

10 A Yes. Yes. I did calculate.

11 Q And, did you, in fact, use the formulas and  
12 prepare figures with respect to each of those cam provisions?

13 A Yes. I did.

14 Q As compared to yours?

15 A Yes. I did.

16 Q Can you tell us what your square foot cam charge  
17 was in 1985?

18 A Based on the calculation, \$2.23.

19 Q Now, taking it one at a time. And, you may refer  
20 to your notes if you feel it necessary.

21 Modern Athlete. Did you, using the formula set  
22 forth in Modern Athlete's cam provision, determine what their  
23 square foot cost was?

1           A       Yes. I did. Based on 1985 figures that I have  
2 here, sir. .

3           Q       Okay.

4                   And, what was that?

5           A       I'd have to refer to my notes, but I believe it  
6 was a \$1.48 or a \$1.45 -- something like that.

7                   MR. KEATS: Your Honor, may I show him this note?  
8 These are the calculations. I'll show them to counsel.

9                   (Mr. Keats handed a document to Mr. Wheeler for  
10 his examination.)

11                  THE COURT: If he needs them to refresh his  
12 recollection, he can look at them.

13                  (Mr. Keats handed a document to the witness  
14 for his examination.)

15                  THE WITNESS: It was a \$1.48 per square foot.

16                  BY MR. KEATS:

17           Q       \$1.48 per square foot?

18           A       That's correct.

19           Q       Now, how did you arrive at that figure?

20           A       By taking the gross -- the common area maintenance  
21 which was quoted at 153,336 and dividing it by the -- the  
22 103,290 which was the square footage -- the gross square --  
23 the square footage of the center less the major tenant.

1 Q And, that is a different formula then what's  
2 compared -- contained in your lease; is that correct?

3 A That's correct.

4 Q Resulting in a difference of about .80 per  
5 square foot?

6 A Approximately. Whatever \$2.23 less \$1.48 is.

7 Q Now, going to the Hair Cuttery which is Exhibit  
8 No. 8 -- strike that. I'll go on to No. 9.

9 Peoples Drug.

10 A Yes, sir.

11 Q Did you also calculate pursuant to their formula  
12 -- their common area maintenance?

13 A Yes. I did.

14 Q Did you use the same method that you told us  
15 before?

16 A There's -- the method was different because the  
17 number was based on the gross leasable area of the space  
18 which is different than the gross area of the space less  
19 the major tenant.

20 Q And, is it also true that there's no management  
21 fee in that?

22 A That's correct.

23 Q What was the difference between your store and



1 and that store as a result?

2 A Peoples Drug Store was paying approximately  
3 \$1.45 a square foot.

4 Q Let me ask you to go now to No. 10 which is  
5 First Virginia Bank.

6 A (The witness complied with the request.)

7 Q Did there come a time when you calculated,  
8 pursuant to their provisions, what their common area maintenance was as opposed to yours?  
9

10 A The best I could do was estimate the -- the  
11 number is different, but the best I could do was to estimate  
12 the square footage of that facility based on the plans that  
13 I had.

14 Q How did you determine the square footage?

15 A By measuring out the way it was drawn on the  
16 plat that I received when I signed the lease.

17 Q There is a scale there on the plat, itself, which  
18 allows you to use a ruler, for example, to determine the  
19 square footage?

20 A That's correct.

21 Q Are the terms and provisions -- the terms and  
22 conditions in First Virginia Bank different than yours?

23 A Yes, sir.

1 Q In what fashion?

2 A Well, they use a different formula. It's based  
3 on the gross leasable area of the center which is -- I  
4 approximate to be because of not knowing the exact square  
5 footage of First Virginia Bank -- to be 106,000+ square  
6 feet and they do not have a management fee.

7 Q That 106,000 -- did you say --

8 A 106,024 square feet and I'm approximating that.

9 Q That's based on however you're measuring the  
10 plat?

11 A That's correct. Yeah.

12 Q And, what did you determine their common area  
13 maintenance charge per foot was?

14 A It would be approximately \$1.18 per square foot.

15 Q So that's more than a dollar less than yours?

16 A That's correct.

17 Q I'd ask you to look at No. 11 which is Crown  
18 Books.

19 A (The witness complied with the request.)

20 Q Did you perform the same calculations there?

21 A Yes, sir. I did.

22 Q Using the provisions contained in their lease?

23 A That's correct.

1           Q       What was the difference between their lease and  
2       your lease?

3           A       It was basically a different formula that  
4       used the exact square footage which was 2970 and the gross  
5       leasable area of the space which again I had to approximate  
6       at 106,024 based on the measurements I had to take.

7           Q       Those measurements again were taken from the plat  
8       containing the scale and using a ruler?

9           A       That's correct.

10          Q       And, what did you come up with as their common  
11       area maintenance per foot?

12          A       \$1.55, approximately.

13          Q       I'd ask you to look at No. 12 which is Harvest  
14       Trading.

15          A       (The witness complied with the request.)

16          Q       Did you again perform the same calculations?

17          A       Yes. I did.

18          Q       Pursuant to the terms of their lease?

19          A       That's correct.

20          Q       Does their lease differ from yours in terms of  
21       the cam provision?

22          A       Yes. They have a major tenant exclusion on it.

23          Q       And, what did that result in?

1           A       A square foot charge of approximately \$1.48 per  
2 square foot.

3           Q       \$1.48 per square foot?

4           A       That's correct.

5           Q       Going on to No. 14 which is -- let's see. I'm  
6 sorry. 13 is Village Classics. Would you look at that one,  
7 please?

8           A       (The witness complied with the request.)

9           Q       Did you make the same calculations there again?

10          A       Yes. I did. And, they had a major tenant  
11 exclusion which resulted in a square foot charge of \$1.48.

12          Q       Your lease does not contain that major tenant  
13 exclusion?

14          A       My lease -- that's correct.

15          Q       Going on to No. 14 which is Perpetual Bank.  
16 Did you again perform those calculations?

17          A       I performed the calculation. Yes, sir.

18          Q       And, what did you --

19          A       Their calculation was -- is based on gross  
20 leasable area of the center which is approximately 106,024  
21 Again, I had to measure the square footage based on the  
22 plat and I came up with approximately 3300 feet and this  
23 is how I'm arriving at these numbers. But using that formula,

1 I came up with approximately \$1.45 a square foot.

2 Q Now, Mr. Gaul, have you also over the period of  
3 time looked at your records and determined how much common  
4 area maintenance you have actually paid?

5 A Yes. I have.

6 Q And, how did you do that?

7 A By breaking out the minimum rent charges, the  
8 real estate tax charges, promotional fund dues and the  
9 common area maintenance charges.

10 Q How much common area maintenance have you paid  
11 since this lease was in operation?

12 A I'd have to look at my notes, but I believe it's  
13 approximately \$9,600.00.

14 Q Do you have your notes here?

15 A Yes. I do.

16 The number is \$9,652.21.

17 Q Now, Mr. Gaul, how much base rent do you actually  
18 pay per month?

19 A I'd have to go back and check, but right now it's  
20 based at \$8.80 a square foot times 5,229 square feet.

21 Q Which approximately works out to --

22 A I believe it's 30 -- approximately \$3,400.00,  
23 \$3,500.00 a month.

1 Q And, have you been paying that rent?

2 A Yes, sir. I have.

3 Q Have you paid April's rent yet?

4 A Yes. I have.

5 Q When did you pay it?

6 A I sent the check out, I believe, on the eighth.

7 And, there's a ten day provision within the lease that  
8 allows me ten days -- a ten day grace period.

9 Q So in other words, until the -- when is your  
10 rent do?

11 A It's due on the first.

12 Q So you're allowed that up until the tenth to have  
13 that rent in?

14 A It's -- there's a ten day provision. Yes, sir.

15 Q Has anybody sent you any kind of a default letter  
16 -- anything?

17 A No, sir.

18 MR. KEATS: I have no further questions.

19 THE COURT: Questions?

20 MR. WHEELER: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. WHEELER:

23 Q When did you negotiate this lease?

1 A Approximately -- I believe it was May of '83.

2 Q Were you in on all of the discussions?

3 A Yes. I was.

4 Q Were you in on all discussions regarding each  
5 of the provisions of the lease?

6 A Yes. I was.

7 Q Are you aware if, at the time you negotiated  
8 the lease, other tenants were already in the shopping center?

9 A I have no idea. I -- to answer your question,  
10 yes, I believe there were other tenants in the shopping  
11 center. However, I don't know who they were at the time.

12 Q Isn't it true that you wanted the clause regarding  
13 the ninety-five percent compliance so that all of the  
14 tenants would actually be forced to comply with the cam  
15 charges so that you wouldn't be, for instance be, left  
16 paying a disproportionate share of the cam charges?

17 A I don't understand the question.

18 Q Wouldn't you say that the reason that you had  
19 the ninety-five percent compliance provision put in the  
20 lease -- wouldn't you say that the reason for that is so  
21 that the landlord did not forego collecting cam charges  
22 from other tenants and that the shopping center wouldn't  
23 deteriorate?

1 A No. That's not true.

2 Q What was your reason?

3 A The reason was as I said before that I was not  
4 -- that I would not be paying on a per square foot basis  
5 more than anybody else would be paying.

6 Q Isn't it true that you could have negotiated  
7 a different clause regarding the actual calculation?

8 MR. KEATS: Your Honor, I would object to the  
9 form of that question. He could have done all kinds of  
10 things. The question is what did he do here?

11 THE COURT: Isn't that speculation at this point?

12 MR. WHEELER: I'm just trying to get into his  
13 thought process when he negotiated the lease. We seem to  
14 have a -- it's going to revolve around the intent of the  
15 parties what this clause meant at the time it was negotiated.

16 MR. KEATS: Well, Your Honor, what he could have  
17 done has nothing to do. He's asking what his intent was  
18 at this time. He's told him.

19 THE COURT: The objection is sustained.

20 BY MR. WHEELER:

21 Q Isn't it true, Mr. Gaul, that you did make  
22 payments for some time, initially, on cam and real estate  
23 tax charges?



1           A       I have made payments on cam, real estate tax  
2 and promotional charges each and every month up to the  
3 TRO date and at that point I stopped paying the cam charges.

4           Q       Isn't it true that you're still paying real  
5 estate tax portions?

6           A       That's correct.

7           Q       Isn't it true that you'd only stopping paying  
8 the cam once you started running into some financial  
9 difficulties?

10          A       That's not true. No.

11          Q       What was your reason for stopping to pay the  
12 cam charges?

13          A       Because when I first received the correspondence  
14 from Western Management and going through my records, that  
15 was the only thing that I couldn't reconcile. And, I  
16 paid -- as a matter of fact, they owe me money as far as  
17 base rent is concerned based on my calculations.

18          Q       If I could direct your attention to the lease.  
19 I guess it's Plaintiff's Exhibit No. 1.

20                 Do you have that in front of you?

21          A       No. I don't.

22                 (The Bailiff handed a document to the witness  
23 for his examination.)

1 Q If I could direct your attention to section 2.02  
2 -- that's the provision dealing with payment of percentage  
3 rent.

4 Are you familiar with that provision?

5 A Yes. I am.

6 Q Isn't it true that under the terms of that  
7 provision you're required to make submissions each month  
8 of your unaudited sales figures?

9 A That's correct.

10 MR. KEATS: Your Honor, just for the record.

11 I think counsel is now going into his counterclaim. And,  
12 I really don't have any objection to him doing that. But  
13 I think we ought to be clear on the fact that that's what  
14 he's doing. And, certainly that provision has nothing  
15 to do with the common area maintenance charges we've been  
16 talking about.

17 THE COURT: Go ahead with the examination.

18 BY MR. WHEELER:

19 Q Isn't it true that you haven't been making these  
20 monthly submissions in a timely manner?

21 A I've been making monthly submissions.

22 Q Every month?

23 A Each and every month. Yes, sir.

1 Q By the first of the month?

2 A Not necessarily by the first of the month.

3 Q Isn't it true that that puts you in violation  
4 of the terms of the lease -- in default of the lease?

5 MR. KEATS: Your Honor, I think that's a judgment  
6 for the Court to make.

7 THE COURT: I do, too.

8 BY MR. WHEELER:

9 Q Let me read you something from the lease, Mr.  
10 Gaul. And, I would state that I'm reading it from section  
11 5.02.

12 MR. KEATS: 5.02?

13 MR. WHEELER: Right. It's in the middle of the  
14 page where 5.02 finishes.

15 BY MR. WHEELER:

16 Q It reads in part: 'In the event landlord at  
17 any time determines that the amount of common area maintenance  
18 expenses actually being paid by landlord exceeds the estimate  
19 upon which tenant's proportionate share of common area  
20 maintenance expenses was computed, tenant, following a  
21 request from landlord shall commence to pay with the next  
22 monthly installment rent due an amount sufficient to result  
23 in tenant's paying its full proportionate share of common

1 area maintenance expenses as computed on the basis of  
2 landlord's revised' -- and I emphasize 'revised' -- 'estimate  
3 of common area maintenance expenses. At the end of each  
4 year there shall be an adjustment' -- and I emphasize  
5 'adjustment' -- 'if the amount paid by the tenant differs  
6 from its proportionate share actually incurred in that year.'

7 Are you familiar with that clause in your lease?

8 A Yes. I am.

9 Q Now, doesn't that mean to you that the cam  
10 charges under the explicit language of the lease should be  
11 revised at some point based on the actuals opposed to the  
12 estimated expenses?

13 MR. KEATS: Objection, Your Honor. The language  
14 speaks for itself. The Court can make that determination.

15 THE COURT: I think he can ask him what his  
16 understanding of it is.

17 THE WITNESS: I'm sorry. You'll have to ask  
18 the question again.

19 BY MR. WHEELER:

20 Q When you read that provision in the lease, doesn't  
21 that mean to you that the cam charges under that explicit  
22 term can be revised retroactively -- once the actual figures  
23 are in, rather than the estimated figures?

1 MR. KEATS: Your Honor, I'm going to object this  
2 time on the grounds of relevancy. I mean, I don't think  
3 that's an issue in this case.

4 MR. WHEELER: Your Honor, if I may. In his  
5 complaint, he makes the allegation explicitly that we  
6 cannot retroactively alter our figures over the term of  
7 the lease. Well, this is the term -- this is the portion  
8 of the lease which explicitly gives us the authority to  
9 go back and retroactively adjust the amount that's billed  
10 for cam -- either upward or downward, based on the actual  
11 figures that come in at the end of the year.

12 MR. KEATS: Would the Court indulge me for a  
13 moment?

14 THE COURT: The objection is overruled. Proceed.

15 THE WITNESS: I'm sorry. Would you ask the  
16 question again?

17 BY MR. WHEELER:

18 Q In looking at that -- the portion of the lease  
19 which I've just read.

20 Doesn't that mean to you that the cam charges  
21 under that explicit term can be revised retroactively once  
22 the actual figures are computed?

23 A Once the actual cam figures are computed. Yes.

1           Q       Then, how do you base your claim in your complaint  
2 that there can't be any retroactive adjustment?

3           A       That in going back and adjusting what I owe --  
4 based on the formula that's written in this lease -- the  
5 lease that I have, that formula is different than other  
6 tenants in that center. And, because of that, the retro-  
7 active cam I should not have to pay because there's not  
8 ninety-five percent compliance.

9           Q       But wouldn't you agree with me that if your cam  
10 provision is valid, then the landlord may go back and  
11 retroactively recalculate the figures?

12          A       If the landlord goes back and recalculates the  
13 figures based on actuals, those are actual figures spent.  
14 But how they charge them to me -- that's my objection.

15          Q       Now, you're not an accountant; are you?

16          A       No, sir.

17          Q       And, you're not familiar with how payments are  
18 credited once they're received in the accounting office of,  
19 for instance, any given real estate management company?

20          A       Well, there are different methods of accounting  
21 and basically, you just apply it against -- to answer your  
22 question, no. I'm not.

23          Q       Let me direct your attention to the -- again

1 section 5.02. It's at the very top of the page of the  
2 portion that I just read. And, it reads: 'Tenant shall  
3 have the right upon reasonable prior written notice to  
4 landlord at the end of each lease year to audit landlord's  
5 books and records for the purpose of determining that the  
6 amount of common area maintenance expenses was properly  
7 computed.'

8 Do you see that provision?

9 A Yes. I do.

10 Q Have you ever given such written notice to  
11 the landlord?

12 A No. I haven't.

13 MR. KEATS: Your Honor, that's not been at issue  
14 in this case. I object to that.

15 THE COURT: The question's been asked and  
16 answered.

17 MR. WHEELER: I have no further questions then,  
18 Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. KEATS:

21 Q Mr. Gaul, dealing with the other provision we're  
22 talking about where there was a retroactive adjustment. It  
23 says, 'At the end of each year there shall be an adjustment

\* \* \*

1 Q Are you familiar with how the amounts owing  
2 under this section are computed?

3 A Yes. I am. Basically.

4 Q If you could elaborate on how they're computed?

5 A I'm trying to read it here.

6 This is computed on a basis of the actual real  
7 estate tax or the estimates, depending on when we're doing  
8 the billing. And, I believe it subtracts out the major  
9 tenants.

10 MR. KEATS: Your Honor, I'm going to object and  
11 say that the document speaks for itself -- the computation  
12 formula set forth in the lease itself and I think that's  
13 what we're all talking about.

14 MR. WHEELER: I'll withdraw the question.

15 THE COURT: All right. The question's withdrawn.

16 BY MR. WHEELER:

17 Q Does this clause then anticipate a revision at  
18 some point?

19 A Yes. It does.

20 Q Has Great Falls Hardware been making payments  
21 on the real estate taxes?

22 A Yes. They have.

23 Q Are they doing so now?



1 A Yes.

2 Q When was the last payment that you received  
3 from --

4 A The last payment was received in March.

5 Q March of eighty --

6 A March of '87.

7 Q How much do they owe for real estate taxes at  
8 this point?

9 A At this point, it's approximately \$1,700.00  
10 taking into effect the credit as well as the amount still  
11 due.

12 Q Are you basing your determination of that on --  
13 are you looking at that -- what Exhibit, now?

14 A I'm looking at Defendant's Exhibit No. 1 which  
15 is the tenant ledger.

16 Q Now, I'd like to direct your attention to the  
17 common area maintenance provision. And, I believe that's  
18 section 5.02?

19 A Right.

20 Q Are you aware of what the purpose of a cam  
21 charge is for?

22 A Yes.

23 MR. KEATS: Objection, Your Honor. We all know

1 that the cam charge is set forth in the document. I think  
2 it's irrelevant at this point.

3 THE COURT: Well, is it any question that it is  
4 to maintain the common area?

5 MR. WHEELER: I don't believe -- I would -- if  
6 that's stipulated, then I'll go on.

7 MR. KEATS: Sure.

8 BY MR. WHEELER:

9 Q Do all of the tenants at South Lakes Village  
10 pay cam?

11 A Yes. They do.

12 Q How do you know that?

13 A We have records to maintain plus it's all set  
14 forth in our annual budgets as well as in all the billing  
15 for all the tenants.

16 Q I'm handing you right now what's been marked as  
17 Defendant's Exhibit No. 2; if you could identify it?

18 (The document referred to above  
19 was marked Defendant's Exhibit  
20 No. 2 for identification.)

21 MR. KEATS: Your Honor, I haven't even seen  
22 Exhibit No. 1, yet.

23 (Mr. Wheeler handed the documents to Mr. Keats  
for his examination.)

\* \* \*

1 respect to every tenant in the building -- in the area.

2 MR. WHEELER: Your Honor, it's simply a tenant  
3 ledger. It reflects payments made. They never requested  
4 any documents which reflects when payments are made. It's  
5 not another document regarding the lease itself.

6 THE COURT: Defendant's Exhibit No. 1 which is  
7 marked No. 1 has been properly identified by the witness.  
8 We haven't gotten to Defendant's No. 2, yet.

9 Go ahead with the examination, please.

10 Your objection is overruled, Mr. Keats.

11 BY MR. WHEELER:

12 Q I'm handing back to you Exhibits No. 1 and 2;  
13 if you could identify and describe what Exhibit --  
14 Defendant's Exhibit No. 2 is?

15 A Okay.

16 Exhibit No. 2 is a copy of the pages from our  
17 annual budget that is done for South Lakes Village. It  
18 details the amount of the monthly share of cam for each  
19 tenant in the shopping center. It also details it on a  
20 monthly basis across the board. And, we also have a page  
21 that lists the 1986 year-end cam recovery which will be  
22 billed in 1987. It's an estimate of the cam charges that  
23 will be billed for the year.

1 Q Would that document indicate whether or not --  
2 either that document, Exhibit No. 2 or 1 indicate whether  
3 the other tenants are complying with their cam provisions  
4 and making cam payments?

5 A Yes. It does. It shows that all the tenants  
6 are billed for the cam.

7 Q Are you aware of how the cam is calculated?

8 A Yes. I am.

9 Q Are there various ways in which cam can be  
10 calculated?

11 A There are two basic methods how cam --  
12 MR. KEATS: Your Honor, I'm going to object and  
13 this is relevant. She told me that she wouldn't know  
14 except for what she saw in the lease that she gave us today  
15 how cam was calculated as to each of these tenants. And,  
16 that's where you're talking about. Not how it's generally  
17 done. Not in the different manners you use. I'm sure  
18 there are fifteen others on what -- what is contained in  
19 this case. What we're concerned about are these.

20 THE COURT: Are we dealing with these tenants?

21 MR. WHEELER: Right. Just the tenants at  
22 South Lakes Village. I'll limit the question to that.

23 THE COURT: All right.

1 BY MR. WHEELER:

2 Q Are you familiar with the various ways in which  
3 cam is calculated as is relevant to the various tenants at  
4 South Lakes Village Center?

5 A Yes. I am. There are two basic ways that it  
6 is calculated. One is calculated on a gross lease and  
7 occupied area which takes into consideration the entire  
8 amount of the charge divided by the total amount of the  
9 square footage of the center. The other method is called  
10 the net gross lease and occupied area which subtracts out  
11 the major tenants' square footage or amount paid and the  
12 net is used to determine the square footage for all the  
13 other tenants.

14 Q In reference to either one of the Exhibits in  
15 front of you right now, are you aware whether -- or what  
16 type of provision does Great Falls Hardware pay cam charges  
17 under --

18 A Great Falls Hardware pays under the net provision.

19 Q Now, has Great Falls Hardware been paying the  
20 cam charges which are billed to them?

21 A No. Not recently. They have not

22 Q Did they ever pay?

23 A Yes. At one time they did.

1 Q And, when did they stop making these payments?

2 A I believe the last cam payment that I'm showing

3 --

4 Q Now, you're referring to which document?

5 A I'm showing Exhibit No. 1, the 1986 tenant ledger.

6 We received a payment for cam August 1 of '86 which is for  
7 the July charges that were due.

8 Q Now, has the cam charge, as it's calculated  
9 under the terms of Great Falls Hardware's lease -- have  
10 those charges ever been calculated in order to determine  
11 what is now due and owing if in fact there is an arrearage?

12 A I'm not sure I understand the question.

13 Q Have you consulted your books and records in  
14 order to determine if there is an arrearage existing on  
15 Great Falls Hardware's account relative to the cam charges?

16 A Yes.

17 Q And, you're making reference to which Exhibit?

18 A I'm making reference to Exhibit No. 1 which is  
19 the tenant ledger.

20 Q And, what does the tenant ledger indicate  
21 regarding those payments?

22 A It indicates that there is a payment that is  
23 owing of \$17,220.00 plus --

1 MR. KEATS: Your Honor, I'm going to object.  
2 Now, she's testifying to a document that hasn't even been  
3 admitted into evidence, yet. I don't even know if she  
4 prepared this document.

5 THE COURT: She's already testified to what she  
6 just said, Mr. Keats.

7 MR. KEATS: I understand that and that's why  
8 I'm concerned about her using a document that's not in  
9 evidence and basically putting that document in evidence  
10 through her testimony.

11 THE COURT: Objection is overruled.

12 BY MR. WHEELER:

13 Q Now, Ms. Newell, if I could move on to the --  
14 if I could direct your attention to Plaintiff's  
15 Exhibit No. 1. That is, I believe you testified, a copy  
16 of the lease between the parties?

17 A Right.

18 Q And, if I could direct your attention to the  
19 provision regarding the ninety-five percent compliance?

20 A Uh-huh.

21 Q Now, if I could just read that provision for  
22 you. It reads: 'This provision shall be effective only  
23 so long as at least ninety-five percent of the other tenants

1 of the shopping center are also required to comply with the  
2 terms and conditions as herein provided.'

3 Are you familiar with that?

4 A Yes. I am.

5 Q Based on your experience with leases and lease  
6 negotiations, do you know why such a provision was put into  
7 a lease?

8 MR. KEATS: Objection. She testified, Your  
9 Honor, that she wasn't even present when this particular  
10 provision was negotiated and put into this lease. She  
11 came along after the scene. She can't tell us based on  
12 her experience what people thought or what they negotiated  
13 or what they intended at the time they went in and put  
14 this phrase into a lease.

15 MR. WHEELER: Your Honor, I believe the way I  
16 phrased my question was not what it means in the context  
17 of this particular lease. I said, based on her experience  
18 with leases and lease negotiations in general -- what  
19 would a provision of this sort imply?

20 MR. KEATS: Well, I object.

21 THE COURT: Objection is sustained.

22 BY MR. WHEELER:

23 Q Are you familiar with the Great Falls Hardware's



1 interpretation of what this ninety-five percent compliance  
2 clause means?

3 A Yes. I am.

4 Q And, what is your understanding of that?

5 MR. KEATS: I object. That's irrelevant. It's  
6 up to the Court to decide now. It's gone beyond what we  
7 think and they think.

8 THE COURT: Well, you're actually asking her  
9 what Mr. Gaul has testified to, so I'm not going to answer  
10 to it.

11 MR. WHEELER: I'll strike the question, Your  
12 Honor.

13 BY MR. WHEELER:

14 Q Do you know when this lease was negotiated?

15 A It was negotiated sometime in 1983.

16 Q Are you aware if whether other tenants were in  
17 the shopping center at this time?

18 A There were other leases that had been signed at  
19 the time.

20 Q Is there a document which would indicate when  
21 other leases were signed and when the negotiations on those  
22 leases would have transpired?

23 A We have a lease expiration report that -- which

1 details the dates of the leases when they went into effect,  
2 when they were signed.

3 Q Now, at this time I will be handing you  
4 Defendant's Exhibit No. 3 and I will just note for the  
5 record that Mr. Keats is examining that document.

6 (The document referred to above  
7 was marked Defendant's Exhibit  
8 No. 3 for identification.)

9 MR. KEATS: I am. And, I object to it. This  
10 falls absolutely within that number five of our request  
11 for production. Now, Your Honor, he has had in his  
12 possession every document that I've introduced in evidence  
13 here today. I had made the request for this. This relates  
14 directly to the leases as set forth in number five and this  
15 is the first time I've seen this (indicating).

16 THE COURT: Mr. Keats, it is the opinion of this  
17 Court that no Appellate Court is going to take lightly to  
18 the exclusion of otherwise admissible evidence because of  
19 discovery or lack thereof.

20 The objection is overruled.

21 BY MR. WHEELER:

22 Q I'm handing you now Defendant's Exhibit No. 3;  
23 if you could identify it and describe what that document is?

A This is the lease expiration report for South

1 Lakes Village which lists the lease expirations for the  
2 different tenants as well as also says their execution date.

3 Q Now, does that indicate whether or not other  
4 leases had been executed prior to Great Falls Hardware's  
5 lease?

6 MR. KEATS: Excuse me, Your Honor. Before she  
7 starts testifying as to the content of that document --  
8 first of all, it ought to be admitted into evidence and I  
9 would like to voir dire on that document. I don't know  
10 where that thing came from, who prepared it, what records  
11 were used or anything else.

12 THE COURT: Well, she says that she is the  
13 custodian of the record, Mr. Keats. She has not testified  
14 to its accuracy at this point. She's simply relating  
15 what it says.

16 MR. KEATS: Well, if she's going to go into the  
17 specifics of what it says, I think I'm entitled to --  
18 before she does that -- to voir dire before it's even  
19 admitted into evidence.

20 THE COURT: All right.

21 Proceed.

22 BY MR. WHEELER:

23 Q I don't remember if you've answered my question,

1 but my question was: Does that document indicate whether  
2 or not other tenants at South Lakes Village had already  
3 executed their leases prior to Great Falls Hardware?

4 A It would so indicate based on the execution dates  
5 that are listed on the report.

6 Q Would it identify which tenants specifically had  
7 already done that?

8 A Yes. It would by the day they were executed.

9 Q And, which ones -- which tenants would those be?

10 MR. KEATS: Your Honor, again, now she is  
11 getting into the specific information contained in that  
12 document.

13 THE COURT: I think it'll speak for itself.

14 MR. WHEELER: Okay. Thank you, Your Honor. I'll  
15 withdraw the question.

16 BY MR. WHEELER:

17 Q Did -- now, referring back to Plaintiff's  
18 Exhibit No. 1, the lease and I'm referring to that section  
19 5.02. At the top of the page there is a notation that is  
20 at the very top which reads: 'Tenant shall have the right  
21 upon reasonable prior written notice to landlord at the  
22 end of each lease year to audit landlord's books and records  
23 for the purpose of determining the amount of common area

1 maintenance expenses was properly computed.'

2 Do you see that?

3 A Yes.

4 MR. KEATS: We will stipulate, Your Honor, that  
5 Mr. Gaul did not ask for such an audit.

6 THE COURT: Well, you don't need to stipulate  
7 to it. He's already testified that he had done so.

8 MR. WHEELER: I won't pursue that course, Your  
9 Honor.

10 BY MR. WHEELER:

11 Q One final question. If I could turn your  
12 attention to section 14.02 of the lease which has to do  
13 with defaults.

14 Does that provide for the payment of any  
15 attorney's fees in the event of a default?

16 A Yes. It does.

17 MR. KEATS: Your Honor, it speaks for itself.

18 MR. WHEELER: I have no further questions, Your  
19 Honor.

20 THE COURT: All right.

21 Cross examine?

22 MR. WHEELER: Oh. Excuse me.

23 Your Honor, at this time I would now move

\* \* \*

1 A Less the credit of \$561.

2 Q So then we're talking about approximately  
3 \$1,700.00; is that right?

4 A That's -- approximately.

5 Q Now, directing your attention to Exhibit No. 1  
6 where 7.01 deals with the payment of real estate taxes.

7 (Pause.)

8 A Yes.

9 Q There is a footnote at the bottom of that page  
10 again; is there not?

11 A Yes. There is.

12 Q Could you tell us what that footnote says?

13 A 'The provision is effective so long as at least  
14 ninety-five percent of the other tenants of the shopping  
15 center are also required to comply with the terms and  
16 conditions as hereby provided.'

17 Q No. As 'herein provided.'

18 A I'm sorry. My copy is not that good.

19 Q Okay. I'll show you the original -- Mr. Gaul's  
20 and see if the word isn't 'herein'?

21 A Yes. It is.

22 Q Thank you. Now, we've just gone through the  
23 various cam provisions which were provided to us by counsel

1 with respect to these other tenants; have we not?

2 A Yes. We have.

3 Q And, we were never given, however, the real  
4 estate sections; were we?

5 A The real estate sections are with the cam  
6 provisions of the copies of the leases.

7 Q Having -- would you go through those again and  
8 tell us if ninety-five percent of the tenants that you  
9 have before you -- or the tenants -- strike that. If the  
10 -- the ones that you have before you have the identical  
11 provisions that Mr. Gaul has?

12 (The Bailiff handed the documents to the witness  
13 for her examination.)

14 A First of all, the leases are all negotiated  
15 separately --

16 Q I'm not asking you that question, ma'am. I'm  
17 just asking you -- let's start with right from the top.  
18 Let's go with -- I believe you said it was Modern Athlete?  
19 Modern Athlete.

20 (Pause.)

21 A Modern Athlete is calculated on a gross basis.

22 Q That is a different formula than that set forth  
23 in Great Falls Hardware?

1 A That is a different calculation.

2 Q How about Hair Cuttery?

3 (Pause.)

4 A It's calculated on a net basis.

5 Q Is there a management fee?

6 A There's no management fee or real estate taxes  
7 for any of the tenants.

8 Q Strike that.

9 How about Peoples?

10 (Pause.)

11 A Peoples is calculated on a gross basis.

12 Q That's different from Mr. Gaul's of Great Falls  
13 Hardware's; is it not?

14 A Yes. It is. The calculation method is different.

15 Q And, it would result in a higher cost to Mr.  
16 Gaul whatever that cost may be?

17 A I can't --

18 Q Do you agree with that?

19 A Whatever cost it comes out to.

20 Q It would be higher than Mr. Gaul's -- I mean  
21 Mr. Gaul's would be higher; would it not?

22 A Possibly.

23 Q How about First Virginia Bank?



1 (Pause.)

2 A This appears to be calculated on the gross  
3 method.

4 Q Which -- that would be different from Mr. Gaul's;  
5 is that correct?

6 A That is correct. The calculation would be  
7 different.

8 Q And, a different formula set forth; does it not?

9 A It's a different calculation. A different  
10 formula is used.

11 Q How about No. 11, Crown Books?

12 (Pause.)

13 A It's also calculated on the gross method.

14 Q Then again, that would be different from Great  
15 Falls Hardware?

16 A Yes. It would.

17 Q Harvest Trading which is No. 12?

18 A That is also calculated on the gross method.

19 Q And again, different from Mr. Gaul's of Great  
20 Falls Hardware?

21 A Yes.

22 Q Village Classics, No. 13?

23 A That's also calculated on the gross method.

1 Q Again, different?

2 A Yes.

3 Q Now to No. 14, Perpetual American Bank.

4 (Pause.)

5 A This is calculated on the gross method.

6 Q Different again?

7 A Yes.

8 Q So again we have seven tenants, do we not, who  
9 do not have to comply with the same terms and conditions  
10 as comparing real estate taxes of Mr. Gaul of Great Falls  
11 Hardware Store?

12 A We have seven tenants whose method of calculation  
13 is different.

14 Q In other words, the conditions are different?

15 A The calculations are different.

16 Q Now, how much -- you claim that Mr. Gaul owes  
17 you some \$1,400.00 in real estate taxes?

18 A I believe we said it was more like \$1,700.00.

19 Q I'm sorry. \$1,700.00.

20 How much real estate taxes has he paid over the  
21 course of this lease?

22 A I would have to calculate that out.

23 Q Could you, please?

1           A       I don't have the figures in front of me to do  
2       that with. If you're talking with the terms of the lease,  
3       I would have to go back and have our accounting department  
4       prepare the whole thing.

5           Q       Well, on the Exhibit which sets forth real  
6       estate -- strike that. We don't have that.

7                   I'll ask you to identify that if you can.

8           MR. KEATS: This will be what, please?

9                               (The document referred to above  
10                              was marked Complainant's Exhibit  
                              No. 15 for identification.)

11                   (Mr. Keats handed a document to the witness  
12       for her examination.)

13                   BY MR. KEATS:

14           Q       Could you tell me what that is, please?

15           A       This is a copy of an invoice that was prepared  
16       in July of '86 for the 1985 real estate taxes for the  
17       actuals.

18           Q       Does that indicate how much Mr. Gaul was supposed  
19       to pay?

20           A       For 1985. Yes. It does.

21           Q       How much?

22           A       He was supposed to have paid \$3,817.17.

23           MR. WHEELER: Excuse me. Has that been marked

\* \* \*

DIRECT EXAMINATION

BY MR. KEATS:

Q Mr. Gaul, you have a chance to review the payments you've made to Western Development on behalf of South Lakes with respect to real estate taxes; have you not, sir?

A Yes. I have.

Q Have you calculated how much you have actually paid them real estate taxes since the --

A From inception to date, it's approximately \$11,500 and there's a number I can't recall.

Q You can refresh your recollection, if you like.  
(Mr. Keats handed a document to the witness for his examination.)

A \$11,542.96.

Q That's money that you've actually spent on the real estate taxes; is that correct?

A Well, that's how -- when I make my payment, I break out how the payment was -- and at least on my books, is supposed to be applied.

MR. KEATS: No further questions.

MR. WHEELER: Nothing further, Your Honor.

THE COURT: All right.

\* \* \*

1 They have conceded that there are different terms and  
2 conditions contained in these other leases; that these  
3 people are not required to comply with the terms and  
4 conditions set forth in this lease. I think they're bound  
5 by the terms of this agreement which they drafted --  
6 although he made the suggestion -- they are the ones who  
7 put the final product together. This lease must be  
8 construed against them. And, they certainly now have to  
9 face the fact that this is what it says. This is what  
10 they're stuck with. It may be unfortunate for them. But  
11 by the same token, this Court has to look at what the  
12 contract says and abide by the terms of that contract  
13 and interpret it accordingly.

14 MR. WHEELER: Your Honor, as you know at this  
15 point the issue in this case is what is meant by the  
16 term used in the lease which states: 'This provision shall  
17 be effective only so long as at least ninety-five percent  
18 of the other tenants of the shopping center are also  
19 required to comply with the terms and conditions as herein  
20 provided.'

21 Now, we're here for the Court to construe what  
22 is meant by that phrase. By the very terms of that Your  
23 Honor, we would submit that this term is unambiguous. It

1 clearly refers to compliance. It refers to, 'to comply' --  
2 quote, unquote. It has nothing to do with how the amounts  
3 are calculated or anything about the terms being the same.  
4 It has to do with -- it says, 'the terms and conditions  
5 as herein provided.' We would submit that the terms and  
6 conditions have to do with payment -- not how the payment  
7 is calculated, but whether payment of cam and real estate  
8 is paid. This term is valid so long as ninety-five percent  
9 comply with those payments. The evidence which we've heard  
10 demonstrates that all -- one hundred percent of the tenants  
11 do comply, but for Great Falls Hardware.

12 Now, as this Court knows, the mere fact that the  
13 parties don't agree as to the interpretation of this clause  
14 doesn't mean that there is an ambiguity in this phrase.  
15 The question of whether or not it's ambiguous is a question  
16 of law for the Court to decide.

17 We would submit that by its very terms, this  
18 is not an ambiguous provision. And, we would submit that  
19 it's simply a smoke screen by the tenant so that they can  
20 be the only tenant at the center that doesn't pay cam and  
21 real estate taxes.

22 However, if this Court does find that there is  
23 an ambiguity, the law in this Commonwealth is clear how this

1 provision should be construed, particularly with regard  
2 to any ambiguity therein. The contract will be construed  
3 to give life to the intentions of the parties if those  
4 intentions can be ascertained reasonably. Here, I believe,  
5 that the testimony indicates that the intent was clear.  
6 There should be ninety-five percent compliance so that  
7 the shopping center would be maintained and kept up and  
8 to ensure that their equities are maintained among the  
9 tenants.

10 Now, here, all the tenants are paying the cam  
11 and the real estate charges except for Great Falls Hardware. The  
12 goal in this provision was one of compliance not with the  
13 precise manner in which the calculations were to be  
14 conducted.

15 There's one additional telling feature in this  
16 case, I believe, Your Honor. And, that's that Virginia  
17 contract law is clear that the terms of a contract must,  
18 if possible, be construed to mean something rather than  
19 nothing and this refers to every provision in the contract.

20 Now, I've referred the Court to the Taylor v.  
21 Taylor and Bell v. Hagmann cases and the Court has copies  
22 of those. Those stand for the proposition that the parties  
23 must have intended something by their agreement. And, they

1 are presumed to have intended that which renders the  
2 agreement valid and capable of performance -- not that  
3 which renders it void and impossible of execution.

4 Further, I've directed the Court's attention  
5 to the Kiser v. Amalgamated Clothing Workers case. In that,  
6 the case indicates that the Courts will not give a contract  
7 or portion of a contract a construction which will render  
8 it void if it can reasonably be interpreted so as to give  
9 an effect. Now, that has significance here because the  
10 evidence indicates -- one of the exhibits which indicates  
11 when the other leases were negotiated. That document  
12 indicates that some of the other tenants had already  
13 negotiated leases. These already existed at the time that  
14 Great Falls Hardware's lease was negotiated. In other  
15 words, there were already tenants who were paying cam and  
16 real estate differently at the time that this agreement was  
17 even negotiated -- the one with Great Falls Hardware.

18 Now, if the Court adopts Great Falls Hardware's  
19 view and maintains that this has to do with ninety-five  
20 percent pay exactly according to the way that the Hardware  
21 Store is supposed to pay, that clause would be void ab  
22 initio since already more than five percent were already  
23 paying according to another formula. But I would submit



1 that's not what was contemplated. The parties contemplated  
2 ninety-five percent compliance -- ninety-five percent at  
3 least would have to pay some cam and some real estate. In  
4 other words, a condition subsequent was set up. That's why  
5 the magic words, 'so long as' were used. In other words,  
6 this was to take effect immediately. And, the only way  
7 possible to interpret it as meaning -- the only way that  
8 this Court could find that it was to take place immediately  
9 is for the Court to find that it -- in light of the fact  
10 that other tenants already existed paying other charges  
11 that this must be construed by law to mean that there was  
12 ninety-five percent compliance.

13 Now, just to touch very briefly on the other  
14 argument which was raised in their pleadings and admittedly,  
15 it wasn't raised much today in terms of whether or not  
16 these figures can be revised retroactively.

17 Well, Your Honor, the very terms of the cam and  
18 the real estate clauses mandate that it can. In fact, it  
19 must be revised retroactively because the figures -- the  
20 cam and the real estate are estimated and they're billed  
21 on those estimates until the actual figures come in. Then  
22 it's revised either upwards or downwards. So the very terms  
23 of the lease provide for such a retroactive application.

1 Now, what we seek from the Court today based  
2 on the testimony is a finding that \$24,268.45 is due and  
3 owing pursuant to the terms of the agreement. Now, in  
4 the registry of the Court there is \$17,680.64. I would  
5 ask that the Court release those funds to my client. We're  
6 also seeking our reasonable attorney's fees based on section  
7 14.02 of the lease. And, we're seeking a declaratory  
8 order that the cam and the real estate clause is valid  
9 unless less than ninety-five percent of the other tenants  
10 fail to comply in that they fail to make cam and real  
11 estate payments or are not obligated to do so -- simply,  
12 just as it's written in the lease.

13 Thank you, Your Honor.

14 THE COURT: Mr. Keats.

15 MR. KEATS: Your Honor, I agree with counsel's  
16 statement of the law to a point. Certainly, when there is  
17 an ambiguity in a contract very often the Court is called  
18 upon to give life, if you will, to the intention of the  
19 parties.

20 Well, you've heard only testimony from one person  
21 today here as to what the intent of those parties were.  
22 We didn't hear anything from the Defendant as to what their  
23 intent was. All you heard was that Mr. Gaul wanted this

\* \* \*

1 Finally, Carter v. Carter 121 S.E. 2d 482.

2 Page 485: The Courts have neither the duty nor the power  
3 to make the contract. It is only their function to construe  
4 them. The intention of the parties must be determined from  
5 what they actually say and not from it may be suppose they  
6 intended to say. Where the meaning of the language used  
7 is clear, a contract needs no interpretation.

8 This contract says that this provision -- the  
9 cam and the real estate provision -- shall be effective --  
10 used against Mr. Gaul -- only so long as at least ninety-  
11 five percent, an easily ascertainable figure -- of the  
12 other tenants of the shopping center are required to comply  
13 with the terms and conditions -- terms and conditions set  
14 forth as herein provided in this document.

15 We would submit to Your Honor that that is clear  
16 and unambiguous. That is their contract and they're stuck  
17 with it.

18 Thank you, sir.

19 THE COURT: The evidence in this case is that  
20 the tenants mentioned have leases, many of which were signed  
21 before Great Falls Hardware's lease, which contain different  
22 clauses, provisions or methods of calculation of their part  
23 of the cam or tax requirements. Therefore, those tenants

1 are required to comply with the terms of their leases not  
2 Great Falls Hardware's lease.

3 The Court finds that notwithstanding the words  
4 quote: 'As herein provided.' unquote; the words quote:  
5 'at least ninety-five percent of the other tenants of the  
6 shopping center are also required to comply with the terms  
7 and conditions' unquote, means complying with the terms  
8 and conditions of their respective leases. And, the  
9 evidence is that they have.

10 The Court adopts the interpretation, if you  
11 please, of the provision in question of the Defendant.  
12 And, unless the parties can agree on a different figure,  
13 the Court finds that the amount due as of today was the  
14 twenty-four thousand dollar figure mentioned by Mr. Wheeler.  
15 I don't have the exact figure but it was twenty-four thousand  
16 and something.

17 Anything further, gentlemen?

18 MR. WHEELER: Shall I prepare an order, Your  
19 Honor, and submit it?

20 THE COURT: Yes, sir. And, submit it to Mr.  
21 Keats for approval as to form.

22 MR. KEATS: Very well.

23 \*\*\*\*\*

ALL CHANGES INDICATE CHANGES  
(P) INDICATE DELETION

Ex 1

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C.

LEASE

The Great Falls Hardware Company of Reston, a Virginia Corporation

SOUTH LAKES VILLAGE CENTER  
RESTON, VIRGINIA

c/o WESTERN DEVELOPMENT CORPORATION  
1200 WISCONSIN AVENUE, N.W.  
WASHINGTON, D.C. 20007  
(202) 462-3600

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Rev. 11-82

CLD-DEF-EX # 1  
DATE 04-13-87  
JUDGE J.H.H.  
PAGE # 98538

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OPTIONAL FORM NO. 504 (1-7-82)

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# LEASE AGREEMENT

or in conformance with Addendum (1) is less than 5,179 square feet

THIS LEASE AGREEMENT is made and entered into this 17<sup>th</sup> day of May 19 84 by and between South Lakes Village Center Associates Limited Partnership, a Virginia Limited Partnership (hereinafter referred to as "Landlord"), and The Great Falls Hardware Company of Reston, a Virginia Corporation (hereinafter referred to as "Tenant")

## WITNESSETH:

That for and in consideration of the rentals hereinafter reserved and of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby mutually agree as follows:

## ARTICLE I. GRANT AND TERM

**SECTION 1.01. DEMISED PREMISES.** Landlord, hereby leases to Tenant for the term and upon the covenants hereinafter set forth, approximately Five Thousand Two Hundred Twenty-Nine (5,229) square feet of ground floor area in the shopping center designated as South Lakes Village Center, or by such other name as Landlord may from time to time hereafter designate (hereinafter "Shopping Center"). The Shopping Center is described on Exhibit "B" hereto which exhibit is incorporated herein by reference. The leased space shall hereinafter be referred to as the "Demised Premises". The Demised Premises are outlined in red on the site plan of the Shopping Center attached hereto and made a part hereof as Exhibit "A". The exact square footage in the Demised Premises shall be determined by the Landlord's architect after the construction of the building in which the Demised Premises are located is completed. Such square footage shall be measured from the mid-line of interior walls and the exterior part of exterior walls, and shall include the totality of the area within such boundaries, including any mezzanines. ~~The minimum square footage shall be binding upon both parties hereto.~~ In the event the square footage as determined by Landlord's architect differs from the square footage set forth above, the Minimum Rent to be paid by the Tenant may be adjusted after the exact square footage is determined by multiplying the square footage by ~~See Following Page~~ Dollars (\$           ). If this calculation produces a Minimum Rent that is greater or less than that set forth in Article II, the Minimum Rent as determined by this Article shall control.

See Addendum (1) sh

sixty (60)

**SECTION 1.02. TERM.** The term of this Lease shall be for a period of Ten ( 10 ) years, commencing either at the expiration of a thirty-day day period (the "Fixturing Period") after the "Delivery of Possession Date" (herein defined) or the date on which the Tenant shall open the Demised Premises for business, whichever occurs first (hereinafter referred to as the "Commencement Date"), and expiring midnight on the same month and day following the expiration of Ten ( 10 ) full years after the Commencement Date unless sooner terminated in accordance with the provisions hereof (the "Expiration Date"). The first lease year shall terminate on the 31st day of December next following the Commencement Date. All subsequent lease years shall continue for twelve (12) calendar months thereafter except that the last lease year shall terminate on the date the Lease is terminated. As a condition precedent to Landlord's and Tenant's obligations under this Lease, if the Demised Premises are not substantially completed on or before ~~the expiration of ten (10) years after the date of Landlord's execution of this Lease, the "Effective Date"~~, then either party may cancel and terminate this Lease upon sixty (60) days prior written notice to the other, in which event neither party shall have any further obligation or liability to the other. If requested by Landlord, immediately following delivery of the Demised Premises to Tenant, or at any other time during the term hereof, Tenant shall execute an Opening and Termination Date Declaration in the form attached hereto as Exhibit F, specifying the information called for in said form. See Addendum (7)

December 31, 1984

## ARTICLE II. RENT AND DEPOSIT

### SECTION 2.01. MINIMUM RENT. and the Renewal Term, if any,

(a) During the entire term of the Lease, the Tenant shall pay annual "Minimum Rent" for the Demised Premises of ~~See Following Page~~ Dollars (\$           ) payable to Landlord, without demand, deduction, set-off or counterclaim, in equal installments, in advance, on the first day of each month, at the rate of ~~See Following Page~~ Dollars (\$           ) per month. The first installment of Minimum Rent shall be paid upon the Effective Date. If the Commencement Date occurs on other than the first day of a month, the second installment of Minimum Rent shall be prorated on a daily basis on the basis of a thirty-day month. ~~See Following Page~~

~~For the first year of the Lease and for each lease year thereafter (hereinafter referred to as the "Adjustment Year"), Tenant shall pay as Additional Rent (hereinafter referred to as the "Escalation Rent") in addition to the Minimum Rent, in equal monthly installments, in advance, an amount equal to the product obtained by multiplying the Minimum Rent by a fraction whose numerator shall be the difference (but not less than zero) between (a) the Consumer Price Index, as that term is defined in Article XIX below, for the most recent month ending prior to the first day of such Adjustment Year for which the Consumer Price Index is published and (b) the Consumer Price Index for the most recent month ending prior to the Base Date (hereinafter defined) for which the Consumer Price Index is published, and whose denominator shall be the Consumer Price Index for the most recent month ending prior to the Base Date for which the Consumer Price Index is published. For purposes hereof, the "Base Date" shall be the Commencement Date. For purposes of computing the Escalation Rent payable for any Adjustment Year during the term of the Lease, with the first month's payment of rental during a lease year, which is due at least fifteen (15) days after Tenant's receipt of a statement from Landlord specifying the Escalation Rent payable during such lease year, computed as aforesaid, (the "Escalation Invoice"), Tenant shall pay the monthly installment of Escalation Rent (including interest for such month and, in addition, shall pay the difference for all prior months of such lease year between the monthly installments of Escalation Rent so specified and the~~

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\*Per Square Foot

A. Term.

Years 1 - 2	Eight and No/100 Dollars	(\$8.00)
Years 3 - 4	Eight and 80/100 Dollars	(\$8.80)
Years 5 - 6	Nine and 20/100 Dollars	(\$9.20)
Years 7 - 8	Nine and 60/100 Dollars	(\$9.60)
Years 9 - 10	Ten and No/100 Dollars	(\$10.00)

B. Renewal Term I.

Years 1 - 2	Eleven and No/100 Dollars	(\$11.00)
Years 3 - 5	Twelve and No/100 Dollars	(\$12.00)

\*\*Annual Minimum Rental

A. Term.

Years 1 - 2	Forty Thousand and No/100 Dollars	(\$40,000.00)
Years 3 - 4	Forty-Four Thousand and No/100 Dollars	(\$44,000.00)
Years 5 - 6	Forty-Six Thousand and No/100 Dollars	(\$46,000.00)
Years 7 - 8	Forty-Eight Thousand and No/100 Dollars	(\$48,000.00)
Years 9 - 10	Fifty Thousand and No/100 Dollars	(\$50,000.00)

B. Renewal Term I.

Years 1 - 2	Fifty-Five Thousand and No/100 Dollars	(\$55,000.00)
Years 3 - 5	Sixty Thousand and No/100 Dollars	(\$60,000.00)

\*\*\*Monthly Installments

A. Term.

Years 1 - 2	Three Thousand Three Hundred Thirty-three and 33/100 Dollars	(\$3,333.33)
Years 3 - 4	Three Thousand Six Hundred Sixty-Six and 67/100 Dollars	(\$3,666.67)
Years 5 - 6	Three Thousand Eight Hundred Thirty-Three and 33/100 Dollars	(\$3,833.33)
Years 7 - 8	Four Thousand and No/100 Dollars	(\$4,000.00)
Years 9 - 10	Four Thousand One Hundred Sixty-Six and 67/100 Dollars	(\$4,166.67)

B. Renewal Term I.

Years 1 - 2	Four Thousand Five Hundred Eighty-Three and 33/100 Dollars	(\$4,583.33)
Years 3 - 5	Five Thousand and No/100 Dollars	(\$5,000.00)



Notwithstanding anything contained in the lease to the contrary, Tenant's obligation to pay either Minimum Rent or Percentage Rent shall not commence until both (i) four (4) full months has passed from the Commencement Date and (ii) Safeway have been open to the public for business in the Shopping Center for four (4) full months. During the period in which Tenant is open for business but is not required to pay Minimum Rent or Percentage Rent, Tenant shall pay to Landlord its proportionate share of Common Area Maintenance Expense pursuant to Section 5.02 hereof and its proportionate share of Real Estate Taxes pursuant to Section 7.01 hereof.

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installments of Escalation Rent required in the Escalation Statement, and the first monthly rental payment due at least fifteen (15) days after Tenant receives the next Escalation Statement, at which time Tenant shall make the payment

#### SECTION 2.02. PERCENTAGE RENT.

(a) During and for each lease year, Tenant shall pay, as Additional Rent, annual percentage rent ("Percentage Rent") equal to Four percent ( 4 %) of the "Tenant's Gross Sales" in excess of See Following Page Dollars (\$                      ) for each lease year, (which sum is hereinafter called the "Sales Break Point"). "Tenant's Gross Sales" is defined to mean the total amount of dollar value of all sales of merchandise or services arising out of or payable on account of the business conducted in, on, or from the Demised Premises by or on account of Tenant or any sublessee, assignee or concessionaire of Tenant for cash or credit including all orders for merchandise taken or sold at or from the Demised Premises, but excluding proceeds from any sales tax, gross receipts tax or similar tax, by whatever name called, bona fide transfers of merchandise from the Demised Premises to any other stores or warehouses of Tenant, refunds given to customers for merchandise returned or exchanged and sales of Tenant's fixtures and equipment not in the ordinary course of Tenant's business.

(b) Tenant shall keep at the Demised Premises or at Tenant's executive offices within the continental United States a full and accurate set of books and records adequately showing the amount of Tenant's Gross Sales in each lease year. Such books shall be kept in accordance with generally accepted accounting principles and shall be retained by Tenant for a period of not less than three (3) years following the end of the lease year to which they have reference. When and as Landlord may reasonably require, Tenant shall also furnish to Landlord any and all statements, information, and copies of sales and income tax reports and returns which separately show financial data for the Demised Premises, and other data evidencing Tenant's Gross Sales. Within ten (10) days following the end of each calendar month Tenant shall submit to Landlord an unaudited statement of Tenant's Gross Sales for such calendar month. Within sixty (60) days after the close of each lease year, Tenant shall furnish to Landlord a statement certified by an accountant and an officer of Tenant and audited by an independent public accountant setting forth the amount of Tenant's Gross Sales during the preceding lease year and showing the amount of Percentage Rent required to be paid by Tenant for such lease year, if any. In addition to the above, within thirty (30) days following the end of each of the first three (3) three-month periods during the lease year, Tenant shall report and certify to Landlord the amount of Tenant's Gross Sales for each such three-month period. With each report, the Tenant shall submit the Percentage Rent computed on one-fourth (1/4) the amount of the Sales Break Point. The Percentage Rent will be adjusted at the end of each lease year; any additional Percentage Rent due shall be paid no later than sixty (60) days after the end of each lease year and any excess Percentage Rent paid shall be credited against Tenant's next due Percentage Rent payment, except for the last lease year wherein any excess shall be refunded to Tenant. Landlord shall have the right, at any time and from time to time, to inspect the sales records of Tenant. If the Tenant's Gross Sales exceed those reported, Tenant shall immediately pay any deficiency. If Tenant's Gross Sales exceed those reported by one percent (1%) or more, the Tenant shall pay Landlord's cost of audit. If Tenant's Gross Sales exceed those reported by (i) three percent (3%) or more in any one (1) lease year or (ii) two percent (2%) or more for any two (2) lease years out of any five (5) lease years, then Landlord shall have the right, at its sole option, to terminate this Lease. \*SEE ADDENDUM (2)

(c) In the event that any lease year during the term hereof is less than exactly twelve (12) full calendar months, then, for the purpose of computing the Percentage Rent for any such short lease year, the Sales Break Point for such short lease year shall be adjusted by multiplying the Sales Break Point otherwise applicable for such lease year by a fraction, the numerator of which shall be the actual number of days in such short lease year, and the denominator of which shall be the number "360".

SECTION 2.03. PAYMENTS BY TENANT. Throughout the term of this Lease, Tenant shall pay to Landlord, without demand, deductions, set-offs or counterclaims, the rent, which is hereby defined as the sum of the Minimum Rent, Escalation Rent, Percentage Rent and all Additional Rent, when and as the same shall be due and payable hereunder. Unless otherwise stated, all other sums of money or charges payable to Landlord from Tenant by this Lease are defined as "Additional Rent" and are due ten (10) days after the rendering of an invoice therefor, without any deductions, set-offs or counterclaims, and failure to pay such charges carries the same consequences as Tenant's failure to pay rent. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in coin or currency of the United States of America, at the address indicated herein. No payment to or receipt by Landlord of a lesser amount than the then amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Landlord may accept such check in payment without prejudice to Landlord's right to recover the balance of any sums owed by Tenant hereunder.

SECTION 2.04. DEPOSIT. Tenant concurrently with the execution of this Lease, has deposited with Landlord the sum of                      Dollars (\$                      ), which sum shall be held by Landlord as security against a Default by Tenant pursuant to the terms of this Lease. The deposit (which shall not bear interest to Tenant) may be applied by Landlord in order to cure any Default in any of the terms, provisions, or conditions of this Lease. The deposit shall be returned to Tenant by the Landlord, after deducting therefrom any sums owed to Landlord pursuant to provisions of this Lease, upon the termination of this Lease, provided such termination is not caused by Tenant. A mortgagee in possession of the Demised Premises, or any interest therein, through public or private foreclosure or the acceptance of a deed in lieu thereof, shall have no liability to Tenant for return of all or any portion of the deposit, unless, and then only to the extent that, such mortgagee has acknowledged receipt of all or any portion of Tenant's deposit. In the event Landlord applies the deposit in whole or in part against a Default by Tenant, Tenant shall, upon demand by Landlord, deposit sufficient funds to maintain the security deposit in the initial amount. Failure of Tenant to deposit additional funds as security shall constitute a default hereunder and entitle the Landlord to avail itself of the remedies provided in this Lease for non-payment of Minimum Rent by Tenant. One (1) year prior to the expiration of the term hereof, Tenant shall increase the amount of the security deposit by an amount equal to the sum deposited with Landlord upon the execution hereof. Upon the expiration of the term hereof, Landlord shall retain the deposit, or so much as has not been applied in accordance with the provisions hereof, until such all of Tenant's obligations to pay any Additional Rent have been fully paid and satisfied.

SECTION 2.05. LATE CHARGE. In the event any sums required hereunder to be paid are not received on or before the fourth (4th) calendar day after the same are due, then, for each and every late payment, Tenant shall immediately pay, as Additional Rent, a service charge equal to the greater of Fifty Dollars (\$50.00), or Ten Dollars (\$10.00) per day for each day, after the due date of such payment, that such payment has not been received by Landlord, or four percent (4%) per month of the amount required to be paid. Notwithstanding this service charge, Tenant shall be in Default under this Lease if all payments required to be made by Tenant are not made at or before the times herein supulated.

sixty (60)  
Twenty (20)  
With the first such report that Tenant has achieved the Sales Break Point for the then applicable lease year, Tenant shall commence payment of Percentage Rent due.

two percent (2%)

Contract documents, deposits on lay-away items until invoiced and delivered or the deposit is forfeited and receipts for vending machines located on the Demised Premises for the convenience of Tenant's employees only.

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tenth (10th)

\*Percentage Rent Sales Break Point

A. Term.

Years 1 - 2	One Million and No/100 Dollars	(\$1,000,000.00)
Years 3 - 4	One Million One Hundred Thousand and No/100 Dollars	(\$1,100,000.00)
Years 5 - 6	One Million One Hundred Fifty Thousand and No/100 Dollars	(\$1,150,000.00)
Years 7 - 8	One Million Two Hundred Thousand and No/100 Dollars	(\$1,200,000.00)
Years 9 - 10	One Million Two Hundred Fifty Thousand and No/100 Dollars	(\$1,250,000.00)

B. Renewal Term I.

Years 1 - 2	One Million Three Hundred Seventy-Five Thousand and No/100 Dollars	(\$1,375,000.00)
Years 3 - 5	One Million Five Hundred Thousand and No/100 Dollars	(\$1,500,000.00)

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Tenant shall be deemed to have accepted the Demised Premises subject to any unfinished items listed on the punchlist prepared in accordance herewith.

**SECTION 2. MINIMUM RENT REVIEW.** Effective as of the last day of each third (3)rd lease year of the term hereof, the then applicable annual Minimum Rent provided for in Section 2.01 shall be adjusted (upward only) to the greater of: (i) the Minimum Rent for the following lease year in accordance with the provisions of Section 2.01 or (ii) the then applicable annual Minimum Rent plus seventy-five percent (75%) of the average Percentage Rent provided in Section 2.02 payable by Tenant to Landlord during the previous three (3) year period.

**SECTION 2.03.** In the event the total rent received for any lease year is less than the Minimum Rent payable during the first full lease year, as increased by one hundred percent (100%) of increases in the Consumer Price Index for each lease year after the first lease through the end of the lease year in question (the "Adjusted Minimum Rent"), Landlord shall at its sole option have the right to either (i) terminate this Lease in whole or in part, or (ii) reduce the then applicable Sales Break Point by an amount obtained by subtracting from the Adjusted Minimum Rent the sum of the Minimum Rent plus Percentage Rent payable for the lease year intended and dividing the difference by the percentage specified in Section 2.02(a).

### ARTICLE III. PREPARATION OF DEMISED PREMISES

**SECTION 3.01. SITE PLAN.** Exhibit "A" sets forth the general layout of development of the Shopping Center. Landlord does not warrant or represent that the Shopping Center will be constructed exactly as shown thereon or that it will be completed by a specific date. Landlord may change or alter any of the stores, common areas or any other aspect in the Shopping Center, or may sell or lease any portions of the Shopping Center all without the consent of or notice to Tenant. Landlord hereby agrees that the relative location and actual size of the Demised Premises shall remain substantially unchanged, and that the visibility of and access to the Demised Premises shall not

**SECTION 3.02. LANDLORD'S WORK.** Landlord, at its expense, shall construct the building wherein the Demised Premises are to be located, substantially in accordance with the "Outline Specifications" attached hereto and made a part hereof as Exhibit "C" (hereinafter referred to as "Landlord's Work"). All other work done by Landlord at Tenant's request shall be at Tenant's expense and shall be paid for within (five (5)) days after the presentation to Tenant of a bill for such work.

**SECTION 3.03. DELIVERY OF POSSESSION DATE.** Landlord shall give Tenant at least thirty (30) days prior written notice of the projected date on which Landlord's Work will be substantially completed and the Demised Premises will be available to Tenant for the performance of Tenant's Work. On the day when Landlord's Work is substantially completed and the Demised Premises are ready for Tenant to begin its work under Section 3.04, Landlord and Tenant shall execute a Delivery of Possession Date Certificate substantially in the form of Exhibit G attached hereto and made a part hereof. (The date specified in such Certificate as the date on which the Demised Premises have been delivered to Tenant shall be the "Delivery of Possession Date".) Tenant agrees to take physical possession of the Demised Premises on the date Landlord renders possession of the Demised Premises to Tenant. From and after the Delivery of Possession Date, Tenant agrees to diligently perform Tenant's Work. \*SEE ADDENDUM (9)

**SECTION 3.04. TENANT'S WORK.** Other than work done pursuant to Section 3.02, all work is to be performed by Tenant at its expense (hereinafter referred to as "Tenant's Work") in accordance with Exhibit "D" attached hereto and made a part hereof and in accordance with the provisions of Section 3.05(b) hereof. All entry into the Demised Premises and work done by Tenant shall be at Tenant's risk. All work performed by Tenant shall be subject to Landlord's prior written approval and shall be in accordance with good construction practices, all applicable laws, insurance requirements, and Landlord's reasonable rules and regulations. Further, Landlord shall have no responsibility or liability for any loss or damage to any property belonging to Tenant. The Tenant agrees to pay for all the utilities used or consumed in the Demised Premises by Tenant on and after the Delivery of Possession Date. [Tenant shall obtain at Tenant's sole expense all certificates and approvals which may be necessary so that a certificate of occupancy for the Demised Premises may be issued.] Copies of all such certificates shall be delivered to Landlord. Except for Landlord's Work, Tenant shall ready the Demised Premises for the opening of Tenant's business by the Commencement Date. \*See Following Page

### SECTION 3.05. ALTERATIONS BY TENANT.

(a) Tenant may not make any exterior or structural alterations to the Demised Premises without the prior written consent of Landlord. In addition, Tenant shall not make, except in an emergency, any interior alterations, except for alterations to the decor of the Demised Premises, provided such alterations affect color or merchandising aspects of the interior only, without giving prior written notice to Landlord and Landlord giving Tenant its consent therefor. [Any such alterations shall be performed in a good and workmanlike manner and in accordance with applicable laws and insurance requirements and the terms and provisions of this Lease. which consent shall not be unreasonably withheld.]

(b) In the event that any mechanic's lien is filed against the Demised Premises or Shopping Center as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity of merits of such lien said lien and all sums so advanced shall be paid on demand as Additional Rent.

(c) Prior to the commencement of any work by Tenant, Tenant shall obtain public liability and workmen's compensation insurance to cover every contractor to be employed by Tenant, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval.

(d) If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Demised Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay the Landlord the costs of such repairs on demand as Additional Rent.

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### ARTICLE IV. CONDUCT OF BUSINESS

, after five (5) days prior written notice to Tenant,

### SECTION 4.01. USE AND TRADE NAME.

(a) Tenant shall use and occupy the Demised Premises for the following purposes only, and for no other purpose:

Retail hardware store selling items customarily sold at retail hardware stores in the Washington, D.C., SMSA, expressly excluding the sales of prescription drugs.

(b) Tenant shall operate its business from the Demised Premises under the following trade name only and under no other trade name: "Great Falls Hardware", without acquiring the prior written consent of Landlord, which consent shall not be unreasonably withheld.

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Landlord shall obtain at Landlord's sole expense all certificates and approvals which may be necessary so that a certificate of occupancy for the Demised Premises may be issued.

Landlord agrees that the Delivery of Possession Date shall be not later than December 31, 1984.

except as may result from the negligence of Landlord and not covered by insurance required to be obtained by Tenant.

be materially adversely affected. Landlord covenants that no kiosk, either permanent or temporary, shall be placed within a radius of 25 feet of Tenant's main door to the Demised Premises.

inspect the Demised Premises, compile a list of punchlist items of which Landlord shall diligently pursue the completion, and

\*Section 3.04 (continued)

Notwithstanding anything contained herein to the contrary, Landlord shall contribute the sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00) to Tenant toward the cost of performing Tenant's Work. The aforesaid sum shall be paid as follows:

(i) Ten Thousand and No/100 Dollars (\$10,000.00) shall be paid to Tenant upon the Delivery of Possession Date; and (ii) Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be paid to Tenant upon the completion of all items to be performed by Tenant pursuant to Exhibit "D", Section III, D. and the opening of the Demised Premises for business to the public. In the event Landlord fails to pay said Landlord's contribution within ten (10) days of the date upon which such payment is required to be made, said unpaid contribution shall bear interest at the prime rate of interest in effect at Riggs National Bank, to be adjusted as of the first day of every month until paid.

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which shall consist of eight (8) hours per day on Monday through Saturday, and six (6) hours on Sunday, provided a substantial majority of the ~~major~~ stores in the Shopping Center are open for business to the public on Sundays.

**SECTION 4.02. OPENING; ESTOPPEL CERTIFICATE.** Tenant agrees to open for business to the public by the end of the Fixturing Period and thereafter conduct its regular business operations continuously on all days and at all hours during which the Shopping Center is open for business. From time to time and upon five (5) days notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Demised Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby appoints Landlord as its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

**SECTION 4.03. UTILITIES.** Tenant, at its expense, shall arrange for and pay all costs of the charges for all utilities and services provided or used in or at the Demised Premises, commencing with the Delivery of Possession Date and throughout the term of this Lease. Tenant shall pay directly to the public utility companies, the cost of any installation not included in Landlord's Work of any and all such utility services. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises after delivery of the Demised Premises to Tenant.

**SECTION 4.04. SIGN.** Tenant shall install and maintain one (1) sign affixed to the front of the Demised Premises, subject to the prior written approval of Landlord, and conforming to all applicable legal and insurance requirements. Tenant's sign shall be consistent with the specifications and requirements contained in Exhibit "E" attached hereto. Tenant shall pay for all costs in connection with such sign and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Demised Premises thereby. In the event Landlord deems it necessary to remove such sign then Landlord shall have the right to do so, provided, however, Landlord shall replace said sign as soon as practicable at Landlord's sole cost. ~~No additional signs, which can be seen from the exterior of the Demised Premises, shall be installed or displayed in, on or about the Demised Premises without the prior written consent of Landlord.~~ Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Demised Premises which does not meet the above criteria may be removed at any time by Landlord without Landlord incurring any liability therefor, after five (5) days notice to Tenant.

**SECTION 4.05. TENANT'S WARRANTIES.** Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Demised Premises and any platform or loading dock used by Tenant in a neat and clean condition; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature; (iii) observe all rules and regulations established by Landlord for all tenants in the Shopping Center, provided Tenant shall be given at least five (5) days notice thereof; (iv) observe all restrictive covenants of record which are applicable to the Shopping Center, provided the same do not prohibit Tenant's permitted use of the Demised Premises; (v) not use the parking areas or sidewalks or any space outside the Demised Premises for display, sale, storage, or any other similar undertaking; (vi) not use any advertising medium or sound devices inside the Demised Premises which may be heard outside the Demised Premises, or permit any objectionable odors to emanate from the Demised Premises; (vii) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (viii) keep the temperature within the Demised Premises at such levels as may be required by any federal, state or local laws, ordinances, or regulations; (ix) maintain a full and complete stock of merchandise so as to attain the highest possible gross sales; and (x) employ only such labor in the performance of any work in and about the Demised Premises as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord, its contractors or subcontractors.

**SECTION 4.06. LEGAL REQUIREMENTS.** Tenant shall, at its own expense, comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

provided such improvements and modifications do not adversely affect visibility or access to the Demised Premises.


#### ARTICLE V. COMMON AREA

in keeping with prudent business practices and Tenant's reasonable judgment,

**SECTION 5.01. USE.** During the term of this Lease Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license, to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any of the stores in the Shopping Center or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the common areas and the use thereof. Tenant agrees to abide by and conform with such rules and regulations upon notice thereof and to cause its permitted concessionaires, ~~licensees~~ and licensees and its and their employees and agents to do the same.

**SECTION 5.02. COMMON AREA MAINTENANCE EXPENSES.** Landlord agrees to maintain and keep in good service and repair all common areas. Tenant agrees to reimburse Landlord for its proportionate share of all costs and expenses incurred by Landlord in maintaining and repairing all common areas in the Shopping Center (the "Common Area Maintenance Expenses"). The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) gas, electricity, water, sewer and other utility charges (including surcharges) of whatever nature; (ii) insurance premiums; (iii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel; (iv) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees; (v) all other maintenance and repair expenses and supplies which may be deductible for such calendar year in computing Federal income tax liability; (vi) any other costs and expenses (i.e. items which are not capital improvements) incurred by Landlord in operating the Shopping Center; (vii) the cost of any additional services not provided to the Shopping Center at the Lease Commencement Date but thereafter

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\*\*Notwithstanding the provisions of Section 4.05(v) regarding Tenant's use of parking areas or sidewalks or space outside the Demised Premises, Landlord and Tenant expressly agree that Tenant shall have the right to use the sidewalk in front of the Demised Premises for display and storage so long as such use does not unreasonably interfere or impede pedestrian traffic on the sidewalk in front of the Demised Premises and to use the area directly behind the Demised Premises in said rear parking lot for storage, provided Tenant does not use any parking space for said use, it keeps said area clear of debris, and said use does not impede vehicular traffic and is in conformance with all applicable local codes and ordinances,

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Tenant shall have the right, upon reasonable prior written notice to Landlord, at the end of each lease year, to audit Landlord's books and records for the purpose of determining that the amount of Common Area Maintenance Expenses was properly computed.

provided by Landlord in the prudent management of the Shopping Center, (viii) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Shopping Center, provided, however, that the cost of such such capital improvement, together with any financing charges incurred in connection therewith shall be amortized and/or depreciated over the useful life thereof, and only that portion thereof attributable to such lease year shall be included in the Common Area Expenses for such lease year, and, (ix) deposits into reserve accounts for capital improvements. Common Area Maintenance Expenses shall not include (i) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances, (ii) leasing commissions payable by Landlord or (iii) deductions for depreciation of the improvements shown on Exhibit A. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all Common Area Maintenance Expenses to which shall be added an additional administrative fee in an amount equal to fifteen percent (15%) of such expenses; (ii) from the sum arrived at by the preceding calculations, subtract the amount of all sums paid for such Expenses by any Major Tenant. (For all purposes in this Lease a "Major Tenant" is any tenant occupying more than twenty thousand (20,000) square feet of floor area in the Shopping Center.) The number arrived at by the calculation described in (ii) above shall hereinafter be referred to as the "Adjusted Common Area Expenses"; (iii) divide the Adjusted Common Area Expenses by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) less the aggregate number of square feet in the Shopping Center leased to Major Tenants; and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area not leased to a Major Tenant on the first day of each calendar month in such lease year or partial lease year. Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Maintenance Expenses, as computed above, in twelve (12) equal monthly installments, with the monthly installment of Minimum Rent. Notwithstanding the above, in the event Landlord at any time determines that the amount of Common Area Maintenance Expenses actually being paid by Landlord exceeds the estimate upon which Tenant's proportionate share of Common Area Maintenance Expenses was computed, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised estimate of Common Area Maintenance Expenses. At the end of each year, there shall be an adjustment if the amount paid by Tenant differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment of Common Area Maintenance Expenses. See Addendum (3).

(except for storefront)

#### ARTICLE VI. REPAIRS AND MAINTENANCE

all pipes, wires, lines, and conduits traversing the Demised Premises but serving areas of the Shopping Center other than the Demised Premises, exterior walls, roof, and foundation, except where such repair is required as a result of damage due to Tenant.

SECTION 6.01. LANDLORD'S OBLIGATIONS. Landlord shall keep in good repair the sewer and water lines servicing the Demised Premises, and the structural supports of the Demised Premises.

SECTION 6.02. TENANT'S OBLIGATIONS. Except as stated in Section 6.01, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Shopping Center, (iii) provide trash storage and removal services regardless of the location of any storage and removal facilities, except that if Landlord, in its sole discretion, shall provide trash services, Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor, (iv) change the Tenant's air conditioning filter as necessary but not less often than five (5) times a year and have the Tenant's air conditioner and heater serviced as necessary, but not less often than two (2) times a year and (v) repair any portion of the Shopping Center which is damaged as a result of any act or omission of Tenant. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

so long as the cost of such services to Tenant is no greater than

the reasonable cost to

provide its own trash removal services,

, except for sprinkler systems which shall be installed and maintained

by Landlord if required by applicable fire code

#### ARTICLE VII. REAL ESTATE TAXES

SECTION 7.01. LIABILITY. Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined for each tax year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes; (ii) from the sum arrived at by the preceding calculation, subtract the amount of all funds paid to Landlord for Taxes by Major Tenants; (iii) divide the number arrived at by the calculation described in (ii) above by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) less the aggregate number of square feet in the Shopping Center leased to Major Tenants; and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area not leased to a Major Tenant on the first day of each calendar month in such lease year or partial lease year. See Addendum (3).

This provision shall be effective only so long as at least ninety-five percent (95%) of the other tenants of the Shopping Center are also required to comply with the terms and conditions as herein provided.



Landlord hereby indemnifies and agrees to save harmless Tenant from and against any and all claims that arise from or in connection with the possession, use, occupation, management, repairs, maintenance or control of the Common Areas of the Shopping Center other than the Demised Premises. Landlord shall, at its own cost and expense, defend any and all actions which may be brought against Tenant with respect to the foregoing.

**SECTION 7.02. METHOD OF PAYMENT.** Tenant shall pay its share of such Taxes by the following method: ~~one-twelfth (1/12) of the taxes estimated to be due by the Landlord, shall be paid each month with the Minimum Rent until the end of the first tax year after the Commencement Date; thereafter the monthly payments shall be based upon the tax bill for the previous tax year; any adjustments necessary for the amount paid for the previous tax year shall be debited or credited for the case may be to the next monthly installment until the liability has been extinguished. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.~~

#### ARTICLE VIII. INSURANCE, INDEMNITY AND LIABILITY

**SECTION 8.01. LANDLORD'S OBLIGATIONS.** Landlord shall obtain and maintain during the term of this Lease, fire and extended coverage insurance insuring against all reasonable perils and liabilities, for eighty percent (80%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Shopping Center is located. Tenant shall reimburse Landlord for its proportionate share of such insurance cost as a portion of the Common Area Maintenance Expenses described in Article V.

**SECTION 8.02. TENANT'S OBLIGATIONS.** ~~the identities of which are furnished to Tenant in writing.~~

(a) Tenant, at Tenant's sole cost and expense, shall obtain and maintain for the term of this Lease, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings, merchandise, and other contents in the Demised Premises, for the full replacement value of said items; ~~(ii) one full year Minimum Rent coverage;~~ (iii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Shopping Center is located; ~~(iv) plate glass insurance, if available; and (v) comprehensive general liability insurance naming Landlord, any mortgagee and master lessor as additional insureds, which policy is to be in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00) with respect to any one person, in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to any one accident, and in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) with respect to property damage. The minimum limits hereinbefore set forth may, at Landlord's option be increased by not more than ten percent (10%), such increase to occur not more often than once during each two (2) consecutive lease years during the term hereof. Tenant shall deliver to Landlord certificates of insurance, or duplicate originals of each such policy.~~ ~~where an increase in minimum limits is required by prudence, but in any event~~

(b) The policies described in this Section 8.02 shall: (i) be acceptable to Landlord in form and content; (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees, and mortgagees and ground lessors; (iii) contain a provision that it shall not be cancelled and that it shall continue in full force and effect unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination; and (iv) not be materially changed without prior notice to Landlord, ~~other than those which are consistent with the use of the Demised Premises as described in Section 4.01(a)~~ ~~hereof.~~

(c) Tenant shall not permit to be done any act which will invalidate or be in conflict with the fire insurance policies covering the Shopping Center or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents ~~shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.~~

#### SECTION 8.03. COVENANTS TO HOLD HARMLESS.

(a) Landlord and Tenant each hereby releases the other, its officers, directors, employees, and agents from any and all liability for responsibility for any loss or damage to property covered by valid and collectable fire insurance with standard and extended coverage endorsement, even if such fire or other casualties shall have been caused by the fault or negligence of the other party, or any one for whom such party may be responsible. ~~Tenant agrees to pay the increased insurance cost if any resulting from such release.~~ ~~which are the responsibility of Tenant.~~

(b) Tenant hereby indemnifies and agrees to save harmless Landlord, any mortgagee and master lessor of the Shopping Center, from and against any and all claims that arise from or in connection with the possession, use, occupation, management, repairs, maintenance or control of the Demised Premises, or any portion thereof, ~~and law sidewalks adjoining same.~~ Tenant shall, at its own cost and expense, defend any and all actions which may be brought against Landlord, any mortgagee or master lessor with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Landlord, any mortgagee or master lessor in connection with the foregoing, ~~except for cases involving personal injury which arise from Landlord's negligence.~~

**SECTION 8.04. LIABILITY OF LANDLORD TO TENANT.** Except with respect to any damages resulting from the gross negligence of Landlord, its agents or employees, Landlord shall not be liable to Tenant, its agents, employees or customers, for any damage, loss, compensation, accident or claims whatsoever.

~~and not covered by Tenant's insurance.~~

#### ARTICLE IX. DESTRUCTION OF DEMISED PREMISES

~~or Tenant~~

**SECTION 9.01. CONTINUANCE OF LEASE.** If all or a substantial portion of the Demised Premises shall be damaged by fire or other casualty, this Lease shall not be terminated or otherwise affected; except that if any such fire or other casualty occurs within the last two (2) years of the term of this Lease and the cost of repair exceeds ~~Five Thousand~~ ~~(\$5,000.00)~~ ~~as estimated by Landlord, then Landlord shall have the option to terminate this Lease within ninety (90) days following the occurrence of such fire or other casualty by giving written notice to the Tenant during such period.~~ ~~In the event Landlord exercises its option, this Lease shall immediately terminate and the entire proceeds of the insurance provided for in Section 8.01 shall be paid to the Landlord and be the sole property of Landlord.~~ ~~other~~

**SECTION 9.02. RECONSTRUCTION; RENT ABATEMENT.** If all or any portion of the Demised Premises is damaged by fire or other casualty and this Lease is not terminated in accordance with the above provision, then all insurance proceeds however recovered shall be made available for payment of the cost of repair, replacing and rebuilding. Landlord shall use the proceeds from the insurance as set forth herein, to repair or rebuild the Demised Premises to its condition in

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In the event Tenant's insurance proceeds shall be more than the Tenant's obligations hereunder, Landlord shall refund such excess immediately to Tenant from the escrow account.

accordance with the provisions of Exhibit C, and Tenant shall, using the proceeds from the insurance provided for in Section 3.02, repair, restore, replace, or rebuild that portion of the Demised Premises constituting Tenant's Work as defined herein together with any additional improvements installed by Tenant, such that the Demised Premises shall be restored to its condition as of immediately prior to the occurrence of such casualty. All of the aforesaid Tenant's insurance proceeds shall be deposited in escrow and shall be disbursed as work on repair, replacement or restoration progresses upon the certification of Landlord's architect that the balance in the escrow fund is sufficient to pay the estimated costs of completing the repair and restoration. If Tenant's such insurance proceeds shall be less than the Tenant's obligation hereunder, Tenant shall pay the entire excess cost. The Minimum Rent, Tenant's share of Common Area Maintenance Expenses, and Fund (as hereinafter defined) contribution which are payable hereunder during the existence of such damage and until such repair rebuilding is substantially completed, shall be equitably apportioned. Equitable apportionment shall terminate upon the earlier of the date upon which the Tenant commences to use substantially all of the Demised Premises for business with the public or the date upon which Landlord substantially completes its repair or rebuilding work and the expiration of a period equal in duration to the Fixturing Period.

, provided, this provision shall be effective only if all other tenants of the Shopping Center are so terminated and not offered new or replacement space in the Shopping Center.

#### ARTICLE X. CONDEMNATION

or Tenant

to the other

**SECTION 10.01. EMINENT DOMAIN.** If twenty-five percent (25%) or more of the floor area of the Demised Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date of which such title shall vest in the authority. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, Landlord may elect to terminate this Lease by giving Tenant notice within one hundred twenty (120) days after such taking. In addition, if any Major Tenant shall terminate its lease with the Landlord, pursuant to a taking of its store, Landlord may terminate this Lease on written notice to Tenant within sixty (60) days after notice to Landlord that a Major Tenant is terminating its lease. In case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which under the terms of this Lease would not have become the property of the Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord.

**SECTION 10.02. RENT APPORTIONMENT.** Tenant's obligation to pay Minimum Rent shall be apportioned or ended, as the case may be, as of the date of vesting of title or termination of this Lease. Any purchase of all or a portion of the Shopping Center in lieu of a taking or condemnation under powers of eminent domain shall be a taking or condemnation thereof.

#### ARTICLE XI. ASSIGNMENT, SUBLETTING AND ENCUMBERING LEASE

without Landlord's prior consent, which consent shall not be unreasonably be withheld

(a) Tenant shall not (i) assign or otherwise transfer, or mortgage or otherwise encumber, this Lease or any of its rights hereunder, (ii) sublet the Demised Premises or any part thereof, or permit the use of the Demised Premises or any part thereof by any persons other than Tenant or its agents, or (iii) permit the assignment or other transfer of this Lease or any of Tenant's rights hereunder by operation of law. Any attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest hereunder and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Premises in violation of the foregoing sentence shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee, sublessee, or occupant. See next page at \*

(b) In addition, in the event Tenant desires to assign or transfer this Lease or sublet (or permit occupancy or use of) the Demised Premises, or any part thereof, Tenant shall give Landlord sixty (60) days prior written notice of Tenant's intention to so assign or transfer or sublet all or any part of the Demised Premises. For sixty (60) days following receipt of said notice, Landlord shall have the right, exercisable by sending written notice to Tenant, either to terminate this Lease or to sublet from Tenant for the balance of the term of this Lease. (i) all of the Demised Premises in the event Tenant notified Landlord of its intention to assign or transfer this Lease, or (ii) only so much of the Demised Premises as Tenant intends to sublet in the event Tenant notified Landlord of its intention to sublet the Demised Premises or a portion thereof, at the same rental per square foot Tenant is obligated to pay to Landlord hereunder. In the event Landlord does not exercise its right to terminate this Lease or sublet such space within sixty (60) days from receipt of said notice, Tenant may assign or transfer or sublet such space if Tenant has obtained the prior written consent of Landlord. In the event that Tenant defaults hereunder, Tenant hereby assigns to Landlord the rent due from any subtenant of Tenant and hereby authorizes each such subtenant to pay rent directly to Landlord. The consent by Landlord to any assignment, transfer, or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant of any covenant or obligation contained in this Lease, nor shall any such assignment, transfer or subletting be construed to release Tenant from giving Landlord and any (60) days notice or from obtaining the consent in writing of Landlord to any further assignment, transfer or subletting.

(c) In the event Landlord does not exercise its right to have all or a portion of the Demised Premises, as the case may be, subleased or assigned to it but gives Tenant its written consent to assign, transfer, or sublet all or a portion of the Demised Premises to a third party, any monthly rent or other payment accruing to Tenant as the result of any such assignment, transfer, or sublease, including any lump sum or periodic payment in any manner relating to such assignment, transfer or sublease, which is in excess of the rent then payable by Tenant under the Lease shall be paid by Tenant to Landlord monthly as additional rent. Landlord may require a certificate from Tenant specifying the full amount of any such payment of whatsoever nature.

reasonable

(d) Any costs and expenses, including attorney's fees (which shall include the cost of any time expended by Landlord's in-house counsel) incurred by Landlord in connection with any proposed or purported assignment, transfer or sublease shall be borne by Tenant and shall be payable to Landlord as Additional Rent.

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\*Article XI (continued)

(a) It shall be considered reasonable if the proposed assignee or subtenant:  
(i) is an experienced retailer in the field of business permitted under Section 4.01 hereof; (ii) has an adequate financial net worth to operate the Demised Premises as reasonably determined by Landlord; (iii) specifically agrees to operate the Demised Premises pursuant to the use clause contained herein. Further, in the event Tenant receives any rentals in excess of the rentals to be paid to Landlord in return for the assignment of the Lease or sublease of the Leased Premises, then such excess consideration, however characterized, shall be paid to Landlord as additional rent. See Addendum (10).

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## ARTICLE XII. SUBORDINATION AND FINANCING

**SECTION 12.01. SUBORDINATION.** This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of the Landlord and the Demised Premises. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee subordinating this Lease to the lien of any present or further mortgage or deed of trust. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver any such instrument for Tenant.

**SECTION 12.02. ATTORNMEN.** If, and so long as this Lease is in full force and effect, then at the option of the mortgagee: (i) this Lease shall remain in full force notwithstanding (A) a default under the mortgage by Landlord, (B) failure of Landlord to comply with this Lease, (C) a defense to which Tenant might be entitled against Landlord under this Lease, or (D) any bankruptcy or similar proceedings with respect to Landlord, (ii) if any such mortgagee shall become possessed of the Demised Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease, (iii) if any mortgagee or purchaser at a private or public sale shall become possessed of the Demised Premises, Tenant shall, without charge, turn to such mortgagee or purchaser as its landlord under the Lease.

**SECTION 12.03. FINANCING.** In the event the construction lender, land lessor, or the permanent lender for the Shopping Center requires as a condition to financing, modifications to this Lease, provided such modifications are reasonable, do not adversely affect Tenant, do not materially alter the approved working plans and do not increase the rentals and other sums to be paid hereunder, the Landlord shall submit to Tenant a written amendment with such required modifications and if Tenant fails to execute and return within ten (10) days thereafter the amendments that have been submitted, then Landlord shall have the right to cancel this Lease, upon written notice to Tenant.

twenty (20)

## ARTICLE XIII. ADVERTISING AND PROMOTIONAL FUND

**SECTION 13.01. LANDLORD'S CONTRIBUTION.** Landlord shall contribute to the Shopping Center Advertising and Promotion Fund (the "Fund") in accordance with the terms of this Article. The object of the Fund shall be to advertise and promote the Shopping Center and the tenants therein. The Fund shall be administered by the Landlord. The Landlord shall contribute to the Fund a dollar amount equal to twenty percent (20%) of the total dollar amount contributed by the tenants in the Shopping Center.

**SECTION 13.02. TENANT'S CONTRIBUTION.** Annual contributions of Tenant shall be Nine Hundred Dollars (\$ 900.00). ~~Times the number of square feet of floor area in the Demised Premises. Tenant shall also pay a one-time initial contribution in an amount equal to one year's contribution as computed above. This initial contribution shall be due and payable on the execution of the Lease. day Tenant opens for business to the public.~~

**SECTION 13.03. METHOD OF PAYMENT.** The contributions shall be paid to Landlord for the account of the Fund in twelve (12) equal monthly installments in the same manner as the monthly installments of Minimum Rent are payable. Landlord, in its sole discretion, may by a notice to all tenants at the end of any lease year make any one of the further contributions to the Fund subject to annual adjustments (upward only) by the increase in the Consumer Price Index by multiplying the annual contribution then in effect by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such adjustment, and the denominator of which shall be the Consumer Price Index as of the Commencement Date. The Consumer Price Index is defined in Article XIV. Landlord shall pay over such contributions to the Fund within ten (10) days after receipt thereof or upon the formal formation of the Fund, whichever event occurs last.

## ARTICLE XIV. DEFAULTS

**SECTION 14.01. ELEMENTS OF DEFAULT.** If any one or more of the following events occur, said event or events shall hereby be classified as a "Default":

(a) if Tenant, or any guarantor of Tenant's obligations hereunder, shall make an assignment for the benefit of creditors or file a petition, in any state court, in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property;

(b) if any petition shall be filed under state law against Tenant, or any guarantor of Tenant's obligations hereunder in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within thirty (30) days after such petition is filed;

(c) if a receiver or trustee shall be appointed under state law for Tenant, or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within thirty (30) days after such appointment; See Addendum (4)

(d) if Tenant refuses to take possession of the Demised Premises within forty-five (45) days of the Delivery of Possession Date, or fails to open its doors for business at the expiration of the Fixturing Period as required herein, vacates the Demised Premises and permits the same to remain unoccupied and unattended or substantially ceases to carry on its normal activities in the Demised Premises;

(e) if the Tenant is a corporation, if any part or all of its stock representing effective voting control of Tenant, shall be transferred so as to result in a change in the present effective voting control of Tenant and such change is not consented to in writing by Landlord, provided, however, this provision shall not apply if Tenant is a publicly traded corporation; See Addendum (10)

(f) if Tenant fails to pay Minimum Rent Percentage Rent, Fund Contributions, its share of the Common Area Maintenance Expenses, Taxes, Additional Rent or any other charges required to be paid by Tenant when same shall become due and payable, and such failure continues for five (5) days, after receipt of written notice of such nonpayment;

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within ten (10) days of the date when it shall become due and payable and

Payable with monthly installments of Minimum Rent in equal installments of Seventy-five Dollars (\$75.00) each.

twenty (20)

(g) if Tenant shall fail to perform or observe any terms and conditions of this Lease, and such failure shall continue for ~~ten (10)~~ days after written notice from Landlord (except that such ~~ten (10)~~ day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such Default, if such Default cannot be cured within such period, provided Tenant commences the process of curing the same within said ~~ten (10)~~ day period and diligently pursues such cure);

valid

within any five (5) consecutive year period

(h) if Tenant shall be given three (3) notices of Default under Section 14.01 (f) ~~or (g)~~, notwithstanding any subsequent cure of the Default identified in such notices; or

(i) if any execution, levy, attachment or other legal process of law shall occur upon Tenant's goods, fixtures, or interest in the Demised Premises.

**SECTION 14.02. LANDLORD'S REMEDIES.** Should a Default occur under this Lease, Landlord may pursue any or all of the following:

(i) Landlord may terminate this Lease, by giving five (5) days' written notice of such termination to Tenant, whereupon this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit the Demised Premises. Any other notice to quit or notice of Landlord's intention to re-enter the Demised Premises is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later.

(ii) Upon termination of this Lease pursuant to Section 14.02(i), Landlord may proceed to recover possession of the Demised Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Shopping Center is located, or by such other proceedings, including re-entry and possession, as may be applicable.

(iii) Should this Lease be terminated before the expiration of the term of this Lease by reason of Tenant's default as hereinabove provided, or if Tenant shall abandon or vacate the Demised Premises before the expiration or termination of the term of this Lease without having paid the full rental for the remainder of such term, Landlord shall have the option to relet the Demised Premises for such rent and upon such terms as are not unreasonable under the circumstances and, if the full rental reserved under this Lease (and any of the costs, expenses or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in rent, reasonable attorneys' fees, brokerage fees and expenses of placing the Demised Premises in first class rentable condition. Landlord, in putting the Demised Premises in good order or preparing the same for rental may, at Landlord's option, make such alterations, repairs, or replacements in the Demised Premises as Landlord, in its sole judgment, considers advisable and necessary for the purpose of reletting the Demised Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises, or in the event that the Demised Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.

prior to the expiration of the applicable grace period described in Section 14.01 above

(iv) If Tenant shall fail to pay any monthly installment of rent pursuant to the terms of this Lease, or any Additional Rent due under this Lease, ~~when each such payment is due~~, for two (2) consecutive months, or three (3) times in any period of six (6) consecutive months, then Landlord may, by giving written notice to Tenant, exercise any of the following options as a condition of Tenant's curing such Default: (A) declare the rent reserved under this Lease for the next six (6) months (or at Landlord's option for a lesser period) to be due and payable within ten (10) days of such notice; or (B) require an additional security deposit to be paid to Landlord within ten (10) days of such notice, in an amount not to exceed six (6) months rent. Landlord may invoke any of the options provided for herein at any time during which Default remains uncured.

(v) Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or at Landlord's option in a single proceeding deferred until the expiration of the term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said term) or in a single proceeding prior to either the time of reletting or the expiration of the term of this Lease.

(vi) Nothing contained herein shall prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired term of this Lease. In the event of a breach or anticipatory breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Demised Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

**SECTION 14.03. PERCENTAGE RENT AFTER DEFAULT.** For the purpose of computing Percentage Rent for each year after a Default, Tenant's Gross Sales shall be deemed to be the average of Tenant's Gross Sales during all of the lease years preceding the lease year during which the Default occurred, but in no event shall such Percentage Rent be deemed to be less than ~~five percent (5%)~~ of the Minimum Rent during the lease year during which the Default occurred, increased by ~~ten percent (10%)~~ for each subsequent year.

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**SECTION 14.04. ADDITIONAL REMEDIES AND WAIVERS.** The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is writing, signed by the Landlord.

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SECTION 14.05. CURE OF DEFAULT. If Tenant shall be in Default hereunder, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of the Tenant. No such notice shall be required for emergency repairs. Tenant agrees to pay Landlord interest, at a rate equal to two percent (2%) in excess of the prime rate of interest announced from time to time by The Chase Manhattan Bank N.A. but not in excess of the maximum legal rate, for all sums paid by Landlord pursuant to the terms of this Article, and for all sums due and owing to Landlord more than five (5) days after the date such sums are due.

#### ARTICLE XV. RIGHT OF ACCESS

, provided such access does not unreasonably interfere with Tenant's conduct of business.

Landlord may, upon prior notice to Tenant, enter upon the Demised Premises for the purpose of inspecting, making repairs, replacements, or alterations, and showing the Demised Premises to prospective purchasers, lenders or lessees. During the last six (6) months of the term, Landlord shall have the right to display one or more "For Rent" signs on or about the Demised Premises.

#### ARTICLES XVI. DELAYS

If Landlord or Tenant is delayed or prevented from performing any of their respective obligations during the term of this Lease because of acts of God or other cause beyond their control, then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder or any obligation of Landlord or Tenant that can be satisfied by the payment of money.

#### ARTICLE XVII. END OF TERM

, except for reasonable wear and tear and casualty not required to be insured and provided Landlord shall specify in writing at least forty-five (45) days prior to the termination date the alterations not wanted.

SECTION 17.01. RETURN OF DEMISED PREMISES. Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Demised Premises, in good order, broom clean, normal wear and tear and acts of God excepted, to the Landlord. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Demised Premises not wanted by Landlord, and repair damage caused by such removal and return the Demised Premises to the condition in which they were prior to the installation of the article so removed. Upon the expiration or termination of this Lease, Tenant shall execute and acknowledge a quit-claim deed to Tenant's interest in the Demised Premises, in recordable form, in favor of the Landlord ten (10) days after written notice and demand therefor by Landlord, and Tenant hereby appoints Landlord its attorney-in-fact, irrevocably to execute and deliver such quit claim deed in the event Tenant fails to deliver such quit claim deed within said ten (10) days of written notice.

SECTION 17.02. HOLDING OVER. If Tenant shall hold possession of the Demised Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Demised Premises as a tenant from month-to-month, at double the Minimum Rent and Percentage Rent in effect during the last least year immediately preceding such hold over and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at a law or in equity including an action for wrongfully holding over. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the rent or other amount owed or to pursue any other remedy provided in this Lease.

if such holdover occurs without Landlord's written consent, and at the same Minimum Rent and Percentage Rent if such holdover occurs with Landlord's written consent.

#### ARTICLE XVIII. COVENANT OF QUIET ENJOYMENT

Landlord covenants that if and so long as Tenant pays the rent and all other charges provided for herein, and performs all of its obligations provided for herein, Tenant shall at all times during the term hereof peaceably, have hold and enjoy the Demised Premises, without any interruption or disturbance from Landlord, or any one claiming through or under Landlord, subject to the terms hereof.

#### ARTICLE XIX. MISCELLANEOUS

(a) This Lease contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, or warranties, or representations, oral or written, between them or other than as herein set forth. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid, addressed:

(1) If to Landlord, to Western Development Corporation, 1204 Wisconsin Avenue, N.W., Washington, D.C. 20007, with a copy to XXXXXXXXXXXXXXXXXXXXXXXXXXXX or to such other address as Landlord shall designate by giving notice in writing to Tenant.

(2) If to Tenant, to P.O. Box 208, Great Falls, VA 22066, or such other address as Tenant shall designate by giving notice thereof to Landlord. The date of service of any notice given by mail shall be the date on which such notice is deposited in the U.S. mails. Copies of all notices to Tenant shall also be sent to Shulman, Rogers, Gandal, Tobin & Ecker, P.A., 8630 Fenton Street, Suite 430, Silver Spring, Maryland 20910, Attention: Lawrence A. Shulman, Esquire.

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(c) It is the intent of the parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the jurisdiction in which the Shopping Center is located.

(d) This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

(e) There shall be no personal liability on Landlord, Landlord's beneficiaries or any successor in interest with respect to any provisions of this Lease. Tenants shall look solely to the equity of the then owner of the Demised Premises for the satisfaction of any remedies of the Tenant in the event of a breach by Landlord or any of its obligations hereunder.

(f) Tenant warrants and represents that there was no broker or agent instrumental in consummating this Lease. Tenant agrees to indemnify and hold Landlord harmless against any claims for brokerage or other commissions arising by reason of a breach by Tenant of this representation and warranty.

(g) Landlord hereunder shall have the right to freely assign this Lease without notice to or the consent of Tenant.

(h) The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint venturers.

(i) Tenant hereby expressly waives for itself and all persons claiming by or through it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Tenant shall be dispossessed for any cause.

(j) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Demised Premises, and/or any claim of injury or damage.

(k) If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

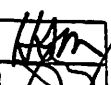
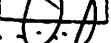
(l) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

~~(m) As used herein Consumer Price Index shall mean the Revised Consumer Price Index for Wage Earners and Clerical Workers for the Metropolitan Washington, D.C. area (all items, 1967=100) promulgated by the Bureau of Labor Statistics of the United States Department of Labor.~~

Landlord similarly agrees to indemnify Tenant by reason of a breach of this warranty by Landlord.

and Landlord each

provided, however, in the event that Tenant is not so informed of an assignment of this Lease prior to its payment of any installment of Minimum Rent, Percentage Rent or Additional Rent which shall become due, then Tenant shall not be held liable by either Landlord or Landlord's assignee for its failure to pay the assignee of the Lease.

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IN WITNESS WHEREOF, and intending that this Lease be a sealed instrument, Landlord and Tenant have executed this Lease under seal on the dates indicated below.

WITNESS:

Rinde S. Bright (SEAL)

ATTEST:

[Signature] (SEAL)  
Secretary  
[Signature]

LANDLORD:

South Lakes Village Center Associates  
Limited Partnership, a Virginia Limited  
Partnership

By: Western Development Company, a  
District of Columbia General Partnership,  
General Partner

By: MKD Associates, a District of Columbia  
General Partnership

By: [Signature] (SEAL)  
Herbert S. Miller,  
General Partner

Date of Execution May 17, 1983

TENANT:

The Great Falls Hardware Company of Reston,  
a Virginia Corporation

By: [Signature] (SEAL)  
John Saul, President

Date of Execution 5-3-83

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TN	<u>[Signature]</u>

REV 1-7-82



CITY OF WASHINGTON  
DISTRICT OF COLUMBIA

ss:

Before me, a Notary Public in and for the jurisdiction aforesaid personally appeared this date Herbert S. Miller, General Partner of MKD Associates, a District of Columbia General Partnership; General Partner of Western Development Company, a District of Columbia General Partnership; General Partner of South Lakes Village Center Associates Limited Partnership, a Virginia Limited Partnership, who being by me first duly sworn, did acknowledge that he, being authorized so to do, executed the foregoing and annexed instrument in the name and on behalf of said corporation, as the free act and deed of said corporation for the uses and purposes therein contained.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_\_\_\_

Notary Public

My Commission Expires \_\_\_\_\_

(Notarial Seal)

COUNTY OF  
STATE OF

ss:

Before me, a Notary Public in and for the jurisdiction aforesaid personally appeared this date \_\_\_\_\_ of \_\_\_\_\_ who being by me first duly sworn, did acknowledge that he, being authorized so to do, executed the foregoing and annexed instrument in the name and on behalf of said \_\_\_\_\_ as the free act and deed of said \_\_\_\_\_ for the uses and purposes therein contained.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_\_\_\_

Notary Public

My Commission Expires \_\_\_\_\_

(Notarial Seal)

COUNTY OF  
STATE OF

ss:

Before me, a Notary Public in and for the jurisdiction aforesaid personally appeared this date \_\_\_\_\_ of \_\_\_\_\_ who being by me first duly sworn, did acknowledge that he, being authorized so to do, executed the foregoing and annexed instrument in the name and on behalf of said \_\_\_\_\_ as the free act and deed of said \_\_\_\_\_ for the uses and purposes therein contained.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_\_\_\_

Notary Public

My Commission Expires \_\_\_\_\_

(Notarial Seal)

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EXHIBIT A

Site Plan



Handwritten signature or initials, possibly "Hm" or "Jm", with a large, stylized flourish below it.

WALTER L. PHILLIPS  
INCORPORATED  
CIVIL ENGINEERS  
LAND SURVEYORS  
PLANNERS

W. LEE PHILLIPS, P.E.  
PRESIDENT  
ROBERT A. KINSEY, P.E.  
EXECUTIVE VICE PRESIDENT  
ERRY A. MCKNIGHT, C.L.S.  
VICE PRESIDENT - SURVEYING  
PATRICIA R. MENHENNICK  
PRESIDENT - ADMINISTRATION  
IANCE M. ANDERSON, P.E.  
VICE PRESIDENT - ENGINEERING

WALTER L. PHILLIPS, P.E.  
(1903-4878)

207 PARK AVENUE  
FALLS CHURCH, VA. 22046  
(703) 532-6163

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Description of Proposed Block 2A of the Resubdivision of Blocks 2, 3, 5, 6 and 7, Block 80, Reston, Centreville District, Fairfax County, Virginia

"Beginning at a point in the west line of South Lakes Drive, Route 5329, said point marking the northeast corner of the property herein described and the southeast corner of Block 1, Section 80, Reston; thence with the west line of South Lakes Drive, Route 5329, S 17° 47' 06" E, 202.68 feet to a point of curvature; thence continuing with the west line of said South Lakes Drive, 909.51 feet with the arc of a curve bearing to the right and having a radius of 755.00 feet (tangent length 519.10 feet, chord length 855.50 feet, chord bearing S 16° 43' 32" W) to a point of tangency; thence continuing with the west line of South Lakes Drive, Route 5329, S 51° 14' 10" W, 96.64 feet to a point of curvature; thence 118.85 feet with the arc of a curve bearing to the left and having a radius of 845.00 feet (tangent length 59.52 feet, chord length 118.85 feet, chord bearing S 47° 12' 25" W) to a point in the curve; thence departing the west line of said South Lakes Drive and running with the north line of Block 3, Section 80, Reston, 34.58 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet (tangent length 20.70 feet, chord length 31.89 feet, chord bearing N 03° 33' 14" E) to a point of reverse curvature; thence 220.09 feet with the arc of a curve bearing to the right and having a radius of 150.00 feet (tangent length 135.23 feet, chord length 200.87 feet, chord bearing N 05° 57' 54" E) to a point of tangency; thence continuing with the line of Block 3, Section 80, Reston, N 48° 00' 00" E, 7.65 feet to a point; thence N 35° 00' 00" W, 296.35 feet to a point; thence N 26° 20' 32" W, 114.94 feet to a point; thence N 12° 00' 00" W, 53.00 feet to a point; thence S 78° 00' 00" W, 35.00 feet to a point, said point being in the east line of Block 1A, Section 80, Reston; thence with the east lines of Block 1A, Section 80, Reston, N 01° 20' 13" E, 139.47 feet to a point; thence S 73° 09' 47" E, 117.15 feet to a

Description of Proposed Block 2A of the Resubdivision of Blocks 2, 4, 5, 6 and 7, Block 80, Reston, Centreville District, Fairfax County, Virginia.

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point; thence N 16° 50' 13" E, 37.54 feet to a point; thence N 76° 20' 14" E, 42.64 feet to a point; thence N 13° 39' 47" W, 230.45 feet to a point; thence N 24° 35' 13" E, 109.00 feet to a point; thence S 72° 24' 48" E, 112.93 feet to a point; thence N 46° 35' 13" E, 86.07 feet to a point marking the southwest corner of Block 1, Section 80, Reston and the southeast corner of Block 1A, Section 80, Reston; thence continuing with the south line of Block 1, Section 80, Reston, N 75° 35' 13" E, 107.88 feet to a point; thence Due East 151.24 feet to the beginning and containing 492,706 square feet or 11.311 acres.

Less and Except Proposed Block 4A Described as Follows:

"Beginning at a point in the west line of South Lakes Drive, Route 5329, said point being S 17° 47' 06" E, 147.68 feet from the northeast corner of proposed Block 2A, Section 80, Reston and the southeast corner of Block 1, Section 80, Reston; thence with the west line of South Lakes Drive, Route 5329, S 17° 47' 06" E, 55.00 feet to a point of curvature; thence 145.55 feet with the arc of a curve bearing to the right and having a radius of 755.00 feet (tangent length 73.00 feet, chord length 145.33 feet, chord bearing S 12° 15' 44" E) to a point; thence departing the west line of South Lakes Drive, Route 5329, and running with the line of proposed Block 2A, Block 80, Reston, S 83° 15' 39" W, 15.90 feet to a point of curvature; thence 129.29 feet with the arc of a curve bearing to the right and having a radius of 125.00 feet (tangent length 71.10 feet, chord length 123.60 feet, chord bearing N 67° 06' 30" W) to a point of reverse curvature; thence 22.92 feet with the arc of a curve bearing to the left and having a radius of 25.00 feet (tangent length 12.33 feet, chord length 22.12 feet, chord bearing N 63° 44' 20" W) to a point; thence Due North 201.00

Ham  
[Signature]

ALTER L PHILLIPS  
INCORPORATED

Description of Proposed Block 2A of the Resubdivision of Blocks 2, 4, 5, 6 and 7, Block 80, Reston, Centreville District, Fairfax County, Virginia.

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feet to a point; thence 46.54 feet with the arc of a curve bearing to the right and having a radius of 34.50 feet (tangent length 27.58 feet, chord length 43.09 feet, chord bearing S 51° 21' 24" E) to a point of reverse curvature; thence 87.50 feet with the arc of a curve bearing to the left and having a radius of 50.50 feet (tangent length 59.42 feet, chord length 76.96 feet, chord bearing S 62° 21' 10" E) to the point of beginning and containing 25,097 square feet or 0.576 acres."

And Less and Except Proposed Block 5A Described as Follows:

"Beginning at a point in the west line of South Lakes Drive Route 5329, said point being 118.85 feet with the arc of a curve bearing to the right and having a radius of 845.00 feet to a point; thence N 51° 14' 10" E, 96.64 feet to a point and; thence 109.01 feet with the arc of a curve bearing to the left and having a radius of 755.00 feet from the southeast corner of proposed Block 2A, Section 80, Reston and the northeast corner of Block 3, Section 80, Reston; thence running with the lines of proposed Block 2A, Section 80, Reston, N 42° 07' 38" W, 140.85 feet to a point; thence 189.58 feet with the arc of a curve bearing to the left and having a radius of 614.79 feet (tangent length 95.55 feet, chord length 188.83 feet, chord bearing N 33° 00' 23" E) to a point of reverse curvature; thence 15.01 feet with the arc of a curve bearing to the right and having a radius of 10.00 feet (tangent length 9.33 feet, chord length 13.64 feet, chord bearing N 67° 10' 34" E) to a point; thence S 69° 49' 12" E, 130.98 feet to a point in a curve in the west line of South Lakes Drive, Route 5329; thence with the

*Handwritten signature*

ALTER L. PHILLIPS  
INCORPORATED

Description of Proposed Block 2A of the Resubdivision of Blocks 2,  
4, 5, 6 and 7, Block 80, Reston, Centreville District, Fairfax  
County, Virginia.

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west line of said South Lakes Drive, 266.72 feet with the arc of a  
curve bearing to the right and having a radius of 755.00 feet  
(tangent length 134.76 feet, chord length 265.33 feet, chord bearing  
S 32° 50' 37" W) to the point of beginning and containing 32,624  
square feet or 0.749 acres."

*W. Lee Phillips*

Walter L. Phillips, C.L.S.

October 8, 1981

*Ham*  
*JP*

**EXHIBIT "C"**  
**OUTLINE SPECIFICATIONS**

**SECTION I: DESCRIPTION OF WORK PROVIDED BY THE LANDLORD FOR SHELL CONSTRUCTION**

All work as described herein, shall be in accordance with applicable federal, state, and local codes and shall be executed in a professional and workmanlike manner.

**A. Site Improvements**

1. Parking areas shall be graded and surfaced with bituminous concrete paving suitable to local conditions as determined by Landlord's architects and engineers.
2. Parking lot lighting and striping as specified by the Landlord's architect and meeting accepted standards.

**B. Excavation, Grading, and Foundations**

1. Excavate and backfill all foundation walls, piers, and wall footings.
2. Reinforced concrete footings, piers, and foundation walls as required to support the structure as imposed by local codes.
3. Compact a minimum of three inches (3") of sand or gravel fill sub-graded four inches (4") below the finished floor elevation.

**C. Exterior Slabs**

1. Front sidewalk of four inches (4") reinforced concrete (width as determined by Landlord's architect) for full length of retail buildings.

**D. Structural Steel**

1. Structural system to conform to latest A.I.S.C. and S.J.I. specifications, and the following:
  - a. Structural steel as governed by local codes.
  - b. Steel joists, main roof as governed by local codes.
  - c. Bridging for majority of steel joists shall be horizontal.
  - d. Steel roof deck.
  - e. All structural steel, steel deck, and joists to be shop painted.

**E. Miscellaneous Iron**

1. Angle framing for roof openings and equipment supports necessary for Landlord's work only.
2. Lintels.
3. Downspout protection.
4. Concrete filled pipe bumpers where necessary for building protection as specified by Landlord's architect.

**SECTION II: DESCRIPTION OF WORK PROVIDED BY LANDLORD FOR FINISHING CONSTRUCTION**

The following items will constitute finish work based on all retail spaces consisting of 80% sales area, 20% storage area.

**A. Concrete Floor Slab**

1. All floors to be four inches (4") concrete. Floor to be covered with paint or concrete stain of a color acceptable to Tenant. Floor to have steel trowel finish.

**B. Interior Partitions** as shown on Exhibit "A-2" and as more fully described below:

1. Interior dividing walls between stores shall be four inches (4") thick (nominal) studs at sixteen inch (16") centers with minimum ½" drywall to meet codes. Drywall shall be carried from slab to the underside of the roof deck on both sides.
2. Stud wall dividing sales area from stock area, similar to Section II, B, 1 above, with ½" drywall, shall be parallel to and located approximately twenty percent (20%) of total depth from rear wall.
3. Two (2) toilet rooms for each Tenant space, approximately 5' x 5' with ½" drywall (to meet local codes) on stud partitions, will be provided. Drywall ceiling at eight foot (8') height.
4. Interior surface of the rear masonry wall and the masonry on the side walls of end stores, will be left unfinished in the rear storage portion of the stores. Masonry walls of sales area in the end stores will be finished with ½" drywall or meet code requirements. Painted.
5. Drywall partitions constructed by Landlord, will be taped and spackled, sanded, and ready for Tenant's finish.

**C. Storefronts And Rear Service Entrance Doors**

1. Plate glass (¼" polished plate) with aluminum trim, "Kawneer", or equal (to meet code).

double 2. One (1) 3'-0" x 7'-0" glass door with aluminum frame enclosure for each tenant space entrance. Door will be provided with cylinder lock and closer.

3. Storefront to be designated by Landlord's architect and constructed by Landlord.

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4. Rear service entrance door, where required, will be a double with crash bar hollow metal door and frame. Hardware shall consist of 1 1/2 pair butts with lockset.

#### D. Interior Door And Trim

1. Stock room and toilet room doors to be 1 1/4" hollow core door, wood or hollow metal frame, and trim. (Hollow metal if required by code.)
2. Hardware shall consist of 1 1/4 pair butts with passage set on stockroom door and privacy set on toilet room doors.
3. Provide door grilles and fire exit doors if required by regulations.

#### E. Ceilings

1. ~~Sales area Acoustical tile (2' x 4' grid), lay in type, typically Owens Corning Fibergloss or equal, white finish with white tile system for sales area 30% of total space.~~
2. Storage area Exposed structural steel deck and joists. Underside of roof to be painted with color acceptable to Tenant.
3. Toilet 1/2" drywall.

Noburn high-outlet 4'x8'

#### F. Electrical

1. One (1) duplex base receptacle at twenty feet (20') O.C. along side walls of sales area only. One (1) additional outlet will be installed adjacent to the electrical panel on the rear wall.
2. Furnish and install 2' x 4' four (4) lamp fluorescent lay in light fixture in sales area. 2' x 2' (2) sub-industrial type fluorescents light fixtures in stock area, maximum fixtures allowed: one (1) fixture per 100 square feet of total square footage of Tenant space. Lights will be switched at lighting panel. One (1) night light in sales area will be provided.
3. Incandescent fixture with outlet in toilet room above lavatory.
4. One (1) single circuit sign outlet located in front of each Tenant space in canopy. Sign, installation, and electrical hook-up provided by Tenant. Sign will be wired to Tenant's meter.
5. Rear security lighting as per Landlord's architect's specifications.
6. Install canopy lights and wire circuits to Landlord's meter.
7. Make all necessary electrical connections for heating and air conditioning equipment and hot water heater; only equipment as specified in G, "Heating and Air Conditioning", and H, "Plumbing", below.
8. Provide electrical connection for wall exhaust fan for each toilet room.
9. Electric service provided by Landlord will be sufficiently sized to accommodate requirements of Landlord's work. Tenant must make application for permanent electric service, meter, etc. with the local electric utility company. Any utility company charges and/or deposits shall be the Tenant's responsibility.
10. Electric service to entire Demised Premises to be not less than 300 amps.

#### G. Heating And Air Conditioning

1. Provide gas or electric (as available) heat and air conditioning roof top units for each Tenant space.
2. Distribution system, ducts, ceiling diffusers, grilles, registers, thermostats, etc., will be designed by Landlord's Engineer, based on location of demising partitions as shown on Landlord's Space Layout (Exhibit "A-2").
3. At Landlord's option, heating and air conditioning design provided, will be based on:
  - a. Minimum requirements set forth by the American Society of Heating, Air Conditioning, and Refrigerating Engineers (A.S.H.A.R.E.) and/or;
  - b. Minimum of one ton of air conditioning per 350 square feet of sales area and 18,000 BTUs of heat per 350 square feet of sales area.

#### H. Plumbing

1. Install water and sewer from exterior of building to two (2) toilet rooms.
2. Each toilet room shall include: One (1) lavatory and one (1) tank-top water closet. Each leased space shall be provided with one (1) six (6) gallon hot water heater.

#### I. Sprinklers

1. A sprinkler system shall be provided in accordance with local regulations and recommendations of applicable Rating Bureau.
2. Sprinkler system shall be designed by Landlord's sprinkler contractor at a maximum design of one (1) head per 130 square feet.



EXHIBIT "D"  
TENANT'S WORK

SECTION I: GENERAL PROVISIONS

Tenant, at its sole cost and expense, shall perform all work, other than that to be performed by Landlord as set forth in Exhibit "C", required to complete the Demised Premises to a finished condition ready for the conduct of business therein.

All of Tenant's work within the Premises performed pursuant to this Section I, for the purpose of the Lease to which this Exhibit "D" is attached, shall be deemed to be improvements made to the Demised Premises by Tenant.

The cost of all work performed by Landlord on behalf of Tenant, shall become due and payable in full prior to Tenant's opening for business or within thirty (30) days after tenant has been invoiced by Landlord, whichever shall be the first to occur.

Tenant's work shall conform to procedures and schedules as set forth in Sections II and III of this Exhibit "D" and shall include without limitation, the following:

A. *Store Design Drawings and Working Drawings & Specifications.*

Store design drawings and working drawings and specifications as set forth in Section II of this Exhibit "D".

B. *Construction*

Construction work in accordance with the requirements as set forth in Section III of this Exhibit "D".

C. *Design Criteria*

The criteria and/or outline specifications as set forth herein, represent minimum standards for the design, construction, and finish of the Demised Premises by Tenant. Tenant shall coordinate his work with work of others or with existing conditions occurring within the Demised Premises, and shall make changes from time to time as required to accommodate such work or conditions.

1. Jurisdiction and Codes: The project is being developed in and under the jurisdiction of Fairfax County, State of Virginia. All design and construction work shall comply with all applicable statutes, ordinances, regulations, laws, and codes, including, but not limited to the following: The National Electric Code; The Guide of the American Society of Heating, Refrigerating, and Air Conditioning Engineers; requirements of the Landlord's fire insurance underwriter; the requirements pertaining to any services and utilities furnished by: Washington Gas Light Company; Potomac Electric and Power Company; Virginia Electric and Power Company; Washington Suburban Sanitary Commission; and C&P Telephone Company requirements; and all applicable State and County Ordinances and OSHA regulations.

2. Permits and Approvals: Prior to the commencement of construction, building and other permits shall be obtained and posted in a prominent place within the leased premises. Landlord's written approval shall be obtained by Tenant prior to the undertaking of any construction work which deviates from Tenant's working drawings and specifications, as approved by Landlord, or the undertaking of any modifications whatsoever to Landlord's building shell and/or utilities and other work not explicitly shown on said working drawings and specifications. Landlord's approval of the foregoing shall not constitute the assumption of any responsibility by Landlord for the accuracy or sufficiency thereof, and Tenant shall be solely responsible therefor.

3. Standard Project Details: Standard project details, as issued by Landlord's architect and as they pertain to Tenant's work, shall govern with respect to such work. Such details shall be incorporated into the Tenant's working drawings and specifications for the Demised Premises.

4. Materials: Only new, first-class materials shall be used in the construction of the Demised Premises.

5. Field Conditions: Tenant will verify conditions pertaining to the Demised Premises from time to time prior to and after commencement of construction of its leased premises.

D. *Architectural Finishes*

~~1. Walls and Partitions: All interior partitions, other than as provided for in Exhibit "C", shall be minimum of 3/4" metal studs at sixteen inches (16") O.C. and shall have minimum 1/2" gypsum board on all sides and taped and spackled joints ready for paint and/or wall covering.~~

~~2. All interior doors and hardware other than as provided for in Exhibit "C".~~

~~3. Ceiling Work: Light covers and other ceilings not standard to the project.~~

~~4. Floor Coverings: Carpeting shall be extensively used in all sales areas. A limited amount of other types of floor covering materials (subject to Landlord's approval) may be used in such areas.~~

~~5. All interior paintings, decorating, paneling, wallpaper, peg board, etc., on all walls and columns. All interior surfaces shall be finished by Tenant (including rock-wool).~~

~~6. Sign and sign panel backgrounds in accordance with Exhibit "E".~~

~~7. Trade fixtures, equipment, and furnishings.~~

~~8. Display window backs, display window floors, display window ceilings, and display window lighting fixtures and power for same.~~

E. *Structural*

1. All struct. work by Tenant shall meet or exceed original structural design and specifications of Landlord's architect and structural engineer and shall leave all finishes unimpaired.

F. *Plumbing*

1. Plumbing fixtures within the Demised Premises, except as provided for in H of Exhibit "C".

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**G. Mechanical**

1. Any additional heating, ventilating, air conditioning, and distribution systems (ducts, registers, ceiling diffusers, thermostats, grilles, etc.) that may be required.

**H. Electrical**

1. Additional electrical service, lighting, fixtures, outlets, wiring, except as provided for in F of Exhibit "D".

**I. Miscellaneous Items**

1. Telephone and communication systems.
2. Burglar alarm and/or warning systems.
3. Tenant's store signs and controlling time clocks.
4. Emergency generator and emergency lights.
5. Fire extinguishers.
6. Tenant to furnish and install all curbs, lintels, flashings, counterflashings, pipes, ducts, vent caps, air ducts, exhaust hoods, louvers, etc., as necessary for Tenant's equipment requiring openings through the roof and/or exterior walls. Any cutting, patching, or flashing of the roof for Tenant's equipment must be performed by the roofing contractor responsible for the roof guarantee, at Tenant's expense.
7. The design of all work and installation undertaken by Tenant shall be subject to the approval of Landlord. All work undertaken by Tenant shall be at Tenant's expense and shall not damage or weaken the structural strength of the building or any part thereof, and shall be done in a first-class workmanlike manner and in accordance with all applicable codes.
8. Work undertaken by Tenant and at Tenant's own expense shall be awarded to Landlord's contractor or any other reputable contractor licensed to do business in the State of Virginia and Fairfax County.
9. Tenant shall satisfy Landlord that adequate arrangements have been made to insure said general contractor for full payment for such work ordered by Tenant. Contractor for Tenant is required to carry full risk insurance.

**SECTION II: PROCEDURE AND SCHEDULES FOR THE COMPLETION OF PLANS AND SPECIFICATIONS.**

All prints, drawing information, and other material to be furnished by Tenant as required hereinabove, shall be addressed to Landlord as provided at the address for notices in the Lease to which this Exhibit "D" is attached.

**A. Space Layout Drawings, Exhibit "A-2"**

Following the execution of this Lease, Landlord shall furnish Tenant with two (2) sets of prints of Space Layout Drawings, Exhibit "A-2", giving technical and design information relative to the Demised Premises.

**B. Store Design Drawings**

1. Within thirty (30) days from either of the following dates, whichever shall be the latter to occur: (a) receipt of Space Layout Drawings from Landlord, or (b) date of execution of Lease, Tenant shall engage an architect registered in the State of Virginia for the purpose of preparing the design drawings, working drawings, and specifications for the Demised Premises and shall submit to Landlord one (1) set of reproducible prints of store design drawings, showing intended design, character and finishes of the Demised Premises. Such package shall include separate drawings for signs in accordance with Exhibit "B-2". The store design drawings shall comply with the Design Criteria and shall set forth the requirements of Tenant within the Demised Premises. Said drawings shall include, but not be limited to, the following:

- a. Architectural design of the space, including floor plans, elevations, sections, and renderings indicating material and color selections and finishes.
- b. Mechanical system: Provided by Landlord as per Section II, G of Exhibit "C".
- c. Electrical system: Floor and reflected ceiling plans showing outlets, type of lighting fixtures, other electrical equipment contemplated and location of panel and meter, as per location shown in Exhibit "A-2", together with projected electrical loads.
- d. Plumbing system: Location and type of fixtures including plumbing layout. (Toilet rooms as per location shown on Exhibit "A-2".)

2. Within ten (10) days after receipt of store design drawings, Landlord shall return to Tenant, one (1) set of prints of store design drawings with its suggested modifications and/or approval. If store design drawings are returned to Tenant with comments, but not bearing approval of Landlord, said store design drawings shall be revised by Tenant and one (1) set of reproducible prints of the revised drawings shall be submitted to Landlord for approval within ten (10) days of receipt by Tenant of the store design drawings returned to Tenant by Landlord without approval.

3. If, upon receipt of approved store design drawings bearing Landlord's comments, Tenant wishes to take exception thereto, Tenant may do so in writing, by certified or registered mail addressed to Landlord at the address for notices as provided in the Lease to which this Exhibit "D" is attached, within ten (10) days from date of receipt of such store design drawings. Unless such action is taken, it will be deemed that all comments made by Landlord on store design drawings are acceptable to and approved by Tenant.

**C. Working Drawings and Specifications**

1. Tenant shall submit to Landlord working drawings and specifications, prepared by Tenant's architect in the form of one (1) set of reproducible print, and sign shop drawings, prepared by Tenant's sign contractor, within twenty-one (21) days from receipt by Tenant of Landlord's approval of store design drawings. The fees for Tenant's architect shall be paid for by the Tenant.

2. Working drawings and specifications shall be prepared in strict compliance with the Design Criteria and requirements as set forth in Section I, C of this Exhibit "D" and shall adhere to the store design drawings as approved by Landlord.

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3. Working drawings, to minimum scales as called for below, and specifications shall include, but not be limited to, the following:

- a. Key plan showing location of the leased premises.
- b. Floor plan at a  $\frac{1}{4}"$  scale ( $\frac{1}{4}" = 1'-0"$ .)
- c. Overall sections at  $\frac{1}{4}"$  scale.
- d. Reflected ceiling plan at  $\frac{1}{4}"$  scale.
- e. Interior elevations of walls at  $\frac{1}{4}"$  scale.
- f. Full sections of types of partitions used at  $\frac{1}{4}"$  scale.
- g. Details of special conditions encountered at 1 and  $\frac{1}{2}"$  scale.
- h. Door schedule with jamb details at 1 and  $\frac{1}{4}"$  scale.
- i. Finish and color schedule.
- j. Electrical plans at  $\frac{1}{4}"$  scale.
- k. Electrical details, fixture schedules, one line electrical riser diagram, and final electrical load tabulations.

4. Within ten (10) days after receipt of working drawings and specifications, Landlord shall return to Tenant one (1) set of prints of store working drawings with its suggested modifications and/or approval. If working drawings are returned to Tenant with comments, but not bearing approval of Landlord, said working drawings shall be revised by Tenant and one (1) set of reproducible prints of the revised drawings shall be submitted to Landlord for approval within ten (10) days of receipt by Tenant of the working drawings returned to Tenant by Landlord without approval.

### SECTION III: PROCEDURE AND SCHEDULES FOR TENANT'S CONSTRUCTION OF DEMISED PREMISES.

#### A. Commencement of Construction

Tenant shall start construction of the Demised Premises upon receipt of the Delivery of Possession Date Certificate specified in the Lease, Section 3.04.

#### B. General Requirements

1. Tenant shall, prior to the commencement of construction, submit to Landlord, by certified or registered mail, the following information:

- a. If applicable, the names and addresses of the general, mechanical, and electrical contractors Tenant intends to engage in the construction of the Demised Premises.
- b. The actual commencement date of construction and the estimated date of completion of construction work, fixturing work, and the date of projected opening.
- c. Tenant's contractors: Performance and/or labor and material bonds, if so required by Landlord.
- d. Itemized statement of estimated construction cost, including architectural, engineering, and contracting fees.
- e. Evidence of insurance as called for herein. Tenant shall secure, pay for, and maintain, or cause its contractor(s) to secure, pay for, and maintain, during the continuance of construction and fixturing work within the Demised Premises, all of the insurance policies required and in the amounts as set forth herein. Tenant shall not permit its contractor(s) to commence any work until all required insurance has been obtained and certified copies of policies have been delivered to Landlord. Insurance policies shall name the Landlord, its architect, and its general contractor as additional insureds. Certificates of insurance shall provide that no change or cancellation of such insurance coverage shall be undertaken without thirty (30) days written notice to Landlord. Tenant's contractor shall deliver the necessary insurance certificates to Landlord prior to commencing work.

#### i. Tenant's General Contractor's and Subcontractor's Required Minimum Coverage and Limits of Liability.

(a) Workmen's Compensation, Employer's Liability Insurance with limits of not less than \$100,000.00, and as required by the law of the State of Virginia, and any insurance required by an Employee Benefit Act or other statute applicable where the work is to be performed as will protect the contractor and subcontractors from any liability under the aforementioned acts.

(b) Comprehensive General Liability Insurance (including Contractor's Protective Liability) in an amount not less than \$500,000.00 per person and \$1,000,000.00 per occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability or a combination thereof, with a minimum aggregate limit of \$1,000,000.00. Such insurance shall provide for explosion and collapse coverage and contractual liability coverage and shall insure the general contractor and/or subcontractors against any and all claims for personal injury, including death resulting therefrom, and damage to the property of others and arising from his operations at the Demised Premises under contract and whether such operations are performed by the general contractor, subcontractors, or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

(c) Comprehensive Automotive Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, and non-owned in the following amounts:

- (i) Bodily injury, each person ..... \$ 500,000.00
- (ii) Bodily injury, each occurrence ..... \$1,000,000.00
- (iii) Property damage liability ..... \$ 100,000.00

Such insurance shall insure the general contractor and/or subcontractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from his operations at the Demised Premises and whether such operations are performed by the general contractor, subcontractors, or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

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## ii. Tenant's Protective Liability Insurance

Tenant shall provide Owner's Protective Liability Insurance as will insure Tenant against any and all liability to third parties for damage because of bodily injury liability (or death resulting therefrom) and property damage liability to others or a combination thereof which may arise from work in the completion of the Demised Premises, and any other liability for damages which the general contractor and/or subcontractors are required to insure under any provisions herein. Landlord and Landlord's architect shall be named as additional insureds. Said insurance shall be provided in minimum amounts as follows:

- (a) Bodily injury, each person ..... \$ 500,000.00
- (b) Bodily injury, each occurrence ..... \$1,000,000.00
- (c) Property damage, each occurrence .... \$ 250,000.00
- (d) Property damage, aggregate ..... \$ 250,000.00

## iii. Tenant's Builder's Risk Insurance

Tenant shall provide a completed Value Form "All Physical Loss" Builder's Risk coverage on its work in the Demised Premises as it relates to the building within which the Demised Premises is located, naming the interests of the Landlord, its general contractor and all subcontractors, as their respective interests may appear, within a radius of one hundred (100) feet of the Demised Premises.

2. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job. All work shall be coordinated with the general project work.

3. Tenant's contractor and construction shall comply in all respects with applicable Federal, state, and/or local statutes, ordinances, regulations, laws, and codes. All required building and other permits in connection with the construction and completion of the Demised Premises shall be obtained and paid for by the Tenant.

4. Landlord shall have the right to perform on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any of Tenant's work which Landlord deems necessary to be done on an emergency basis and which pertains to structural components, the general utility systems for the project, and the erection of temporary barricades and temporary signs, per Design Criteria, during construction and/or the period following the opening of the center for business.

5. Tenant's work shall be subject to the inspection and approval of Landlord and Landlord's architect.

6. Tenant shall apply and pay for all utility meters.

7. Upon the completion of the Tenant's store work, all facilities shall be in full use without defects.

8. All work performed by Tenant during the term of the Lease shall be performed so as to cause a minimum of interference with other Tenants and the operation of the Shopping Center. Tenant will take all precautionary steps to protect its facilities and the facilities of others affected by Tenant's work and properly police same. Construction equipment and materials are to be located in confined areas and truck traffic is to be routed in and from the site as directed by Landlord so as not to burden the construction and/or operation of the Shopping Center.

9. Landlord shall have the right to order any Tenant or Tenant's contractor, who willfully violates the above requirements, to cease work, and to remove himself, his equipment, and his employees from the Landlord's property.

10. No approval by the Landlord is valid unless in writing, signed by the Landlord or Landlord's architect.

## C. Temporary Facilities During Construction

1. Utility costs or charges for any service to the Demised Premises shall be the responsibility of Tenant from the date the Tenant is obligated to commence Tenant's work.

2. If necessary, Tenant will provide temporary heat for its premises during construction.

3. If required during construction, Landlord will provide temporary electrical service in an area designated by Landlord. Tenant shall request, in writing, permission to connect temporary lines in the power source for service to its Demised Premises. Landlord will absorb costs for temporary service. When Tenant's permanent service and/or electric meter is installed, Tenant shall cease to use Landlord's temporary service.

4. During initial construction, Tenant fixturing and merchandise stocking, Landlord will provide trash removal service from designated areas. Tenant is responsible for breaking down boxes and placing trash in containers in these designated areas.

The Tenant shall not permit trash to accumulate within its area or in any area adjacent to its space. Should this situation develop and Landlord be forced to remove Tenant's trash, the cost for such service will be paid for by the Tenant.

## D. Architect's Certificate of Acceptance

1. Upon completion of Tenant's construction and fixturing work within its leased premises, Landlord, upon request in writing by Tenant, shall issue a Certificate of Acceptance of said premises. The issuing of such a Certificate shall be contingent upon all of the following:

a. The satisfactory completion by Tenant of the work to be performed by Tenant under Section I of this Exhibit "D", in accordance with good workmanship and the working drawings and specifications therefore, as approved by Landlord, which decision shall be made by Landlord within seven (7) days of request therefor.

b. Receipt from Landlord's architect of a Premises Acceptance Letter. This letter to be issued upon correction of the deficiencies noted by inspection of the Demised Premises. Tenant shall be required to complete punch list items within a reasonable period after initial inspection, but the failure to complete such items shall not delay the issuance by Landlord of the Certificate of Acceptance of the premises.

INITIAL  
LL

~~Tenant shall have furnished Landlord with a sworn statement in such form as may be required by Landlord from all persons performing labor and/or supplying materials in connection with such work showing that all such persons have been compensated in full.~~

d. Submission by Tenant to Landlord of a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices showing payment thereof. , if any,

e. Tenant shall have reimbursed Landlord for the cost of Tenant's work done for Tenant by Landlord and all other sums owed by Tenant to Landlord pursuant to the Lease and Exhibits thereto.

f. Submission by Tenant of a statement wherein Tenant agrees to indemnify the Landlord and Landlord's designated escrow agent against any and all liens against the Demised Premises or any claims by any material suppliers, contractors, or subcontractors temporary

g. Tenant shall furnish a copy of Certificate of Occupancy.

h. Tenant shall execute an Estoppel Letter which will be prepared by Landlord, provided said letter is furnished to Tenant prior to opening of the premises.

**E. Landlord's Right to Correct Deficiencies in Tenant's Construction**

Landlord may, but shall not be obligated to, correct any of the items in Tenant's construction which have not been finished or completed in accordance with the requirements of this Lease and Tenant's working drawings. Landlord shall not undertake the doing of any such work until it shall have furnished Tenant with a final punch list of deficient items and permitted Tenant thirty (30) days thereafter to comply. In the event Landlord performs any such work, Tenant shall reimburse Landlord upon demand for any obligations thereby incurred.

, together with a sworn statement that all persons performing labor and/or supplying materials in connection with such work have been paid in full.

INITIAL	
LL	<i>LL</i>
TS	<i>TS</i>

REV 11-87

D-5

June 11, 1981

EXHIBIT 2  
"SIGN CRITERIA"

SOUTH LAKES VILLAGE CENTER

RESTON, VIRGINIA

Re: Tenant Sign Program

Sign:

1. Sign for tenant identification shall be limited to channel letters 2'-0" in height (24" capitals and proportional lower case letters, as type style dictates) placed with a maximum length of 14'-0" and shall be mounted to the canopy fascia as indicated on the front elevation. Sign to be centered between canopy columns as close as possible to the storefront beyond. Signs will not be allowed to straddle the the canopy columns.
2. It is intended that the signing of the stores shall be developed in an imaginative and varied manner so as to enhance the architectural treatment of the facade, and although previous and current signing practices of the Tenant will be considered, they will not govern signs to be installed.
3. Additional innovative signs, in addition to canopy sign, will be encouraged, but all shall be subject Landlord's review and approval. Flashing, neon or illuminated box type signs will be prohibited, but all other types will be considered.
4. The use of corporate shields, crests, logos, or insignia will be permitted (subject to Landlord's approval).
5. Letters shall be fabricated from sheet aluminum heliarc welded construction with a five year guarantee against peeling, cracking, crazing or blistering. Medium bronze duranodic finish for exposed surfaces on the perimeter and back, acrylic face, color not restricted, back-lighted illumination by neon tubes and powered by normal power factor transformers installed in building. Maximum brightness allowed for signs will be 100 foot Lamberts taken at the letter face.
6. The letters shall be Underwriters Laboratories approved and carry their seal of approval on all component parts and on the complete display. Mounting method shall assure permanency. Face projected max. 6" from wall.
7. No exposed raceways, ballast boxes or electrical transformers will be permitted except as required by code.
8. Local permits to erect and connect the sign must be issued by local community before signs are installed.
9. Owners will not be responsible for signs improperly manufactured or installed and those signs not meeting the sign criteria and approved by local authorities shall be ordered removed at the tenants cost to be built to conform with the above described criteria and sign drawings.
10. Tenants and their agents shall submit drawings of the proposed sign, sign legend and sign details for approval of Landlord of the project before starting manufacturing. Sign legend shall be limited to business name only (but will permit use of tenant's individual logo).

EXHIBIT G

DELIVERY OF POSSESSION DATE CERTIFICATE

LANDLORD:

TENANT:

PROJECT:

LEASE DATE:

PREMISES NUMBER:

SQUARE FOOTAGE:

DELIVERY OF POSSESSION DATE:

Landlord and Tenant acknowledge and agrees that the Demised Premises described in the above-referenced lease has been delivered to Tenant for the performance of Tenant's Work (as said term is defined in the lease) on the Delivery of Possession Date noted above.

Tenant further acknowledges that all of Landlord's Work pursuant to said lease has been completed except as follows:

LANDLORD:

TENANT:

Name:  
Title:

ADDENDUM TO LEASE

The foregoing attached Lease, dated 17 May, 1983 between South Lakes Village Center Associates Limited Partnership, a Virginia limited partnership ("Landlord"), and The Great Falls Hardward Company of Reston, a Virginia corporation ("Tenant"), is modified, amended and or supplemented as hereinafter set forth, and any language of or provision in said Lease inconsistent or in conflict with the following, and not herein expressly referred to, shall be deemed appropriately amended or modified:

(1) Modifying the provisions of this Lease, insert on line 10 of Section 1.01: Landlord shall submit its architect's certificate to Tenant as soon as reasonably possible after completion of construction of the building in which the Demised Premises are located. In the event Tenant disputes the square footage determined by Landlord's architect, and the parties cannot agree to the appropriate square footage within fifteen (15) days of notice from Tenant that it disputes Landlord's computation, then an architect mutually chosen by Landlord and Tenant shall recompute the square footage in the Demised Premises, which figures shall be binding upon the parties in accordance herewith. Landlord and Tenant shall share equally the cost of said appointed architect.

(2) Modifying the provisions of this Lease, insert at "" on line 11 of Section 2.02(b): In the event Landlord shall determine that Tenant's Gross Sales shall exceed Tenant's reported Gross Sales by two percent (2%) or more, then, in addition to the statement certified by an officer of Tenant and submitted to Landlord within sixty (60) days after the close of each fiscal year, Tenant shall also be required during the remainder of the term, to submit a statement of Tenant's Gross Sales within one hundred twenty (120) days of the close of a fiscal year which has been certified by an independent certified public accountant.

as to the square footage of the  
Demised Premises



(3) Modifying the provisions of this Lease, especially including but not necessarily limited to Sections 5.02 and 7.01: Notwithstanding anything to the contrary in this Lease, especially in Sections 5.02 and 7.01, for all purposes of computation, the phrase "the total square footage of the gross leased and occupied floor area in the Shopping Center" shall never be less than ninety percent (90%) of the actual leasable floor area in the Shopping Center.

(4) Modifying the provisions of Section 14.01(a)-(c): Notwithstanding anything to the contrary, Tenant shall not be in default hereunder so long as all Minimum Rent, Percentage Rent and Additional Rent is paid as it becomes due, and provided further that Gross Sales for the six (6) month period commencing with the occurrence of the event identified in Section 14.01(a)-(c) shall not be less than the average of the same six calendar month period in the preceding two (2) lease years.

(5) Landlord Waiver. Provided Tenant is not in default of its obligations under this Lease beyond any period to cure, Landlord shall execute, upon Tenant's request, a Landlord's Waiver of Liens with regard to trade fixtures, furniture or any other equipment Tenant may install in the Demised Premises. Landlord's obligation to execute said Waiver of Liens shall not be deemed a requirement for it to execute an assignment of this Lease as a security interest for a third party lender.

(6) Effective Date. The date of Landlord's execution hereof shall be the Effective Date of this Lease.

(7) Renewal Term. Tenant shall have the right, at Tenant's sole option, to renew this Lease for one (1) additional periods of five (5) years each (each such additional period being hereinafter referred to as a "renewal term"). Such renewal option shall be exercisable by Tenant giving written notice of the exercise of such renewal option to the Landlord at least six (6) months prior to the expiration of the term, or renewed term, as applicable. Each renewal term shall be upon the same terms, covenants and




conditions as set forth herein with respect to the term, except that the Minimum Rent and Percentage Rent shall be payable as provided below and in Section 2 of the Lease.

(8) Deleted.



(9) Delivery of Possession. Modifying the provisions of Section 3.03, Landlord agrees that it shall use its best efforts to deliver possession of the Demised Premises to Tenant on or before October 1, 1983. In the event that Landlord delivers possession of the Demised Premises to Tenant subsequent to said date, and accordingly, the Commencement Date is to occur pursuant to the terms of this Lease between May 15, 1984 and October 15, 1984, then Landlord and Tenant expressly agree that Tenant shall not be required to accept delivery of the Demised Premises until August 16, 1984, at which time the sixty (60) day fixture period as provided in Section 1.02 shall commence to run.

(10) Modifying the provisions of Article XI(a) and Section 14.01(e): Notwithstanding anything therein to the contrary, provided Tenant shall not be in default under this Lease, Tenant shall have the right, without Landlord's prior written consent, to assign this Lease to any wholly owned subsidiary or to any parent corporation of Tenant or to any subsidiary of any parent corporation of Tenant or to any other similar affiliate, subject to the following express conditions:

-  (i) Any assignee corporation must be principally owned and controlled by John Gaul and/or

members of his immediate family;

(ii) No such assignment shall be deemed to release The Great Falls Hardware Company of Reston from continuing liability hereunder; and

(iii) Any assignee must expressly assume all of the obligations of the Tenant under this Lease.

Provided Tenant shall not be in default under this Lease, Landlord agrees not to unreasonably withhold its consent to an assignment of this Lease (or to a sale or transfer of Tenant's stock) resulting from a merger, consolidation, corporate reorganization (other than pursuant to the bankruptcy laws), sale of assets or sale of other transfer of stock subject to the following conditions:

(i) Such assignee or transferee, as the case may be, must have a net worth sufficient in Landlord's reasonable judgment for said assignee to perform its financial obligations hereunder; and

(ii) Tenant shall not be released from any continuing liability under this Lease; and any assignee must expressly assume all of the obligations of the "tenant" hereunder.

(iii) specifically agrees to operate the Demised Premises pursuant to the use clause contained herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written and declare this Addendum to Lease to be binding on them and their respective successors and permitted assigns.

WITNESS:

LANDLORD:

South Lakes Village Center Associates Limited Partnership, a Virginia Limited Partnership

By: Western Development Company, a District of Columbia General Partnership, General Partner

By: MKD Associates, a District of Columbia General Partnership

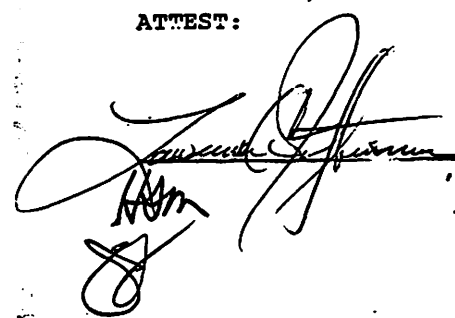
By:  (SEAL)

TENANT:

The Great Falls Hardware Company of Reston, a Virginia Corporation

By:  (SEAL)  
John Gaul, President

ATTEST:

 (SEAL)  
Secretary

Leasing Information				
ADDRESS	TRIP #	REMARKS	APPROX. M	EST. STATUS
				1 2 3 4 5 6 7 8 9 10
15	10	400	40	
16	22	400	40	
16A	80	400	40	
17	40	400	40	
17A	30	400	40	
17B	40	400	40	
17C	40	400	40	
17D	40	400	40	
17E	40	400	40	
17F	40	400	40	
17G	40	400	40	
17H	40	400	40	
17I	40	400	40	
17J	40	400	40	
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19D	40	400	40	
19E	40	400	40	
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19G	40	400	40	
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19O	40	400	40	
19P	40	400	40	
19Q	40	400	40	
19R	40	400	40	
19S	40	400	40	
19T	40	400	40	
19U	40	400	40	
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20	40	400	40	
20A	40	400	40	
2				

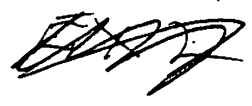
ADDRESS	PM-1	REMARK	AMPHON 31	REASON FOR LOSS
10	10	10	4	
11	11	11	7	
12	12	12	7	
13	13	13	2472	
14	14	14		
15	15	15		
16	16	16		
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99	99	99		
100	100	100		

SCALE: 1" = 30'-0"

0-1	0-1
1-2	1-2
2-3	2-3
3-4	3-4
4-5	4-5
5-6	5-6
6-7	6-7
7-8	7-8
8-9	8-9
9-10	9-10
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93-94	93-94
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98-99	98-99
99-100	99-100

**SOUTH LAKES VILLAGE CENTER**  
**RESTON VIRGINIA**

**WESTERN DEVELOPMENT CORPORATION**  
1204 Wisconsin Ave. NW  
Washington D.C. 20007



# Western Management Corporation

1331 H STREET, N.W.  
SUITE 410  
WASHINGTON, D.C. 20005  
(202) 737-9714

June 3, 1986

Mr. John A. Keats  
Keats, Krebs & Leckey  
Attorneys at Law  
Washington Square  
655 S. Washington Street  
Alexandria, VA 22314

RE: GREAT FALLS HARDWARE

Dear Mr. Keats:

I am in receipt of your letter of May 28, 1986, and I am enclosing copies of the invoices sent to Mr. Gaul, with the detailed itemizing of payments received and charges billed.

It took several months of researching our records and the leases to prepare these invoices. All charges and computations were verified and the CPI increases to Minimum Rent for the Great Falls Center location were re-figured to verify their accuracy.

While we recognize that your client has had numerous discussions with our company concerning the CAM charges at South Lakes Village, please be advised that CAM estimates for 1986 were prepared excluding the management fee, and that the 1985 actuals, when billed this month, will also reflect deletion of the management fee.

In researching the correspondence and lease files, I find that there have been a number of attempts made by our company to secure payment in full of all past due charges owed by your client. Mr. Gaul has been invoiced for all charges per his lease agreements, and arrangements must be made to pay the balances due on both Centers.

We will expect your written reply as to the payment of the this amount due within ten days, or we will proceed with all rights and remedies as permitted under the leases for such non-payment.



Sincerely,



Deborah Newell  
Property Manager

/dh

Certified Mail No P 084 260 859

  DEF-EX # 3  
DATE 07-13-87  
JUDGE 2.H.H.  
CASE # 98538  
123

Western Management Corporation

NO.

1331 H STREET, N. W. WASHINGTON, D. C. 20005 (202) 737-9714

# INVOICE

TO: Great Falls Hardware  
P. O. Box 208  
Great Falls, VA 22066

INVOICE DATE: May 15, 1986  
PROPERTY: South Lakes Village Center  
UNIT: 48  
SQUARE FOOTAGE: 5229

CHARGE DESCRIPTION	EFFECTIVE DATE	REGULAR MONTHLY PAYMENTS	MISCELLANEOUS PAYMENTS
<b>MINIMUM RENTS (1)</b>			
(See attached Computation) (1984-1986)	1984-1986		\$73,903.20
6/86 and thereafter	6/1/86	\$3,834.60	
Credit for Prior Payments	1984-1986		(\$65,011.92)
<b>COMMON AREA MAINTENANCE CHARGES (2) Estimate</b>			
(See attached computation)			
(1984-1986)	1984-1986		\$20,105.44
6/86 and thereafter	6/1/86	\$1,215.74	
Credit for Prior Payments			(\$10,061.70)
<b>INTERIM RENT (3)</b>			
(See attached Computation)			
1984	1984		\$945.00
Credit for Prior Payments	4/85		(\$401.14)
<b>REAL ESTATE TAXES (4)</b>			
(See attached Computation)			
(1984-1986)	1984-1986		\$0,054.85
6/86 and thereafter	6/1/86	\$344.24	
Credit for Prior Payments	1984-1986		(\$5,690.56)
<b>PROMOTION CHARGES (6)</b>			
(See attached Computation)			
(1984-1986)	1984-1986		\$1,950.00
6/86 and thereafter	6/1/86	\$75.00	
Credit for Prior Payments	1984-1986		(\$1,650.00)
<b>MISCELLANEOUS CHARGES (8)</b>			
Gas bill due for period 11/23/83 through 3/2/84.	11/23/83 3/2/84		\$447.01
<p>adn RLP-DEF-EX # 3a DATE 04-13-87 JUDGE J.H.H. CASE # 98538</p>		95,469.58	923,581.18

EX 5

KEATS, KREBS & LECKEY

ATTORNEYS AT LAW

WASHINGTON SQUARE

651 SOUTH WASHINGTON STREET

ALEXANDRIA, VIRGINIA 22314

(703) 836-1003

JOHN A. KEATS\*  
WILLIAM F. KREBS\*  
KATHRYN D. LECKEY\*

\*D.C. AND VA.  
\*VA.

DISTRICT OF COLUMBIA OFFICE

1742 N STREET, N.W.

WASHINGTON, D.C. 20036

September 3, 1986

Deborah Newell  
Western Management Corporation  
1331 H Street, N. W.  
Suite 410  
Washington, D.C. 20005

Re: Great Falls Hardware  
South Lakes Center

Dear Miss Newell:

As per our phone conversation of August 27, 1986, I once again request the right to review the leases pertaining to the South Lakes Village Shopping Center and in that regard, to obtain copies of Article 5 of those leases pertaining to Common Area Maintenance.

As you know, the lease pertaining to the Great Falls Hardware store in that location has a specific reservation of Article 5 until "95% of the tenants" are required to comply with the specific provision in Mr. Gaul's lease.

It has recently come to our attention that several tenants in the center have provisions in their lease which are at variance with the provision set forth in the Great Falls Hardware lease. If this is the case, then it would appear that Great Falls Hardware should be excused from any compliance with the provision set forth in its lease.

We further take the position that Western Management has purposely withheld recordation of these leases and has not permitted us to examine the other leases in an attempt to wrongfully extract common area maintenance charges from Mr. Gaul. That being the case, we hereby make demand upon you on behalf of Great Falls Hardware for repayment of any and all CAM charges.

CLP-DEF-EX # 5  
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KEATS, KREBS & LECKEY

Deborah Newell

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September 3, 1986

In as much as you have taken the position that we are not entitled to examine any of the other leases in question, we would assume that if and when court action is initiated by either side, these leases will be submitted to the court for its perusal.

Very truly yours,

KEATS, KREBS & LECKEY

  
John A. Keats

JAK:rb

cc: John Gaul



Western Management Corporation  
Suite 410, 1331 H Street, NW, Washington, D.C., 20005 (202) 737-9714

SOUTH LAKES VILLAGE  
COMPUTATION OF ACTUAL COMMON AREA  
MAINTENANCE (CAM) EXPENSE PAYMENTS  
1985

Tenant GREAT FALLS HARDWARE

Gross Leased and Occupied Area of Center 103,290 sf

Less: Major Tenants s.f. 40,822 sf

Net Gross Leased And Occupied Area of Center 62,468 sf

Actual CAM Expense for Year \$153,336

Less: Major Tenant's Contribution \$14,287.70

Actual Net CAM Expense for Year \$139,048

CAM Expense per SF of NGLDA  
\$139,048 62,468 sf \$2.23  
----- X ----- = -----

5229 SF \$2.23 \$11,660.67  
----- X ----- = -----

Tenant's Pro-Rata Share for 1985  
\$11,660.67 365/365 \$11,660.67  
----- X ----- = -----

ACTUAL CAM EXPENSES DUE, 1985 \$11,660.67  
ESTIMATED CAM EXPENSES BILLED, 1985 (\$7,320.60)  
-----

TOTAL AMOUNT DUE \$4,340.07  
=====

atm RLF-DEF-EX # 6  
DATE 04-13-87  
JUDGE 2. H. H.  
CASE # 98539

Modern Athlet

adn PLP-DEF-EX # 7  
DATE 04-13-87  
JUDGE J. H. H.  
CASE # 98539

**SECTION 4.02. OPENING: ESTOPPEL CERTIFICATE.** Tenant agrees to open for business to the public by the end of the Fixturing Period and thereafter conduct its regular business operations continuously on all days and at all hours during which the Shopping Center is open for business. From time to time and upon five (5) days notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Demised Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby appoints Landlord as its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

**SECTION 4.03. UTILITIES.** Tenant, at its expense, shall arrange for and pay all costs of the charges for all utilities and services provided or used in or at the Demised Premises, commencing with the Delivery of Possession Date and throughout the term of this Lease. Tenant shall pay directly to the public utility companies, the cost of any installation not included in Landlord's Work of any and all such utility services. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises.

**SECTION 4.04. SIGN.** Tenant shall install and maintain one (1) sign affixed to the front of the Demised Premises, subject to the prior written approval of Landlord, and conforming to all applicable legal and insurance requirements. Tenant's sign shall be consistent with the specifications and requirements contained in Exhibit "E" attached hereto. Tenant shall pay for all costs in connection with such sign and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Demised Premises thereby. In the event Landlord deems it necessary to remove such sign then Landlord shall have the right to do so, provided, however, Landlord shall replace said sign as soon as practicable at Landlord's sole cost. No additional signs, which can be seen from the exterior of the Demised Premises, shall be installed or displayed in, on or about the Demised Premises without the prior written consent of Landlord. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Demised Premises which does not meet the above criteria may be removed at any time by Landlord without Landlord incurring any liability therefor.

**SECTION 4.05. TENANT'S WARRANTIES.** Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Demised Premises and any platform or loading dock used by Tenant in a neat and clean condition; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature, (iii) observe all rules and regulations established by Landlord for all tenants in the Shopping Center, provided Tenant shall be given at least five (5) days notice thereof, (iv) observe all restrictive covenants of record which are applicable to the Shopping Center, provided the same do not prohibit Tenant's permitted use of the Demised Premises, (v) not use the parking areas or sidewalks or any space outside the Demised Premises for display, sale, storage, or any other similar undertaking, (vi) not use any advertising medium or sound devices inside the Demised Premises which may be heard outside the Demised Premises, or permit any objectional odors to emanate from the Demised Premises, (vii) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (viii) keep the temperature within the Demised Premises at such levels as may be required by any federal, state or local laws, ordinances, or regulations, (ix) maintain a full and complete stock of merchandise so as to attain the highest possible gross sales, and (x) employ only such labor in the performance of any work in and about the Demised Premises as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord, its contractors or subcontractors.

**SECTION 4.06. LEGAL REQUIREMENTS.** Tenant shall, at its own expense, comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

## ARTICLE V. COMMON AREA

**SECTION 5.01. USE.** During the term of this Lease Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any of the stores in the Shopping Center or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the common areas and the use thereof. Tenant agrees to abide by and conform with such rules and regulations upon notice thereof and to cause its permitted concessionaires, invitees and licensees and its and their employees and agents to do the same.

**SECTION 5.02. COMMON AREA MAINTENANCE EXPENSES.** Landlord agrees to maintain and keep in good service and repair all common areas. Tenant agrees to reimburse Landlord for its proportionate share of all costs and expenses incurred by Landlord in maintaining and repairing all common areas in the Shopping Center (the "Common Area Maintenance Expenses"). The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) gas, electricity, water, sewer and other utility charges (including surcharges) of whatever nature, (ii) insurance premiums, (iii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel, (iv) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees, (v) all other maintenance and repair expenses and supplies which may be deductible for such calendar year in computing Federal income tax liability, (vi) any other costs and expenses (i.e. items which are not capital improvements) incurred by Landlord in operating the Shopping Center, and the cost of any additional services not provided to the Shopping Center at the Lease Commencement Date but hereafter

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LL	<i>[Signature]</i>
T	<i>[Signature]</i>

provided by Landlord in the prudent management of the Shopping Center, (viii) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Shopping Center, provided, however, that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such lease year shall be included in the Common Area Expenses for such lease year, and (ix) deposits into reserve accounts for capital improvements. Common Area Maintenance Expenses shall not include (i) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances, (ii) leasing commissions payable by Landlord or (iii) deductions for depreciation of the improvements shown on Exhibit A. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all Common Area Maintenance Expenses to which shall be added an additional administrative fee in an amount equal to fifteen percent (15%) of such expenses; ~~(ii) from the sum arrived at by the preceding calculations, subtract the amount of all sums paid for such Expenses by any Major Tenant. For all purposes in this Lease a "Major Tenant" is any tenant occupying more than twenty thousand (20,000) square feet of floor area in the Shopping Center.~~ The number arrived at by the calculation described in (i) above shall hereinafter be referred to as the "Adjusted Common Area Expenses"; (iii) divide the Adjusted Common Area Expenses by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) ~~less the aggregate number of square feet in the Shopping Center leased to Major Tenants~~, and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area ~~not leased to a Major Tenant~~ on the first day of each calendar month in such lease year or partial lease year. Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Maintenance Expenses, as computed above, in twelve (12) equal monthly installments, with the monthly installment of Minimum Rent. Notwithstanding the above, in the event Landlord at any time determines that the amount of Common Area Maintenance Expenses actually being paid by Landlord exceeds the estimate upon which Tenant's proportionate share of Common Area Maintenance Expenses was computed, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised estimate of Common Area Maintenance Expenses. At the end of each year, there shall be an adjustment if the amount paid by Tenant differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment of Common Area Maintenance Expenses. Notwithstanding the foregoing, in no event shall Tenant's liability pursuant to this section 5.02 in any one lease year exceed ten percent (10%) of the total Adjusted Common Area expenses for the Shopping Center for that lease year.

## ARTICLE VI. REPAIRS AND MAINTENANCE

**SECTION 6.01. LANDLORD'S OBLIGATIONS.** Landlord shall keep in good repair the sewer and water lines servicing the Demised Premises, and the structural supports of the Demised Premises, and the roof thereof.

**SECTION 6.02. TENANT'S OBLIGATIONS.** Except as stated in Section 6.01, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Shopping Center, (iii) provide trash storage and removal services regardless of the location of any storage and removal facilities, except that if Landlord, in its sole discretion, shall provide trash services, Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor, (iv) change the Tenant's air conditioning filter as necessary but not less often than five (5) times a year and have the Tenant's air conditioner and heater serviced as necessary, but not less often than two (2) times a year and (v) repair any portion of the Shopping Center which is damaged as a result of any act or omission of Tenant. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

## ARTICLE VII. REAL ESTATE TAXES

**SECTION 7.01. LIABILITY.** Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined for each tax year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes, ~~from the sum arrived at by the preceding calculation, subtract the amount of funds paid to Landlord for Taxes by Major Tenants,~~ (ii) divide the number arrived at by the calculation described in (i) above by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) ~~less the aggregate number of square feet in the Shopping Center leased to Major Tenants, and~~ (iii) multiply the quotient arrived at through the calculations described in (ii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area ~~not leased to a Major Tenant~~ on the first day of each calendar month in such lease year or partial lease year. Notwithstanding the foregoing, in no event shall Tenant's liability pursuant to this section 7.01 in any one lease year exceed ten-percent (10%) of the total taxes for that lease year.

Haircutters

PLF-DEF-EX # 8  
DATE 04-13-87  
JUDGE 2.1.4.  
CASE # 98538

(c) Prior to the commencement of any work, Tenant shall obtain public liability and workmen's compensation insurance to cover every contractor to be employed, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval.

(d) If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Demised Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay the Landlord the costs of such repairs on demand as additional rent.

#### ARTICLE IV. CONDUCT OF BUSINESS.

SECTION 4.01. USE. The Tenant shall use and occupy the Demised Premises for the following purposes only, and for no other purpose: The operation of a haircutting (men, women and children) and beauty service establishment and the retail sale of related hair care products.

SECTION 4.02. OPENING; ESTOPPEL CERTIFICATE. The Tenant agrees to open for business to the public within thirty (30) days following the Delivery of Possession Date and thereafter conduct its regular business operations continuously on all days and at all hours during which the Shopping Center is open for business. From time to time and upon five (5) days notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Demised Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant.

SECTION 4.03. UTILITIES. The Tenant, at its expense, shall arrange for and pay all costs of and charges for all utilities and services provided or used in or at the Demised Premises, commencing with the Delivery of Possession Date and throughout the term of this Lease. Tenant shall pay directly to the public utility companies, the cost of any installation of any and all such utility services. The Tenant agrees to indemnify and hold harmless the Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises.

SECTION 4.04. SIGN. Tenant shall install and maintain one (1) sign affixed to the front of Demised Premises, subject to the written approval of Landlord, and legal and insurance requirements. The Tenant's sign shall be consistent with the specifications and requirements contained in Exhibit "B-2" attached hereto. Tenant shall pay for all costs in connection with such sign and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Demised Premises thereby. In the event Landlord deems it necessary to remove such sign then Landlord shall have the right to do so. No additional signs, which can be seen from the exterior of the Demised Premises, shall be installed without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. long as such signs are designed and installed in a professional, first-class manner.

\*at its sole cost and expense.

sixty (60)

**SECTION 4.05. TENANT'S WARRANTIES.** The Tenant warrants, represents, covenants and agrees to: (i) keep the Demised Premises and any platform or loading dock used by Tenant in a neat and clean condition; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature; (iii) observe all rules and regulations established by Landlord for all Tenants in the Shopping Center, provided Tenant shall be given at least five (5) days notice thereof; (iv) observe all restrictive covenants of record which are applicable to the Shopping Center, provided the same do not prohibit Tenant's permitted use of the Demised Premises; (v) not use the parking areas or sidewalks or any space outside the Demised Premises for display, sale, storage, or any other similar undertaking; (vi) not use any advertising medium or sound devices inside the Demised Premises which may be heard outside the Demised Premises, or permit any objectional odors to emanate from the Demised Premises; (vii) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (viii) keep the temperature within the Demised Premises at such levels as may be required by any federal, state or local laws, ordinances, or regulations; (ix) maintain a full and complete stock of merchandise so as to attain the highest possible Gross Sales; and (x) employ only such labor in the performance of any work in and about the Demised Premises as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord, its contractors or subcontractors.

**SECTION 4.06. LEGAL REQUIREMENTS.** Tenant shall, at its own expense, comply with all laws, orders, ordinances and with directions of public officers thereunder, and all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

## ARTICLE V. COMMON AREA

**SECTION 5.01. USE.** During the term of this Lease Tenant is granted, subject to Landlord's rules and regulations, the non-exclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access to the Demised Premises from a public street or highway. Landlord shall have the following rights with respect to the common areas throughout the term hereof: (i) to close all or any portion thereof temporarily to discourage non-customer use; and (ii) to modify the traffic flow pattern and layout of parking spaces and entrances and exits to adjoining public streets.

**SECTION 5.02. MAINTENANCE.** Landlord agrees to maintain and keep in good service and repair all common areas. Tenant agrees to reimburse Landlord for its proportionate share of all expenses incurred by Landlord in maintaining and repairing all common areas in the Shopping Center. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all expenses incurred in maintaining and repairing the common areas to which shall be added an additional amount equal to fifteen percent (15%) of such expenses; (ii) from the sum arrived at by the preceding calculations, subtract the amount of all funds paid to Landlord for common area maintenance expenses by any Major Tenant. For all purposes in this Lease a "Major Tenant" is any tenant occupying more than twenty thousand (20,000) square feet of floor area in the Shopping Center. (The number arrived at by the calculation described in (ii) above shall hereinafter be referred to as the "Common Area Expenses"); (iii) divide the Common Area Expenses by a number which is

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the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) less the aggregate number of square feet in the Shopping Center leased to Major Tenants, and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area not leased to a Major Tenant on the first day of each calendar month in such lease year or partial lease year. The Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Expenses, as computed above, in twelve (12) equal monthly installments, with the monthly installment of Minimum Rent. At the end of each year, there shall be an adjustment, if the amount paid by the Tenant differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment.

## **ARTICLE VI. REPAIRS AND MAINTENANCE.**

**SECTION 6.01. LANDLORD'S OBLIGATIONS.** Landlord shall keep in good repair the sewer and water lines servicing the Demised Premises, and the structural supports of the buildings.

**SECTION 6.02. TENANT'S OBLIGATIONS.** Except as stated in Section 6.01, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Shopping Center, (iii) provide trash storage and removal services, except that if Landlord, in its sole discretion, shall provide trash services, Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor, and (iv) change the Tenant's air conditioning filter five (5) times a year and have the Tenant's air conditioner and heater serviced two (2) times a year. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

## **ARTICLE VII. REAL ESTATE TAXES.**

**SECTION 7.01 LIABILITY.** Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord as additional rent, Tenant's proportionate share of the real estate taxes and assessments (including special assessments) upon the Shopping Center for each tax year. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all real estate taxes and assessments upon the Shopping Center, (ii) from the sum arrived at by the preceding calculation, subtract the amount of all funds paid to Landlord for real estate taxes and assessments by Major Tenants, (iii) divide the number arrived at by the calculation described in (ii) above by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) less the aggregate number of square feet in the Shopping Center leased to Major Tenants, and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area not leased to a Major Tenant on the first day of each calendar month in such lease year or partial lease year, provided, however, that if for any tax year than eighty percent (80%) of the total number of square feet of leaseable commerc

**SECTION 7.02 METHOD OF PAYMENT.** Tenant shall pay its share of such taxes by the following method: one-twelfth ( $\frac{1}{12}$ ) of the taxes estimated to be due by the Landlord, shall be paid each month with the Minimum Rent until the end of the first tax year after the Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year; any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished.

## ARTICLE VIII. INSURANCE, INDEMNITY AND LIABILITY.

**SECTION 8.01. LANDLORD'S OBLIGATIONS.** Landlord shall obtain and maintain during the term of this Lease, fire and extended coverage insurance, insuring against all reasonable perils and liabilities, for one hundred percent (100%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Shopping Center is located. Tenant shall reimburse Landlord for its proportionate share of such insurance cost as a portion of the Common Area Expenses described in Article V.

### SECTION 8.02. TENANT'S OBLIGATION.

(a) Tenant, at Tenant's sole cost and expense shall obtain and maintain for the term of this Lease, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings, merchandise, and other contents in the Demised Premises, for the full replacement value of said items; (ii) one full year Minimum Rent coverage; (iii) all perils included in the classification "fire and extended coverage" under insurance industry practices in the jurisdiction in which the Shopping Center is located; (iv) plate glass insurance, if available; and (v) comprehensive general liability insurance naming Landlord, any mortgagee and master lessor as additional insureds, which policy is to be in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00) with respect to any one person, in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to any one accident, and in the minimum amount of Fifty Thousand Dollars (\$50,000.00) with respect to property damage. Tenants shall deliver to Landlord certificates of insurance, or duplicate originals of each such policy.

(b) The policy described in this Section 8.02 shall: (i) be acceptable to the Landlord in form and content, (ii) contain an express waiver of any right of subrogation by the insurance company against the Landlord, Landlord's agents and employees, (iii) contain a provision that it shall not be cancelled and that it shall continue in full force and effect unless Landlord has received at least ten (10) days prior written notice of such cancellation or termination, and (iv) not be materially changed without prior notice to the Landlord.

\*area in the Shopping Mall is gross leased and occupied, then Tenant's proportionate share of the foregoing taxes and assessments shall be computed as if eighty percent (80%) of leaseable floor area was gross leased and occupied.

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# PEOPLE'S DRUG

PLP DEF-EX # 9  
DATE 04-13-87  
JUDGE D.N.H.  
CASE # 98538

its property insurable under the insurance policies required to be carried hereunder. Each party shall obtain policies containing a waiver of subrogation clause (i.e., recognizing this release and waiving all rights of subrogation by the insurance carrier). This waiver shall also apply to any loss or damage self-insured by Tenant or Landlord under such policies.

15. Signs and Permits. Tenant shall have the right to erect any tasteful, not-hand-lettered signs on or in the Demised Premises as it may desire, provided that any permanent exterior sign shall be in accordance with applicable regulations and with Landlord's uniform sign criteria and approved by Landlord, which approval shall not be unreasonably withheld. Landlord agrees to cooperate with Tenant in procuring any necessary permits for such signs, or for any alterations or improvements that Tenant is privileged to make.

In the event Landlord, at its sole election, erects a Shopping Center pylon at its expense, then it is agreed that said pylon shall contain, in Landlord's sole discretion, (i) only the name of the Shopping Center, or (ii) the names of the Shopping Center, Safeway and Peoples Drug Store (in that order, from the top of the pylon down), and possible other tenants below, but in no event will any tenant have its name above Peoples Drug Store on the pylon except for Safeway.

16. Real Property Taxes and Other Charges.

A. Landlord agrees to pay all "Taxes" (as defined in Paragraph B of Section 16 below) levied and assessed upon, or resulting from the ownership of, the Demised Premises and the Shopping Center. In the event Landlord shall fail to pay any of

such Taxes, or shall fail to pay when due the interest or principal on any mortgage or deed of trust, ground rent or any other charge or assessment the lien of which is prior to the lien of this Lease, or fails to pay insurance premiums or other charges payable by Landlord hereunder when the same becomes due and payable, and if, by reason of lack of a non-disturbance agreement or otherwise, Tenant's occupancy of the Demised Premises or leasehold interest is jeopardized thereby, Tenant may, after reasonable written notice to Landlord, make any payments necessary in its reasonable opinion to protect its leasehold interest and continued occupancy of the Demised Premises, and the amount so paid shall be payable by Landlord to Tenant, together with all reasonable costs and interest at the rate of six percent (6%) per annum on all sums so paid, but said amount may not be deducted against rents payable by Tenant except in accordance with Section 12E herein. Tenant shall have no right to cure any default in any mortgage or deed of trust if Tenant has been furnished with an attornment and non-disturbance agreement with respect thereto which is satisfactory to Tenant, or which is in the form attached hereto as Exhibit D.

B. Starting with the Rent Commencement Date and throughout the entire term of this Lease, Tenant shall pay to Landlord, as Additional Rent, Tenant's proportionate share of Taxes. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, and foreseen and unforeseen, including assessments for public improvements and betterments assessed, levied or imposed by duly authorized governmental authority with respect to land and real

property improvements included within the Shopping Center. The term "Taxes" shall also include all costs reasonably incurred in any good faith proceeding brought by Landlord to reduce said Taxes, including reasonable attorneys' fees. Tenant's proportionate share hereunder shall be calculated as follows:

(i) Landlord shall aggregate together all Taxes, (ii) divide the number arrived at by the calculation described in (i) above by a number which is the total square footage of the gross leaseable area in the Shopping Center (and any expansion thereof), and (iii) multiply the quotient arrived at through the calculations described in (ii) above by the total square footage of floor area in the Demised Premises.

If Landlord's permanent lender requires Landlord to escrow taxes monthly, Tenant shall pay its share of such Taxes by the following method: one-twelfth (1/12th) of the Taxes estimated to be due by the Landlord shall be paid each month with the Minimum Rent until the end of the first tax year after the Rent Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year; and any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. In the event no escrow is so required, Tenant shall pay Landlord for its proportionate share of Taxes within thirty (30) days after receipt of a copy of the tax bill and an accompanying statement setting forth in detail how Tenant's proportionate share was computed. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for

all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

Landlord shall give Tenant prompt notice of any proposed increases in Taxes, and inform Tenant whether or not Landlord intends to contest same. If Landlord does not elect to contest any such increase, then, upon written request of Tenant, Landlord agrees that it shall contest same nevertheless.

17. Condemnation As Unsafe. In the event, due to the fault or neglect of Landlord, that the Demised Premises are condemned as unsafe at any time during the term of this Lease, and Tenant on account thereof shall be unable to occupy same to operate its business therein, Landlord shall promptly cause the same to be put in safe condition and the condemnation removed. Rent shall abate during the period Tenant is unable to use the Demise . Premises for the conduct of its business, and Landlord shall be responsible for Tenant's damage suffered on account of said condemnation as unsafe. It is expressly understood, however, that there shall be no cessation or abatement of rent as herein provided if the condemnation (as unsafe) has been occasioned by the negligence or default of Tenant or its agents or employees, and, in that event, Tenant shall promptly, at its own expense, cause same to be put in safe condition.

18. Eminent Domain.

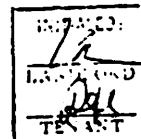
A. In the event that (1) more than ten percent (10%) of the ground floor area of the Demised Premises, or (2) a portion of the term of this Lease, or (3) more than twenty five percent (25%) of the parking area in the Shopping Center, or

a limit of \$100,000.00 for each accident. Upon request, Tenant will furnish Landlord with a certificate evidencing that such insurance is in force. Tenant hereby covenants to defend, indemnify and hold Landlord harmless from and against all loss, liability or expense arising out of any bodily injury, death or property damage occurring on or about the Demised Premises, unless caused by Landlord's negligence.

B. Landlord agrees to maintain throughout the term hereof a standard public liability form of insurance policy covering the common areas, with the same limits as set forth in Paragraph A of this Section 20 with respect to Tenant's public liability insurance, the cost of which shall be included in the common area expenses, as hereinafter defined. Any such insurance may be effected by a policy or policies of blanket insurance, covering additional items or locations or assureds. Landlord hereby covenants to defend, indemnify and hold Tenant harmless from and against all loss, liability or expense arising out of any bodily injury, death or property damage occurring on or about the Shopping Center, excluding the Demised Premises, unless caused by Tenant's negligence.

21. Common Areas. Prior to the commencement of and during the term of this Lease, Landlord agrees:

(1) To provide concrete or macadam hard-surfaced parking areas and shall provide sidewalks in the Shopping Center as shown on Exhibit A hereto, which parking areas shall contain parking spaces for at least three hundred <sup>thirty</sup> ~~sixty-five~~ (335) <sup>(335)</sup> standard-sized automobiles and ten (10) handicap spaces <sup>RE</sup> <sup>DA5</sup> and 107 compact spaces, all as shown on Exhibit A.



(2) To provide a hard-surfaced service area at the rear of the Demised Premises as shown on Exhibit A hereto and means of ingress and egress thereto and therefrom, and does hereby grant Tenant the right to use same in common with other tenants in the Shopping Center;

(3) To provide adequate and suitable means of ingress and egress and circulation for the aforesaid parking areas to and from public streets and roads bordering the Shopping Center;

(4) To adequately paint, clean, seal, replace and re-mark paved surfaces and curbs;

(5) To adequately mark, and to provide adequate lighting facilities for, said parking areas; and

(6) To provide, with respect to the entire Shopping Center, supervision, management, inspection and traffic direction.

Landlord hereby grants to customers of Tenant the full and free right to use the aforesaid parking areas, sidewalks, circulation areas and means of ingress and egress, subject to the extension of similar rights to customers of other tenants in the Shopping Center. The parties agree that neither Tenant nor its employees, or other tenants and their employees, shall use said parking areas, except such portions thereof in the rear of the Shopping Center as may be designated by mutual agreement for the specific use of employees. Notwithstanding the foregoing, it is understood that the area to the rear of the Shopping Center will provide convenient accessibility to the Demised Premises, have sufficient lighting and serve all of the employees in the Shopping Center as well as Tenant's employees.

Landlord agrees and covenants that during the term of this Lease it will retain the approximate size of, and, at its expense, maintain in good order and repair, and free from ice, snow and debris, the common areas (parking areas, service areas, sidewalks, circulation areas and means of ingress and egress) in the Shopping Center as shown on Exhibit A hereto, and will provide adequate lighting (including the electricity therefor) for said common areas. (The foregoing sentence shall not be construed as modifying the provisions set forth in Paragraph G of Section 12 limiting Landlord's right to make changes within the area outlined in green on the plan attached hereto as Exhibit A.) In the event that Landlord fails to keep and maintain any portion of the common areas as aforesaid after reasonable notice from Tenant, then Tenant may make any necessary repairs and recover the cost thereof from Landlord. Tenant may deduct from rent only in accordance with Section 12E.

Tenant shall be obligated to reimburse Landlord for Tenant's share of common area maintenance expenses. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all expenses incurred in maintaining and repairing the common areas to which shall be added an additional amount equal to fifteen percent (15%) of such expenses [the number arrived at by the calculation described in (i) above shall hereinafter be referred to as the "Common Area Expenses"]; (ii) divide the Common Area Expenses by a number which is the total square footage of the gross leaseable area in the Shopping Center (and any expansion thereof); and (iii) multiply the quotient arrived at through the calculation in (ii) above by the



total square footage of floor area in the Demised Premises. Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Expenses, as computed above (such estimate shall not exceed a 12% increase over the previous year's actual Common Area Expense), in twelve (12) equal monthly installments, with the monthly installment of Minimum Rent. At the end of each Lease Year, Landlord shall provide Tenant with a detailed and itemized statement of the Common Area Expenses for said Lease Year and Tenant's proportionate share thereof, and there shall be a reimbursement if the amount paid by Tenant differs from its proportionate share actually incurred in that year. Any amount due Landlord shall be paid within thirty (30) days from Tenant's receipt of such statement. Any amount due Tenant shall be paid by Landlord and shall accompany said statement. For any period of less than a full Lease Year, the Common Area Expenses will be appropriately prorated.

In addition, late night lighting will be provided by Landlord when required by Tenant, and Tenant's share thereof shall be determined and paid to Landlord as hereinafter set forth in this Section 21. Lighting on between 10 p.m. and 6 a.m. shall be defined as "Late Night Lighting". All tenants in the Shopping Center who are open for business to the public during the Late Night Lighting hours shall share in the costs thereof. Landlord shall cause a licensed electrical engineer to ascertain or estimate the cost per hour of Late Night Lighting. For each billing period by the appropriate public utility, Tenant's proportionate share of Late Night Lighting costs shall be determined by: (i) multiplying the aforesaid hourly cost by a

fraction, the numerator of which is the total square footage of floor area of the tenant's premises and the denominator of which is the total square footage of floor area of all of the tenants open during that particular billing period; and (ii) multiplying the product obtained in (i) by the number of Late Night Hours during the billing period that Tenant was open.

Tenant shall reimburse Landlord for its share of Late Night Lighting costs after receipt of satisfactory evidence of the costs and the amount due from Tenant as provided for above, but no more often than once each month.

Upon reasonable notice, Tenant may inspect Landlord's books and records relating to Common Area Expenses, provided that Tenant's payment of all amounts of Common Area Expenses billed to Tenant shall be a condition precedent to Tenant's said inspection rights. Landlord covenants that the Common Area Expenses of the Shopping Center will be necessary and competitively priced, and Landlord will make its best efforts to keep same commensurate with other similar sized shopping centers.

In the event of future development or expansion of the Shopping Center, Landlord agrees that it will maintain the same ratio of parking space to leaseable areas as provided by applicable local law.

22. Exclusive Covenant.

A. To the extent permitted by law, Landlord covenants that it has included, and will include, in every lease agreement now or hereafter executed for every tenant of the Shopping Center, a provision which specifies the permitted use or business to be carried on by a tenant, and which prohibits the

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company shall be deposited promptly with Landlord, and such policies shall: (a) contain an express waiver of subrogation against Landlord and its mortgagee or ground lessor, and (b) shall provide that it shall not be cancelled for any reason unless and until Landlord is given fifteen (15) days prior written notice by the insurance company. In addition, Tenant agrees that if it becomes customary for tenants of strip shopping centers of a similar size in the County in which the Demised Premises are located to be required to provide liability insurance policies to their landlords with coverage limits higher than the foregoing limits, then Tenant shall be required on request of Landlord to provide Landlord with insurance policies the limits of which are not less than the customary limits for Tenant's type of business; provided, however, that the foregoing requirement shall not be applicable more than once during each two (2) consecutive Lease Years during the term of the Lease.

F. That it shall have no right to encumber or subject the interest of the Landlord in the Demised Premises to any mechanic's, materialmen's or other liens or claims of any nature whatsoever, and upon actual notice of such lien or claim, the failure of the Tenant to have the same removed from record within twenty (20) days, or otherwise bonded off, is an event of default and shall entitle Landlord to, without inquiry into the validity thereof, pay such sums as may be necessary to satisfy or cause the removal of any such lien, claim or bond, and all monies so advanced by Landlord shall be payable by the Tenant within five (5) days after demand therefor by Landlord. Nothing in this paragraph shall preclude Landlord from taking any legal action provided for elsewhere in this Lease in the event of a default hereunder by Tenant.

7. Real Estate Taxes:

A. If the Demised Premises is assessed for tax purposes separately from the rest and remainder of the Shopping Center, then in that event Tenant shall be responsible for all "Real Estate Taxes and Assessments" upon the Demised Premises (including Tenant Improvements), and Tenant shall pay same to Landlord as Additional Rent within thirty (30) days before same is payable to the taxing authority without penalty. "Real Estate Taxes and Assessments" means all taxes, rates, and assessments, general and special, levied or imposed with respect to the Demised Premises and improvements constructed thereon, including all taxes, rates, and assessments, general and special, levied or imposed for school, public betterment, general, or local improvements. If the system of real estate taxation shall be altered or varied and any new tax shall be levied or imposed on said land and improvements, and/or Landlord, in substitution for real estate taxes presently levied or imposed on immovables in the jurisdiction wherein the

center is located, then any such new tax or levy shall be included within the term Real Estate Taxes and Assessments, and the provisions of this Article 7 shall apply mutatis mutandis. If the competent authority shall at any time or from time to time eliminate any tax, rate, assessment, or imposition which composed part of the Real Estate Taxes and Assessments as defined herein, Landlord shall eliminate the same for the purposes of applying this Article; provided, however, that Landlord shall not eliminate the same if any new tax or levy shall have been imposed in lieu of or in replacement of the tax, rate, assessment, or imposition so eliminated and such new tax or levy shall have been included in calculating Real Estate Taxes and Assessments pursuant to the preceding sentence. The amount of the Real Estate Taxes and Assessments which shall be deemed to have been levied or imposed with respect to the Demised Premises and improvements shall be such amount as the legal authority imposing Real Estate Taxes and Assessments shall have attributed thereto or, in the absence of such attribution, or, if such legal authority shall include immovables other than the Demised Premises and improvements in imposing such Real Estate Taxes and Assessments, such amount as Landlord in the exercise of reasonable judgment shall establish. If no separate Real Estate Taxes and Assessments for the Demised Premises is available, Tenant shall pay to Landlord as Additional Rent, "Tenant's Proportionate Share of the Real Estate Taxes and Assessments" upon the Shopping Center of which the Demised Premises is a part for such tax year. The Tenant's Proportionate Share of Real Estate Taxes and Assessments means an amount equal to the Real Estate Taxes and Assessments of the Shopping Center multiplied by a fraction the numerator of which is the total gross area of the Demised Premises and the denominator of which is the total gross area of the Shopping Center. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Real Estate Taxes and Assessments in equal monthly installments in advance on the first day of each calendar month. Landlord shall furnish to Tenant, for each Lease Year, a statement of: (i) the actual Real Estate Taxes and Assessments for the prior Lease Year (or partial Lease Year), (ii) Tenant's Proportionate Share of Real Estate Taxes and Assessments for the prior Lease Year (or partial Lease Year), (iii) the amount paid by Tenant during the prior Lease Year (or partial Lease Year) in respect of such Real Estate Taxes and Assessments, (iv) either the deficiency or overage in such payments, and, (v) Landlord's estimate of Tenant's Proportionate Share of Real Estate Taxes and Assessments for the then current Lease Year. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next

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SUITE 200  
1000 WESTBURY BLVD. N.E.  
WASHINGTON, DC 20002

succeeding payments of Tenant's Proportionate Share of Real Estate Taxes and Assessments. After receipt of a statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Real Estate Taxes and Assessments as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement, or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of Real Estate Taxes and Assessments, an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Real Estate Taxes and Assessments in accordance with the disputed statement and such payment shall be without prejudice to either party's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Real Estate Taxes and Assessments resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Real Estate Taxes and Assessments. For any fraction of a real estate tax year during the term hereof, Tenant's obligation under this paragraph shall be determined on a per diem basis, based upon the number of days in such fractional tax year.

B. Provided that the Demised Premises is separately assessed and billed for real estate tax purposes, Tenant at its option shall have the right, at its own cost and expense and for its sole benefit, in its own name or in the name of the Landlord, as circumstances may require, to initiate and protest before the proper authorities any assessment for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes or assessments assessed to or levied upon the premises, and to prosecute any appeal proceedings as fully and to the same extent as if Tenant were the record owner of property and the said Landlord does hereby constitute and appoint the Tenant, its agent and attorney-in-fact for and on its behalf to initiate such proceedings and to execute any and all papers and documents as may be necessary or appropriate under the circumstances, to the end that such proceedings may be brought to

a successful conclusion; provided, however, that the Tenant shall fully indemnify and save the Landlord harmless for all loss, cost, damage and expense incurred by or to be incurred or suffered by the Landlord in the premises.

**8. Common Areas:**

A. It is hereby understood that the Landlord has or will construct and complete on land adjacent to and surrounding the Demised Premises, the Shopping Center substantially in accordance with Exhibit "E", annexed hereto and incorporated herein by reference, and that Tenant and Tenant's employees, agents, invitees, patrons, customers, concessionaires, and licensees shall have a nonexclusive and non-revocable right, at no additional cost or expense, in common with Landlord and other tenants of the shopping center for use throughout the entire term of this Lease, to use the parking and common areas of the Shopping Center for their intended purpose, including without limitation, all parking areas, loading areas, driveways, truckways, walks, sidewalks, ramps, tunnels, ingress, egress, malls, recreation areas, facilities, and restrooms. Landlord hereby agrees that the parking areas shall be lighted during evening hours when the Shopping Center is open for business until approximately 10:30 p.m. each day. Landlord shall have the right, with respect to the parking and common areas, to establish, modify or enforce reasonable rules or regulations with respect to the use of said area and Tenant agrees that it shall comply with such rules and regulations upon notice thereof.

It is understood and agreed that the Demised Premises is and shall be self-contained, independent and distinct as a free standing pad site within the Shopping Center. Landlord and Tenant hereby agree that they shall not erect any barrier or fence which would impede the flow of vehicular or pedestrian traffic to or from the Demised Premises and the remainder of the Shopping Center. However, this covenant shall not prevent Landlord from the installation of appropriate traffic control signals for the purpose of regulating the flow of vehicular traffic across the remainder of the Shopping Center.

Notwithstanding the distinct and separate nature of the Demised Premises in relation to the remainder of the Shopping Center, Tenant does hereby grant to Landlord the right and easements necessary to permit access and egress to and from the Shopping Center and the Demised Premises, and Tenant further agrees that Shopping Center patrons, suppliers, customers and tenants may freely traverse and park upon such areas as may be designated for same by Tenant in the Demised Premises. It is the intent hereof that cross-easements for access and egress be and hereby are granted by and between the parties hereto for vehicular and pedestrian traffic such that for the

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BENNETT, DENO, ORENTLICO & THOMAS  
SUITE 700  
1800 KENTZMITH ST. N.W.  
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foregoing purpose the Demised Premises and Shopping Center shall be an integrated whole. Each party hereto agrees to execute, upon request and without cost, such other and further documents as may be reasonably necessary to effectuate the foregoing; provided, however, that the parking areas within the Demised Premises are to be devoted primarily to Tenant, its agents, servants, employees, customers and suppliers. Except for the area within the Demised Premises, nothing contained herein shall limit the Landlord from rearranging the parking areas shown on Exhibit "E" or rearranging the buildings.

B. Landlord shall maintain or keep in good order, repair and condition, the parking areas and common areas not within the Demised Premises (including but not limited to, lighting, painting, inspecting, landscaping, cleaning, paving, striping and drainage), and further keep same reasonably free from snow, ice, refuse and rubbish.

C. Tenant shall pay to Landlord as Additional Rent, "Tenant's Proportionate Share of Common Area Maintenance Costs" of the Shopping Center. For the purposes of this Lease, the phrase "Common Area Maintenance Costs" shall include (but not be limited to) the following expenses incurred by Landlord in maintaining and keeping in good service and repair all of the common areas of the Shopping Center not within the Demised Premises (those common areas within the Demised Premises shall be Tenant's obligation to maintain at its own expense): landscaping (other than the initial landscaping of the Shopping Center or parts thereof) and landscape maintenance; keeping the parking lot properly paved and in good order and repair, striped and lighted; snow or ice removal, or preventing accumulation thereof; keeping all sidewalks and curbs paved and in good order and repair, and reasonably clean; keeping the common areas in good order and repair, and reasonably clean; providing liability insurance coverage pertaining to the common areas (standard fire and extended coverage insurance pertaining to the buildings and improvements other than within the Demised Premises) in the Shopping Center, when and in such amounts as Landlord deems necessary; reasonable deposits into reserves for major repairs and replacements of the common areas; plus an additional fifteen percent (15%) of the sum of the Common Area Maintenance Costs. The Tenant's Proportionate Share of Common Area Maintenance Costs (including the additional fifteen percent (15%)) means an amount equal to the Common Area Maintenance Costs multiplied by a fraction the numerator of which shall be the total gross floor area of the building to be built by Tenant upon the Demised Premises and the denominator of which shall be the total gross leasable floor area of the Shopping Center. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Charges in equal monthly installments in advance on the first day of each calendar month. Landlord



shall furnish to Tenant, for each Lease Year (or partial Lease Year) a statement of: (i) the actual Common Area Maintenance Costs for the prior Lease Year (or partial Lease Year), (ii) Tenant's Proportionate Share of Common Area Maintenance Costs for the prior Lease Year (or partial Lease Year), (iii) the amount paid by Tenant during the prior Lease Year (or partial Lease Year) in respect of such Common Area Maintenance Costs, (iv) either the deficiency or overage in such payments, and, (v) Landlord's estimate of Tenant's Proportionate Share of Common Area Maintenance Costs for the then current Lease Year. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs. After receipt of a statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Common Area Maintenance Costs as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement, or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs, an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Common Area Maintenance Costs in accordance with the disputed statement and such payment shall be without prejudice to either party's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Common Area Maintenance Costs resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs. For purposes of the period from the Commencement Date to the date Landlord furnishes the first statement to Tenant, Landlord's estimate of Tenant's Proportionate Share of Common Area Maintenance Costs shall be One Dollar (\$1.00) per annum per square foot of gross floor area in the Demised Premises. For any partial Lease Year

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DENNETT, DODD, GIBSON, HENRI & THOMAS  
1000 MONTGOMERY AVENUE, N.W.  
WASHINGTON, D.C. 20004

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during the term hereof, Tenant's obligation under this paragraph shall be determined on a per diem basis, based upon the number of days in such partial Lease Year.

**9. Compliance with Rules, Regulations, Ordinances, Etc.:**

Tenant shall comply with and carry out all reasonable rules and regulations now made or hereafter made by Landlord in respect to the operation and/or maintenance of the Shopping Center of which the Demised Premises are a part, provided said rules and regulations do not violate rules and regulations of applicable regulatory authorities which supervise Tenant; and provided further that such rules and regulations shall not interfere with Tenant's intended use of the premises. Landlord agrees to provide a copy of all such rules and regulations to Tenant and shall provide copies of all revisions of same to Tenant as they are issued.

Tenant shall abide by and faithfully observe all ordinances relating to highway, sidewalk and alley use and occupancy, and traffic rules now or hereafter to be enforced in the State, County and Municipality in which the Shopping Center is located.

Tenant will, at its own cost, promptly comply with and carry out all orders, requirements and/or conditions now or hereafter imposed upon it by the ordinances, laws and/or regulations of the Federal, State, County and Municipal governments in which the Shopping Center is located or any of its various departments, whether required of Landlord or otherwise to be done or performed during the term of this Lease by making such repairs, additions, changes and/or renewals, or taking whatever other action is required so as to comply with any such ordinances, laws and/or regulations.

**10. Hold Harmless:**

Tenant shall indemnify Landlord and hold Landlord harmless from, and Landlord shall not be liable to Tenant, its employees, agents, business invitees, licensees, customers, clients, family members, guests or trespassers, for any damage, loss, compensation, accident or claims whatsoever resulting from: (i) the necessity of repairing any portion of the building erected by Tenant or the Demised Premises unless caused by Landlord's negligence and not covered by the insurance required to be maintained by Tenant pursuant hereto; (ii) the interruption in the use of the Demised Premises; (iii) the use or operation of the Demised Premises (by Landlord, Tenant, or any other person or persons whatsoever); (iv) the termination of this Lease by reason of the destruction of the Demised Premises; (v) any fire, robbery, theft, or any other casualty; (vi) any leakage in any part or portion of the Demised Premises and any water, wind, rain or snow that may leak into, or flow from any part of the Demised Premises and any water, wind, rain or snow that may leak into, or flow from any part of the Demised

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event, Landlord terminates the lease pursuant to this paragraph, and reopens the Shopping Center for business within three years from the date Tenant vacates its premises, Tenant shall have the right of first refusal to lease the same square footage in a comparable location to its present location as modified to the new layout of the Shopping Center, on the same terms and conditions contained in the Lease for a term equivalent to that remaining under this Lease on the date of Landlord's termination notice.

18. Common Area Maintenance

A. The common areas shall be subject to the exclusive control and management of Landlord, and Landlord may establish, enforce and amend reasonable rules with respect thereto. The Landlord shall, throughout the term of this Lease, maintain the parking area, sidewalks, driveways, and other common areas within the Shopping Center in good condition and repair and in a clean, safe, presentable and sanitary condition with adequate drainage, and at all times free and clear of snow, ice or other obstructions which would interfere with the operation of the Tenant's business or the convenience of Tenant's customers, and shall maintain the parking areas properly striped at all times. The parking areas of the common area shall be used for parking only and for no other purpose.

Landlord further agrees to employ at its own expense reasonable safeguards to protect the common areas and to insure that they are utilized only by Landlord, tenants and Customers, invitees, employees, and agents of tenants and Landlord, provided however that this requirement shall not be construed as requiring Landlord to employ a full time security guard. Landlord agrees that every lease hereafter executed for office space in the Shopping Center, if any, shall require the Tenants thereunder and their employees and visitors to park in the areas designated for office parking as shown on Exhibit "A". In the event that office space tenants or commuters do not comply with the foregoing restrictions, then and in such event, Landlord shall, upon notice

from Tenant of violations thereof, promptly take action to remove prohibited cars from the prohibited parking areas. If such action is not promptly taken by Landlord and such cars removed, Tenant shall have the option of having such cars removed, Tenant to act in a reasonable and prudent manner.

B. Landlord shall use its best efforts to preserve and improve access into and out of the Shopping Center. In the event access or egress to the Shopping Center is required to be changed by a governmental authority, Landlord shall use its best efforts to provide access and egress equal to or better than that shown on Exhibit "A".

C. Tenant shall pay to Landlord, in addition to all other sums that may become due hereunder, Tenant's proportionate share of the expenses incurred by Landlord in maintaining the common areas as provided in paragraph 18A above. Tenant's proportionate share shall be based on the ratio that the square footage of the Premises (2970) bears to the total leaseable square footage of the Shopping Center. Landlord shall furnish Tenant with Landlord's estimate in reasonable detail of Tenant's proportionate share of such costs prior to the commencement of each Lease Year. Tenant shall pay 1/12th of the estimated annual charge with each installment of minimum rent payable hereunder. Within sixty (60) days after the end of each Lease Year, Landlord shall provide Tenant with a statement in reasonable detail showing the total cost of such common area maintenance during the previous Lease Year and Tenant's proportionate share, as calculated above, thereof. At such time, Tenant shall pay any additional sum due over the estimated payments made by Tenant during such prior lease year, and any excess payment made by Tenant during such prior Lease Year shall be refunded to Tenant or credited against Tenant's next due monthly payments.

19. Termination.

Upon the expiration of this Lease, or any extension thereof, the Tenant will quit and surrender the Demised Premises in the condition required by Article 14 hereof, without the necessity of any notice from either Landlord or Tenant to

it has an interest will be the fee simple owners or owners of a leasehold estate of the Shopping Center tract; (ii) it has the authority to enter into this Lease; and (iii) Tenant shall have the peaceful and quiet use and possession of the Demised Premises throughout the term of this Lease so long as Tenant performs all its covenants and agreements hereunder.

**36. No Brokerage.**

Tenant represents that it has dealt only with Western Development Corporation and its representatives regarding negotiations of this lease. Landlord covenants to hold Tenant harmless against any claims for brokerage commissions arising out of any conversations or negotiations had by Tenant in regard to this transaction, except in the event of a breach of the foregoing representation by Tenant.

**37. Recordation.**

The parties agree to execute a short form of this Lease, which may, at the desire of either party, be recorded among the land records of the Jurisdiction where the Demised Premises are located, the expense thereof to be borne by the recording party.

**38. Real Estate Taxes.**

Tenant agrees to pay Landlord its proportionate share of real estate taxes on the land and buildings which comprise the Shopping Center. Tenant's proportionate share shall be based upon the proportion of its store's square footage to the total square footage of buildings in the entire Shopping Center. Tenant shall make its payments hereunder within 30 days following receipt of a bill therefor which shall be rendered no earlier than 60 days before such taxes must be paid to the taxing authority; provided, however, that if Landlord's lender requires that taxes be escrowed on a monthly basis, Tenant shall make its payments to Landlord in the same manner. For the purposes hereof, Tenant's square footage shall be considered 2970 square feet. For the purposes hereof, "real estate taxes"

shall be deemed to mean levies and assessments including special assessments on the land and improvements in, and appurtenances to, the Shopping Center by the local government authority, and any other tax of any type which is imposed as a substitute for, or an addition to, real estate taxes as presently constituted. Such levies and assessments shall include, but not be limited to, general and special assessments. Tenant shall not be obligated for Landlord's income taxes.

**39. Utilities-Trash Storage Facility.**

Tenant shall pay directly to the supplier thereof all charges for the use of water, gas, electricity, sewer, telephone and other utilities used or consumed in the Demised Premises, its signs thereon from and after the delivery of possession date. All utility meters shall be installed at Landlord expense.

**40. Notices.**

A. All notices and other communications required to be given to Tenant hereunder shall be deemed sufficiently given if delivered personally or sent by registered or certified mail addressed to Tenant at 3301 Pennsy Drive, Landover, Maryland 20785, or to such other address as Tenant shall hereafter designate in writing.

B. All notices and other communications required to be given to Landlord hereunder shall be deemed sufficiently given if delivered personally or sent by registered or certified mail addressed to Landlord at 1204 Wisconsin Avenue, N. W., Washington, D. C. or to such other address as Landlord shall hereafter designate in writing.

C. Notices and other communications given in accordance with paragraphs A and B of this Article shall be deemed served on the day on which personally delivered or, if sent by mail, on the third (3rd) day after being posted.

**41. Governing Law.**

This Lease and the rights and liabilities of the parties hereunder shall be governed by the internal laws of the

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(Adm)

PLP-DEF-EX # 12

DATE 04-13-87

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CASE # 98538

**SECTION 4.02. OPENING: ESTOPPEL CERTIFICATE.** Tenant agrees to open for business to the public by the end of the Fixturing Period and thereafter conduct its regular business operations continuously on all days and at all hours during which the Shopping Center is open for business. From time to time and upon five (5) days notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Demised Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby appoints Landlord as its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

**SECTION 4.03. UTILITIES.** Tenant, at its expense, shall arrange for and pay all costs of the charges for all utilities and services provided or used in or at the Demised Premises, commencing with the Delivery of Possession Date and throughout the term of this Lease. Tenant shall pay directly to the public utility companies, the cost of any installation not included in Landlord's Work of any and all such utility services. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises.

**SECTION 4.04. SIGN.** Tenant shall install and maintain one (1) sign affixed to the front of the Demised Premises, subject to the prior written approval of Landlord, and conforming to all applicable legal and insurance requirements. Tenant's sign shall be consistent with the specifications and requirements contained in Exhibit "E" attached hereto. Tenant shall pay for all costs in connection with such sign and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Demised Premises thereby. In the event Landlord deems it necessary to remove such sign then Landlord shall have the right to do so, provided, however, Landlord shall replace said sign as soon as practicable at Landlord's sole cost. No additional signs, which can be seen from the exterior of the Demised Premises, shall be installed or displayed in, on or about the Demised Premises without the prior written consent of Landlord. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Demised Premises which does not meet the above criteria may be removed at any time by Landlord without Landlord incurring any liability therefor.

**SECTION 4.05. TENANT'S WARRANTIES.** Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Demised Premises and any platform or loading dock used by Tenant in a neat and clean condition; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature; (iii) observe all rules and regulations established by Landlord for all tenants in the Shopping Center, provided Tenant shall be given at least five (5) days notice thereof; (iv) observe all restrictive covenants of record which are applicable to the Shopping Center, provided the same do not prohibit Tenant's permitted use of the Demised Premises; (v) not use the parking areas or sidewalks or any space outside the Demised Premises for display, sale, storage, or any other similar undertaking; (vi) not use any advertising medium or sound devices inside the Demised Premises which may be heard outside the Demised Premises, or permit any objectional odors to emanate from the Demised Premises; (vii) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (viii) keep the temperature within the Demised Premises at such levels as may be required by any federal, state or local laws, ordinances, or regulations; (ix) maintain a full and complete stock of merchandise so as to attain the highest possible gross sales, and (x) employ only such labor in the performance of any work in and about the Demised Premises as will not cause any conflict or controversy with any labor organization representing grades performing work for Landlord, its contractors or subcontractors.

**SECTION 4.06. LEGAL REQUIREMENTS.** Tenant shall, at its own expense, comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request. Tenant shall not be required to perform any structural work as a result of this provision.

Tenant shall be entitled mutually to an estoppel certificate from Landlord.

reasonable

as set forth herein,

construction

## ARTICLE V. COMMON AREA

**SECTION 5.01. USE.** During the term of this Lease Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice or consent of Tenant, to change the size, location, elevation and nature of any of the stores in the Shopping Center or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the common areas and the use thereof. Tenant agrees to abide by and conform with such rules and regulations upon notice thereof and to cause its permitted concessionaires, invitees and licensees and its and their employees and agents to do the same.

**SECTION 5.02. COMMON AREA MAINTENANCE EXPENSES.** Landlord agrees to maintain and keep in good service and repair all common areas. Tenant agrees to reimburse Landlord for its proportionate share of all costs and expenses incurred by Landlord in maintaining and repairing all common areas in the Shopping Center (the "Common Area Maintenance Expenses"). The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) gas, electricity, water, sewer and other utility charges (including surcharges) of whatever nature, (ii) insurance premiums, (iii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel, (iv) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees, (v) all other maintenance and repair expenses and supplies which may be deductible for such calendar year in computing Federal income tax liability, (vi) any other costs and expenses (i.e. items which are not capital improvements) incurred by Landlord in ~~operating~~ the Shopping Center, (vii) the cost of any additional services not provided to the Shopping Center at the Lease Commencement Date but hereafter

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## IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

common area, roof and foundations.

For the purpose of this calculation, the gross leased and occupied floor areas shall not be considered to be less than eighty percent (80%) of the gross leaseable floor area of the Shopping Center.

**SECTION 6.02. TENANT'S OBLIGATIONS.** Except as stated in Section 6.01, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Shopping Center, (iii) provide trash storage and removal services regardless of the location of any storage and removal facilities, except that if Landlord, in its sole discretion, shall provide trash services, Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor, (iv) change the Tenant's air conditioning filter as necessary but not less often than five (5) times a year and have the Tenant's air conditioner and heater serviced as necessary, but not less often than two (2) times a year and (v) repair any portion of the Shopping Center which is damaged as a result of any act or omission of Tenant. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

**SECTION 7.01. LIABILITY.** Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined for each tax year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or

based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes, ~~from the sum arrived at by the preceding calculation, subtract the amount of all funds paid to Landlord for Taxes by Major Tenants.~~ (iii) divide the number arrived at by the calculation described in (ii) above by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) ~~less the aggregate number of square feet in the Shopping Center leased to Major Tenants;~~ and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area ~~as leased to a Major Tenant~~ on the first day of each calendar month in such lease year or partial lease year.

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**SECTION 7.02. METHOD OF PAYMENT.** Tenant shall pay its share of such Taxes by the following method: one-twelfth (1/12) of the taxes estimated to be due by the Landlord, shall be paid each month with the Minimum Rent until the end of the first tax year after the Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year; any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

## ARTICLE VIII INSURANCE, INDEMNITY AND LIABILITY

**SECTION 8.01. LANDLORD'S OBLIGATIONS.** Landlord shall obtain and maintain during the term of this Lease, fire and extended coverage insurance, insuring against all reasonable perils and liabilities, for eighty percent (80%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Shopping Center is located. Tenant shall reimburse Landlord for its proportionate share of such insurance cost as a portion of the Common Area Maintenance Expenses described in Article V.

## SECTION 8.02. TENANT'S OBLIGATIONS.

(a) Tenant, at Tenant's sole cost and expense, shall obtain and maintain for the term of this Lease, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings, merchandise, and other contents in the Demised Premises, for the full replacement value of said items; (ii) one full year Minimum Rent coverage; (iii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Shopping Center is located; ~~(iv) plate glass insurance, if available;~~ and (v) comprehensive general liability insurance naming Landlord, any mortgagee and master lessor as additional insureds, which policy is to be in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00) with respect to any one person, in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to any one accident, and in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) with respect to property damage. The minimum limits hereinbefore set forth may, at Landlord's option be increased by not more than ten percent (10%), such increase to occur not more often than once during each two (2) consecutive lease years during the term hereof. Tenant shall deliver to Landlord certificates of insurance, or duplicate originals of each such policy.

(b) The policies described in this Section 8.02 shall: (i) be acceptable to Landlord in form and content, (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees, and mortgagees and ground lessors, (iii) contain a provision that it shall not be cancelled and that it shall continue in full force and effect unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination, and (iv) not be materially changed without prior notice to Landlord.

(c) Tenant shall not permit to be done any act which will invalidate or be in conflict with the fire insurance policies covering the Shopping Center or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

## SECTION 8.03. COVENANTS TO HOLD HARMLESS.

(a) Landlord and Tenant each hereby releases the other, its officers, directors, employees, and agents from any and all liability for responsibility for any loss or damage to property covered by ~~valid and collectable~~ fire insurance with standard and extended coverage endorsement, even if such fire or other casualties shall have been caused by the fault or negligence of the other party, or any one for whom such party may be responsible. Tenant agrees to pay the increased insurance cost, if any, resulting from such release.

(b) Tenant hereby indemnifies and agrees to save harmless Landlord, any mortgagee and master lessor of the Shopping Center, from and against any and all claims that arise from or in connection with the possession, use, occupation, management, repairs, maintenance or control of the Demised Premises, or any portion thereof, and any sidewalks adjoining same. Tenant shall, at its own cost and expense, defend any and all actions which may be brought against Landlord, any mortgagee or master lessor with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Landlord, any mortgagee or master lessor in connection with the foregoing.

**SECTION 8.04. LIABILITY OF LANDLORD TO TENANT.** Except with respect to any damages resulting from the gross negligence of Landlord, its agents or employees, Landlord shall not be liable to Tenant, its agents, employees or customers, for any damage, loss, compensation, accident or claims whatsoever.

## ARTICLE IX. DESTRUCTION OF DEMISED PREMISES

**SECTION 9.01. CONTINUANCE OF LEASE.** If all or a substantial portion of the Demised Premises shall be damaged by fire or other casualty, this Lease shall not be terminated or otherwise affected; except that if any such fire or other casualty occurs within the last two (2) years of the term of this Lease and the cost of repair exceeds ~~Ten Thousand Dollars (\$10,000.00)~~ as estimated by Landlord, then Landlord shall have the option to terminate this Lease within ninety (90) days following the occurrence of such fire or other casualty by giving written notice to the Tenant during such period. In the event Landlord exercises its option, this Lease shall immediately terminate and the entire proceeds of the insurance provided for in Section 8.01 shall be paid to the Landlord and be the sole property of Landlord.

**SECTION 9.02. RECONSTRUCTION; RENT ABATEMENT.** If all or any portion of the Demised Premises is damaged by fire or other casualty and this Lease is not terminated in accordance with the above provision, then all insurance proceeds however recovered shall be made available for payment of the cost of repair, replacing and rebuilding. Landlord shall use the proceeds from the insurance as set forth herein, to repair or rebuild the Demised Premises to its condition in

damaged by fire or other casualty, and Landlord notifies Tenant within ninety (90) days of said fire or other casualty of Landlord's intention not to rebuild the Center, then Tenant may, at its option, terminate this Lease upon ninety (90) days prior written notice to Landlord.

over and above rates of insurance normal and customary for similar stores,

negligence or willful misconduct.

fifty thousand dollars (\$50,000.00)

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# VILLAGE CLASSICS

PLF-DEF-EX # 13  
DATE 04-13-87  
JUDGE 2.H.H.  
CASE # 98538

**SECTION 5.01. USE.** During the term of this Lease Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any of the stores in the Shopping Center or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the common areas and the use thereof. Tenant agrees to abide by and conform with such rules and regulations upon notice thereof and to cause its permitted concessionaires, invitees and licensees and its and their employees and agents to do the same.

**SECTION 5.02. COMMON AREA MAINTENANCE EXPENSES.** Landlord agrees to maintain and keep in good service and repair all common areas. Tenant agrees to reimburse Landlord for its proportionate share of all costs and expenses incurred by Landlord in maintaining and repairing all common areas in the Shopping Center (the "Common Area Maintenance Expenses"). The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) gas, electricity, water, sewer and other utility charges (including surcharges) of whatever nature, (ii) insurance premiums, (iii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel, (iv) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees, (v) all other maintenance and repair expenses and supplies which may be deductible for such calendar year in computing Federal income tax liability, (vi) any other costs and expenses (i.e. items which are not capital improvements) incurred by Landlord in operating the Shopping Center, (vii) the cost of any additional services not provided to the Shopping Center at the Lease Commencement Date but thereafter

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provided by Landlord in the prudent management of the Shopping Center. (viii) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Shopping Center, provided, however, that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such lease year shall be included in the Common Area Expenses for such lease year, and (ix) deposits into reserve accounts for capital improvements. Common Area Maintenance Expenses shall not include (i) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances, (ii) leasing commissions payable by Landlord or (iii) deductions for depreciation of the improvements shown on Exhibit A. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all Common Area Maintenance Expenses to which shall be added an additional administrative fee in an amount equal to fifteen percent (15%) of such expenses; (ii) ~~from the sum arrived at by the preceding calculations, subtract the amount of all sums paid for such Expenses by any Major Tenant. (For all purposes in this Lease a "Major Tenant" is any tenant occupying more than twenty thousand (20,000) square feet of floor area in the Shopping Center.)~~ The number arrived at by the calculation described in (ii) above shall hereinafter be referred to as the "Adjusted Common Area Expenses"; (iii) divide the Adjusted Common Area Expenses by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) ~~less the aggregate number of square feet in the Shopping Center leased to Major Tenants,~~ and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area ~~not leased to a Major Tenant~~ on the first day of each calendar month in such lease year or partial lease year. Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Maintenance Expenses, as computed above, in twelve (12) equal monthly installments, with the monthly installment of Minimum Rent. Notwithstanding the above, in the event Landlord at any time determines that the amount of Common Area Maintenance Expenses actually being paid by Landlord exceeds the estimate upon which Tenant's proportionate share of Common Area Maintenance Expenses was computed, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised estimate of Common Area Maintenance Expenses. At the end of each year, there shall be an adjustment if the amount paid by Tenant differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment of Common Area Maintenance Expenses.

not be considered to be less than area of the Shopping Center.

may be required by any governmental body or authority, except that if Landlord, in its sole discretion, shall provide trash services. Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor. (iv) change the Tenant's air conditioning filter as necessary but not less often than five (5) times a year and have the Tenant's air conditioner and heater serviced as necessary, but not less often than two (2) times a year and (v) repair any portion of the Shopping Center which is damaged as a result of any act or omission of Tenant. Notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

## ARTICLE VII. REAL ESTATE TAXES

**SECTION 7.01. LIABILITY.** Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined for each tax year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes; (ii) ~~from the sum arrived at by the preceding calculation, subtract the amount of all taxes paid to Landlord for Taxes by Major Tenants;~~ (iii) divide the number arrived at by the calculation described in (ii) above by a number which is the total square footage of the gross leased and occupied floor area in the Shopping Center (and any expansion thereof) ~~less the aggregate number of square feet in the Shopping Center leased to Major Tenants;~~ and (iv) multiply the quotient arrived at through the calculations described in (iii) above by the total square footage of floor area in the Demised Premises. The gross leased and occupied floor area in effect for the whole of any lease year or partial lease year shall be the average of the gross leased and occupied floor area ~~not leased to a Major Tenant~~ on the first day of each calendar month in such lease year or partial lease year.

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## ARTICLE VIII. INSURANCE, INDEMNITY AND LIABILITY

**SECTION 7.02. METHOD OF PAYMENT.** Tenant shall pay its share of such Taxes by the following method: one-twelfth (1/12) of the taxes estimated to be due by the Landlord, shall be paid each month with the Minimum Rent until the end of the first tax year after the Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year; any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

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 RLE DEF-EX # 14  
DATE 04-13-87  
JUDGE D.H.H.  
CASE # 98538

the validity thereof, pay such sums as may be necessary to satisfy or cause the removal of any such lien, claim or bond, and all monies so advanced by Landlord shall be payable by the Tenant within five (5) days after demand therefor by Landlord. Nothing in this paragraph shall preclude Landlord from taking any legal action provided for elsewhere in this Lease in the event of a default hereunder by Tenant.

7. Real Estate Taxes:

~~A. If the Demised Premises is assessed for tax purposes separately from the rest and remainder of the Shopping Center, then in that event Tenant shall be responsible for all "Real Estate Taxes and Assessments" (hereinafter "Taxes") upon the Demised Premises (including Tenant Improvements), and Tenant shall pay same to Landlord as Additional Rent within thirty (30) days before same is payable to the taxing authority without penalty. "Taxes" means all taxes, rates, and assessments, general and special, levied or imposed with respect to the Demised Premises and improvements constructed thereon, including all taxes, rates, and assessments, general and special, levied or imposed for school, public betterment, general, or local improvements. If the system of real estate taxation shall be altered or varied and any new tax shall be levied or imposed on said land and improvement, and/or Landlord, in substitution for real estate taxes presently levied or imposed on immovables in the jurisdiction wherein the center is located, then any such new tax or levy shall be included within the term Taxes, and the provisions of this Article 7 shall apply mutatis mutandis. If the competent authority shall at any time or from time to time eliminate any tax, rate, assessment, or imposition which composed part of the Taxes as defined herein, Landlord shall eliminate the same for the purposes of applying this Article; provided, however, that Landlord shall not eliminate the same if any new tax or levy shall have been imposed in lieu of or in replacement of the tax, rate, assessment, or imposition so eliminated and such new tax or levy shall have been included in calculating Taxes pursuant to the preceding sentence. The amount of the Taxes which shall be deemed to have been levied or imposed with respect to the Demised Premises and improvements shall be such amount as the legal authority imposing taxes shall have attributed thereto or, in the absence of such attribution, or, if such legal authority shall include immovables other than the Demised Premises and improvements in imposing such taxes, such amount as Landlord in the exercise of reasonable judgment shall establish. Notwithstanding anything else herein to the contrary, if Landlord fails to pay the Real Estate Taxes due the taxing authority in a timely manner, for reasons not within Tenant's control, then late fees, assessments and penalties shall be paid by Landlord and shall not be considered part of Real Estate Taxes as herein defined.~~

~~If no separate Taxes bill for the Demised Premises is available,~~  
Tenant shall pay to Landlord as Additional Rent, "Tenant's Proportionate Share of the Taxes" upon the Shopping Center of which the Demised Premises is a part for each Tax Year during the term hereof. As used herein the term "Tax Year" shall mean and refer to the twelve month period established by the local taxing authority as the year for which Taxes are due. The Tenant's Proportionate Share



of Taxes means an <sup>equal</sup> ~~equal~~ amount to the Taxes of the Shopping Center multiplied by a fraction the numerator of which is the total gross floor area of the Building on the Demised Premises and the denominator of which is the total gross leaseable area of the Shopping Center. <sup>\*(see Insert, pg 10(a) on or about the Commencement Date, and thereafter)</sup> ~~On or about the first day of~~ each Lease Year, Landlord shall furnish to Tenant a statement of: (i) the actual taxes for the prior Lease Year and Tax Year ~~(as hereinafter defined)~~; (ii) Tenant's Proportionate Share of Taxes for the prior Lease Year and Tax Year; (iii) the amount paid by Tenant during the prior Lease Year and Tax Year in respect of Taxes; (iv) any deficiency or overage in payments; and (v) Landlord's <sup>good faith</sup> estimate of Tenant's share of Taxes for the current Lease Year. ~~It is understood that the Tax Year~~ that twelve (12) month period established by the local taxing authority to which Taxes apply - may not coincide with each Lease Year and that the taxing authority may require that payments in respect of Taxes be made in the midst (as opposed to the beginning or end) of a Tax Year. Accordingly, Landlord's estimate of Tenant's Share of Taxes referred to in (v) above shall take into account Tenant's share of Taxes for the next succeeding Tax Year and Tenant's Share of Taxes paid or to be paid by Landlord during the current Lease Year. It is the intent hereof that Tenant shall pay to Landlord its full share of Taxes applicable to a Tax Year and the portion thereof. This Lease is or is to be in effect, prior to the date in which Landlord is required to make any Tax payment to the taxing authority. In the event that Landlord has already paid Taxes for a current Tax Year to the taxing authority, it is the intent hereof that Tenant shall reimburse Landlord in full in a lump sum for Tenant's share of Taxes paid and applicable to a period this Lease is or ~~is to be in effect~~. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next succeeding payments of Tenant's Proportionate Share of Taxes. At the expiration or earlier termination of the Lease (including any extensions or renewals hereof), provided Tenant is not in default hereof, Landlord shall furnish Tenant a statement with the information contained in clauses (i) through (iv) <sup>above</sup> ~~of the preceding sentence~~, and Landlord shall refund any overpayment or Tenant shall pay any deficiency (as the case may be) within thirty (30) days after receipt of such statement. After receipt of a statement or a revised statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month in advance an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Taxes as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year or if a revised statement is provided during a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement, or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of

\* Insert

For Tax Years at the beginning and end of the term of this Lease, Tenant's Proportionate Share of Taxes shall be prorated on a per diem basis.

On or about the Commencement Date, Landlord shall provide Tenant with a statement, as applicable, of either (i) the amount which Tenant must reimburse Landlord for Taxes paid by Landlord in advance respecting Tenant's share of Taxes for the then current Tax Year and the amount of Tenant's share of Taxes for the following Tax Year, (which shall be payable in equal monthly installments); or (ii) the amount which Tenant shall pay monthly such that by the next Tax Payment Date Tenant will have paid its full share of Taxes for the then current Tax Year and the amount Tenant shall pay in equal monthly installments following such Tax Payment Date for the following Tax Year. As used herein the term "Tax Payment Date" shall mean and refer to the date established by the local taxing authorities for the payment of Taxes for the applicable Tax Year.

For example, assume the first Tax Year is July 1, 1983 through June 30, 1984 the second Tax Year is July 1, 1984 through June 30, 1985, and the Tax Payment Date is September 30 of each Tax Year (three (3) months in arrears and nine (9) months in advance).

If the Commencement date is October 1, 1983, Tenant shall, on or about the Commencement Date, reimburse Landlord for Tenant's share of nine (9) months of Taxes for the first Tax Year and shall pay monthly 1/12th of Tenant's share of Taxes applicable to the second Tax Year.

If the Commencement Date is August 1, 1983, Tenant shall, by September 30, 1983, pay 11/12ths of Taxes for the first Tax Year and commencing October 1, 1983 pay monthly 1/12th of Tenant's share of Taxes applicable to the second Tax Year.

If the Commencement Date is January 1, 1984, Tenant shall, on or about the Commencement Date, reimburse Landlord for Tenant's share of six (6) months of Taxes for the first Tax Year and shall also commence making monthly payments of 1/9 of its share of Taxes applicable to the second Tax Year.

-10(a)-

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H.M. - W.K.   
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Taxes an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Taxes in accordance with the disputed statement and such payment shall be without prejudice to either party's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Taxes resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Taxes or refunded to Tenant <sup>within 20 days after Tenant's request</sup> if this Lease has terminated. Tenant's obligations to pay its share of Taxes assessed against the Shopping Center during the term of this Lease shall survive termination of this Lease, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

~~B. Provided that the Demised Premises is separately assessed and billed for real estate tax purposes, Tenant at its option shall have the right, at its own cost and expense and for its sole benefit, in its own name or in the name of the Landlord, as circumstances may require, to initiate and protest before the proper authorities any assessment for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes or assessments assessed to or levied upon the premises, and to prosecute any appeal proceedings as fully and to the same extent as if Tenant were the record owner of property and the said Landlord does hereby constitute and appoint the Tenant, its agent and attorney-in-fact for and on its behalf to initiate such proceedings and to execute any and all papers and documents as may be necessary or appropriate under the circumstances, to the end that such proceedings may be brought to a successful conclusion; provided, however, that the Tenant shall fully indemnify and save the Landlord harmless for all loss, cost, damage and expense incurred by or to be incurred or suffered by the Landlord in the premises.~~

8. Common Areas:

A. It is hereby understood that the Landlord has or will construct and complete on land adjacent to and surrounding the Demised Premises, the Shopping Center substantially in accordance with Exhibit "E", annexed hereto and incorporated herein by reference, and that Tenant and Tenant's employees, agents, invitees, patrons, customers, concessionaires, and licensees shall have a nonexclusive and non-revocable right, at no additional cost or expense, in common with

WIL  
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M.D.H.

#### Shopping Center

Landlord and other tenants of the shopping-center for use throughout the entire term of this Lease, to use the parking and common areas of the Shopping Center for their intended purpose, including without limitation, all parking areas, loading areas, driveways, truckways, walks, sidewalks, ramps, tunnels, ingress, egress, malls, recreation areas, facilities, and restrooms. Landlord hereby agrees that the parking areas shall be lighted during evening hours when the Shopping Center is open for business until approximately 10:30 p.m. each day. Landlord shall have the right, with respect to the parking and common areas, to establish, modify or enforce reasonable rules or regulations with respect to the use of said area and Tenant agrees that it shall comply with such rules and regulations upon notice thereof, provided that such rules do not violate rules and regulations of applicable regulatory authorities, and provided further that such rules and regulations shall not interfere with Tenant's intended use of the Premises or its rights under this Lease.

It is understood and agreed that the Demised Premises is and shall be self-contained, independent and distinct as a free standing pad site within the Shopping Center. Landlord and Tenant hereby agree that they shall not erect any barrier or fence which would impede the flow of vehicular or pedestrian traffic to or from the Demised Premises and the remainder of the Shopping Center. However, this covenant shall not prevent Landlord from the installation of appropriate traffic control signals for the purpose of regulating the flow of vehicular traffic across the remainder of the Shopping Center, provided such signals do not interfere with Tenant's approved plans and specifications or the grant of the Special Exception.

Notwithstanding the distinct and separate nature of the Demised Premises in relation to the remainder of the Shopping Center, Tenant does hereby grant to Landlord the right and easements necessary to permit access and egress to and from the Shopping Center and the Demised Premises, and Tenant further agrees that Shopping Center patrons, suppliers, customers and tenants may freely traverse and park upon such areas as may be designated for same by Tenant in the Demised Premises. It is the intent hereof that cross-easements for access and egress be and hereby are granted by and between the parties hereto for vehicular and pedestrian traffic such that for the foregoing purposes the Demised Premises and Shopping Center shall be integrated whole. Each party hereto agrees to execute, upon request and <sup>without charge to the requesting party</sup> ~~without cost~~, such other and further documents as may be reasonable necessary to effectuate the foregoing; provided, however, that the parking areas within the Demised Premises are to be devoted primarily to Tenant, its agents, servants, employees, customers and suppliers. ~~Except for the area within the Demised Premises, nothing contained herein shall limit the Landlord from rearranging the parking areas shown on Exhibit "E" or rearranging the buildings, provided that Landlord and Tenant's use of the cross-easements referred to hereinabove shall not be materially impaired.~~

B. Landlord shall maintain or keep in good order, repair and condition, the parking areas and common areas (including but not limited to, lighting, painting, inspecting, landscaping, cleaning, paving, striping and drainage), and further keep same reasonably free from snow, ice, refuse and rubbish.

C. Tenant shall pay to Landlord as Additional Rent, "Tenant's Proportionate Share of Common Area Maintenance Costs" of the Shopping Center. For the purposes of this Lease, the phrase "Common Area Maintenance Costs" shall include (but not be limited to) the following expenses incurred by Landlord in maintaining and keeping in good service and repair all of the common areas of the Shopping Center; landscaping (other than the initial landscaping of the Shopping Center or parts thereof) and landscape maintenance; keeping the parking lot properly paved and in good order and repair, striped and lighted; snow or ice removal, or preventing accumulation thereof; keeping all sidewalks and curbs paved and in good order and repair, and reasonably clean; keeping the common areas in good order and repair, and reasonably clean; providing liability insurance coverage pertaining to the common areas (standard fire and extended coverage insurance pertaining to the common areas) in the Shopping Center, when and in such amounts as Landlord deems necessary; reasonable deposits into reserves for major repairs and replacements of the common areas; costs of on-site personnel (including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other on-site personnel); costs of security services; the cost of any capital improvements which are made by the Landlord after completion of initial construction of the Shopping Center substantially in accordance with Exhibit "E" hereof (provided, however, that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such <sup>Lease Year</sup> ~~lease year~~ shall be included in the Common Area Maintenance costs of such lease year); plus an additional fifteen percent (15%) of the sum of the Common Area Maintenance Costs. The Tenant's Proportionate Share of Common Area Maintenance Costs (including the additional fifteen percent (15%)) means an amount equal to the Common Area Maintenance Costs multiplied by a fraction the numerator of which shall be the total gross floor area of the building to be built by Tenant upon the Demised Premises and the denominator of which shall be the total gross leasable floor area of the Shopping Center. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Charges, in equal monthly installments in advance on the first day of each calendar month. Landlord shall furnish to Tenant, for each Lease Year (or partial Lease Year) a statement of: (i) the actual Common Area Maintenance Costs for the prior Lease Year (or partial Lease Year), (ii) Tenant's Proportionate Share of Common Area Maintenance

\*It is hereby expressly understood and agreed that the parking area within Demised Premises is a common area, as shall be maintained, insured and repaired as a common area.

Costs for the prior Lease Year (or partial Lease Year), (iii) the amount paid by Tenant during the prior Lease Year (or partial Lease Year) in respect of such Common Area Maintenance Costs, (iv) either the deficiency or overage in such payments, and, (v) Landlord's estimate of Tenant's Proportionate Share of Common Area Maintenance Costs for the then current Lease Year. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs, or refunded to Tenant <sup>request</sup> within 20 days after Tenant's request if the Lease has terminated. After receipt of a statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Common Area Maintenance Costs as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement, or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs, an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Common Area Maintenance Costs in accordance with the disputed statement and such payment shall be without prejudice to either party's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Common Area Maintenance Costs resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Maintenance Costs or refunded to Tenant <sup>request</sup> within 20 days after Tenant's request if this Lease has terminated. For purposes of the period from the Commencement Date to the date Landlord furnishes the first statement to Tenant as hereinabove described, Landlord shall notify Tenant of Landlord's initial estimate of Tenant's Proportionate Share of Common Area Maintenance Costs approximately thirty (30) days before the anticipated Commencement Date, and Tenant shall pay to Landlord on the Commencement Date and thereafter on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of said initial estimate until receipt of a new statement. For any partial Lease Year during the term hereof, Tenant's obligation under this paragraph shall be determined on a per diem basis, based upon the number of days in such partial Lease Year.

Wm  
W.H.  
8-26-82  
m.c.H.

Western Management Corporation  
Suite 410, 1331 H Street, NW, Washington, D.C., 20005 (202) 737-9714

SOUTH LAKES VILLAGE CENTER  
COMPUTATION OF ACTUAL REAL ESTATE TAXES  
EXPENSE PAYMENTS  
1985

Tenant: GREAT FALLS HARDWARE

Gross Leased and Occupied Area of Center 103,290 sf

Less: Major Tenants s.f. 40,822 sf

Net Gross Leased And Occupied Area of Center 62,468 sf

Actual Real Estate Expense for Year \$74,693.71

Less: Major Tenant's Contribution \$29,391.84

Actual Net Real Estate Expense for Year \$45,302

Real Estate Taxes Expense per SF of NSLOA		
\$45,302	62,468 sf	\$0.73
----- x ----- = -----		

5229	\$0.73	\$3,817.17
----- x ----- = -----		

Tenant's Pro-Rata Share for 1985		
\$3,817.17	365/365	\$3,817.17
----- x ----- = -----		

ACTUAL REAL ESTATE TAXES EXPENSES DUE, 1985	\$3,817.17
ESTIMATED REAL ESTATE TAXES EXPENSES BILLED, 1985	(\$4,392.36)
	-----

TOTAL AMOUNT DUE	(\$575.19)
	-----

*(Adm)* PIP-DEF-EX # 15  
DATE 04-13-87  
JUDGE *2. H. H.*  
CASE # 98538  
173



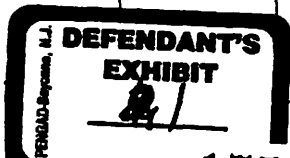


# TENANT LEDGER

CLIENT/CLIENT NAME	TENANT IDENTIFICATION	PACKAGE PAGE NUMBER	DATE
81181 WESTERN MANAGEMENT CORP	833-005-0040-1 GREAT FALLS HARDWAR	3.428	3/31/87
DEV. DEVELOPMENT NAME	REPORT NO.	KEY	PG-CL: JPG-DEVI PG-TEN
833 SOUTH LAKES VILLAGE CENTER	CMS223EOM	8118000833	328 201

MO/YR	DESCRIPTION	REF.	PERIOD		BALANCE FORWARD	CHARGES		PAYMENTS		ENDING BALANCE	C O C C
			FROM	THRU		DATE	AMOUNT	DATE	AMOUNT		
1/87	B-84 PCT RNT ACTL				.00					.00	(S)
1/87	C-CAM		1/01/87	1/31/87	12,357.86	1/01/87	1,215.74			13,573.60	(C)
1/87	D-CAM-YRLY ADJUST				6,442.41					6,442.41	(D)
1/87	I-INTERIM RENT				217.05					217.05	(I)
1/87	P-PROMOTION		1/01/87	1/31/87	21.79	1/01/87	75.00	1/14/87	96.79	43.58	(P)
1/87	Q-R/E TAX-YRLY AD				561.74					561.74	(Q)
1/87	R-R/E TAX		1/01/87	1/31/87	1,304.21	1/01/87	344.24	1/14/87	344.24	1,304.21	(R)
1/87	S-MINIMUM RENT		1/01/87	1/31/87	348.60	1/01/87	3,834.60	1/14/87	3,834.60	348.60	(S)
1/87	U-UTILITIES				.00					.00	(U)
1/87	X-TENANT REIMB.				447.01					447.01	(X)
1/87	-MONTHLY TOTALS				21,133.61		5,469.58		4,275.63	22,327.56	
2/87	B-84 PCT RNT ACTL				.00					.00	(S)
2/87	C-CAM		2/01/87	2/28/87	13,573.60	2/01/87	1,215.74			14,789.34	(C)
2/87	D-CAM-YRLY ADJUST				6,442.41					6,442.41	(D)
2/87	I-INTERIM RENT		2/01/87	2/28/87	217.05	2/01/87	75.00			217.05	(I)
2/87	P-PROMOTION				43.58					31.42	(P)
2/87	Q-R/E TAX-YRLY AD				561.74					561.74	(Q)
2/87	R-R/E TAX		2/01/87	2/28/87	1,304.21	2/01/87	344.24			2,248.45	(R)
2/87	S-MINIMUM RENT		2/01/87	2/28/87	348.60	2/01/87	3,834.60			4,183.20	(S)
2/87	U-UTILITIES				.00					.00	(U)
2/87	X-TENANT REIMB.				447.01					447.01	(X)
2/87	-MONTHLY TOTALS				22,327.56		5,469.58		.00	27,797.14	
3/87	B-84 PCT RNT ACTL				.00					.00	(S)
3/87	C-CAM		3/01/87	3/31/87	14,789.34	3/01/87	1,215.74			16,005.08	(C)
3/87	D-CAM-YRLY ADJUST				6,442.41					6,442.41	(D)
3/87	I-INTERIM RENT				217.05					217.05	(I)
3/87	P-PROMOTION		3/01/87	3/31/87	31.42	3/01/87	75.00	2/25/87	96.79	5.63	(P)
3/87	Q-R/E TAX-YRLY AD				561.74					561.74	(Q)
3/87	R-R/E TAX		3/01/87	3/31/87	2,248.45	3/01/87	344.24	2/25/87	344.24	2,248.45	(R)
3/87	S-MINIMUM RENT		3/01/87	3/31/87	4,183.20	3/01/87	3,834.60	2/25/87	3,834.60	4,183.20	(S)
3/87	U-UTILITIES				.00					.00	(U)
3/87	X-TENANT REIMB.				447.01	3/19/87	447.01			.00	(X)
3/87	-MONTHLY TOTALS				27,797.14		5,022.57		4,275.63	28,544.08	
	SUMMARY FOR	833-005-0040-1									
	C-CAM				12,357.86		3,647.22		.00	16,005.08	(C)
	D-CAM-YRLY ADJUST				6,442.41		.00		.00	6,442.41	(D)
	I-INTERIM RENT				217.05		.00		.00	217.05	(I)
	P-PROMOTION				21.79		225.00		193.38	5.63	(P)
	Q-R/E TAX-YRLY AD				561.74		.00		.00	561.74	(Q)
	R-R/E TAX				1,304.21		1,032.72		688.48	2,248.45	(R)
	S-MINIMUM RENT				348.60		11,503.80		7,669.20	4,183.20	(S)
	X-TENANT REIMB.				447.01		447.01		.00	.00	(X)
	SAL ADJUSTMENTS						.00				
	RECOVERY BILLING						.00				
	TENANT TOTALS				21,133.61		15,961.73		8,551.26	28,544.08	
	GRAND TOTALS				21,133.61		15,961.73		8,551.26	28,544.08	
								3/20	P 96.79	16,005.08	C
									R 344.24	6,442.41	D
									S 3834.60	217.05	I
										(87.16)	P
										(561.74)	Q
										1704.21	R
										343.00	S
									4275.63	24,268.45	
						H1	1215.74			17,220.32	C
							75.00			6442.41	D
							344.24			217.05	I
							3334.60			(12.16)	P
							5469.58			(561.74)	Q
										2248.45	R
										4183.20	S
										29,733.03	

PLF-DEF-EX # 1  
DATE 04-13-87  
JUDGE J.A.W.  
CASE # 98538



CLIENT	CLIENT NAME	TENANT IDENTIFICATION	PG-CL	GE NUMBER	DATE	
833	WESTERN MANAGEMENT CORP	833-005-0040-1 GREAT FA	PG-CL	4,312	12/31/88	
DEV.	DEVELOPMENT NAME	REPORT NO.	KEY	PG-CL	PG-DEV	PG-TEN
833	SOUTH LAKES VILLAGE CENTER	CMS223EOM	8118000833	535	38	1

MO/YR	DESCRIPTION	REF.	PERIOD		BALANCE FORWARD	CHARGES		PAYMENTS		ENDING BALANCE
			FROM	THRU		DATE	AMOUNT	DATE	AMOUNT	
1/88	B-84 PCT RNT ACTL				543.88					543.88
1/88	C-CAM		1/01/88	1/31/88	1,647.14	1/01/88	570.83	1/29/88	189.93	1,542.58
1/88	C-CAM							1/29/88	505.48	
1/88	C-CAM								875.41	
1/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
1/88	P-PROMOTION		1/01/88	1/31/88	.00	1/01/88	75.00	1/29/88	75.00	.00
1/88	Q-R/E TAX-YRLY AD				13.45					13.45
1/88	R-R/E TAX		1/01/88	1/31/88	1,834.09	1/01/88	388.03			2,000.12
1/88	S-MINIMUM RENT		1/01/88	1/31/88	.00	1/01/88	3,486.00	1/29/88	3,486.00	.00
1/88	X-TENANT REIMB.				447.01					447.01
1/88	-MONTHLY TOTALS				6,387.89		4,497.88		4,238.41	6,849.34
2/88	B-84 PCT RNT ACTL				543.88					543.88
2/88	C-CAM		2/01/88	2/28/88	1,542.58	2/01/88	570.83			2,113.39
2/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
2/88	P-PROMOTION		2/01/88	2/28/88	.00	2/01/88	75.00			75.00
2/88	Q-R/E TAX-YRLY AD				13.45					13.45
2/88	R-R/E TAX		2/01/88	2/28/88	2,000.12	2/01/88	388.03			2,388.15
2/88	S-MINIMUM RENT	INV8202	2/01/88	2/28/88	.00	2/01/88	3,486.00			7,553.00
2/88	S-MINIMUM RENT					2/08/88	3,834.60			
2/88	S-MINIMUM RENT	INV8202	1/22/88	1/31/88		2/08/88	3,486.00			
2/88	S-MINIMUM RENT	INV8202	1/01/88	1/21/88		2/08/88	1,278.20			
2/88	S-MINIMUM RENT					2/08/88	2,440.20			
2/88	X-TENANT REIMB.				447.01		7,553.00			447.01
2/88	-MONTHLY TOTALS				6,849.34		8,584.86		.00	15,214.20
3/88	B-84 PCT RNT ACTL				543.88					543.88
3/88	C-CAM		3/01/88	3/31/88	2,113.39	3/01/88	570.83			2,884.22
3/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
3/88	P-PROMOTION		3/01/88	3/31/88	75.00	3/01/88	75.00			150.00
3/88	Q-R/E TAX-YRLY AD				13.45					13.45
3/88	R-R/E TAX		3/01/88	3/31/88	2,388.15	3/01/88	388.03			2,732.18
3/88	S-MINIMUM RENT		3/01/88	3/31/88	7,553.00	3/01/88	3,834.60			11,387.60
3/88	X-TENANT REIMB.				447.01					447.01
3/88	-MONTHLY TOTALS				15,214.20		4,846.46		.00	20,060.66
4/88	B-84 PCT RNT ACTL				543.88					543.88
4/88	C-CAM		4/01/88	4/30/88	2,884.22	4/01/88	570.83	4/02/88	570.83	2,884.22
4/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
4/88	P-PROMOTION		4/01/88	4/30/88	150.00	4/01/88	75.00	4/02/88	75.00	150.00
4/88	Q-R/E TAX-YRLY AD				13.45					13.45
4/88	R-R/E TAX		4/01/88	4/30/88	2,732.18	4/01/88	388.03	4/02/88	339.89	2,758.32
4/88	S-MINIMUM RENT		4/01/88	4/30/88	11,387.60	4/01/88	3,834.60	4/02/88	9,834.80	10,458.00
4/88	S-MINIMUM RENT							4/02/88	929.80	
4/88	S-MINIMUM RENT							4/02/88	4,764.20	
4/88	X-TENANT REIMB.				447.01					447.01
4/88	-MONTHLY TOTALS				20,060.66		4,846.46		5,749.92	19,157.20
5/88	B-84 PCT RNT ACTL				543.88					543.88
5/88	C-CAM	INV 8872	5/01/88	5/31/88	2,884.22	5/01/88	570.83	5/05/88	570.83	12,157.13
5/88	C-CAM	INV 8872	1/01/84	12/31/88		5/28/88	20,105.44	5/29/88	570.93	
5/88	C-CAM					5/28/88	10,061.70			
5/88	C-CAM						10,814.57		1,141.66	
5/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
5/88	I-INTERIM RENT	INV 8872	4/01/85	4/30/85	.00	5/28/88	401.14			401.14
5/88	P-PROMOTION	INV 8872	5/01/88	5/31/88	150.00	5/01/88	75.00	5/05/88	75.00	375.00
5/88	P-PROMOTION	INV 8872	1/01/84	12/31/88		5/28/88	1,950.00	5/29/88	75.00	
5/88	P-PROMOTION	INV 8872				5/28/88	1,850.00			
5/88	P-PROMOTION						375.00		150.00	
5/88	Q-R/E TAX-YRLY AD				13.45					13.45
5/88	R-R/E TAX	INV 8872	5/01/88	5/31/88	2,758.32	5/01/88	388.03	5/05/88	339.89	5,799.88
5/88	R-R/E TAX	INV 8872	1/01/84	12/31/88		5/28/88	9,054.85	5/29/88	339.89	
5/88	R-R/E TAX	INV 8872	1/01/84	12/31/88		5/28/88	5,699.56			
5/88	R-R/E TAX						3,721.32		879.78	
5/88	S-MINIMUM RENT	INV 8872	5/01/88	5/31/88	10,458.00	5/01/88	3,834.60	5/05/88	3,834.60	16,459.68
5/88	S-MINIMUM RENT	INV 8872	4/01/85	4/30/85		5/28/88	945.00	5/29/88	3,834.60	
5/88	S-MINIMUM RENT	INV 8872	1/01/84	12/31/88		5/28/88	65,011.92			
5/88	S-MINIMUM RENT	INV 8872				5/28/88	73,903.20			
5/88	S-MINIMUM RENT						13,870.88		7,889.20	
5/88	U-UTILITIES	INV 8872	11/23/83	11/02/86	.00	5/28/88	447.01			447.01
5/88	X-TENANT REIMB.				447.01					447.01
5/88	-MONTHLY TOTALS				19,157.20		28,427.64		9,840.64	37,944.20
6/88	B-84 PCT RNT ACTL				543.88					543.88
6/88	C-CAM		6/01/88	6/30/88	12,157.13	6/01/88	1,215.74	6/30/88	570.83	12,802.04
6/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
6/88	I-INTERIM RENT	ADJ			401.14	5/28/88	945.00			543.88
6/88	P-PROMOTION		6/01/88	6/30/88	375.00	6/01/88	75.00	6/30/88	75.00	375.00
6/88	Q-R/E TAX-YRLY AD				13.45					13.45
6/88	R-R/E TAX	ADJ	6/01/88	6/30/88	5,799.88	6/01/88	344.24	6/30/88	339.89	5,804.21
6/88	S-MINIMUM RENT		6/01/88	6/30/88	16,459.68	5/28/88	945.00	6/30/88	3,834.60	15,514.68
6/88	S-MINIMUM RENT					6/01/88	3,834.60			
6/88	S-MINIMUM RENT						2,889.60			
6/88	U-UTILITIES				447.01					447.01
6/88	X-TENANT REIMB.				447.01					447.01
6/88	-MONTHLY TOTALS				37,944.70		5,489.58		4,820.32	38,593.48
7/88	B-84 PCT RNT ACTL				543.88					543.88
7/88	C-CAM		7/01/88	7/31/88	12,802.04	7/01/88	1,215.74			14,017.78
7/88	D-CAM-YRLY ADJUST				2,102.34					2,102.34
7/88	I-INTERIM RENT				543.88					543.88
7/88	P-PROMOTION		7/01/88	7/31/88	375.00	7/01/88	75.00			450.00
7/88	Q-R/E TAX-YRLY AD				13.45					13.45
7/88	R-R/E TAX		7/01/88	7/31/88	5,804.21	7/01/88	344.24			6,148.45
7/88	S-MINIMUM RENT		7/01/88	7/31/88	15,514.68	7/01/88	3,834.60			19,349.28

A=ALLOWANCE, B=BAD DEBTS V=RECOVERY BILLING

F=SEC FORFEITURE, H=REDEPOSIT, N=NON-CASH, R=REFUND, X=N.S.F., J=ADJ

CM009

CLIENT	CLIENT NAME	TENANT IDENTIFICATION	PACKAGE NUMBER:	DATE
8118	WESTERN MANAGEMENT CORP	833-005-0040-1 GREAT FA	4,313	12/31/86
DEV.	DEVELOPMENT NAME	REPORT NO.	PG-CLI	PG-DEV
833	SOUTH LAKES VILLAGE CENTER	CMS223EOM	536	39

MO/YR	DESCRIPTION	REF.	PERIOD		BALANCE FORWARD	CHARGES		PAYMENTS		ENDING BALANCE
			FROM	THRU		DATE	AMOUNT	DATE	AMOUNT	
7/86	U-UTILITIES				447.01					447.01
7/86	X-TENANT REIMB.				447.01					447.01
7/86	-MONTHLY TOTALS				38,593.48		5,469.58		.00	44,063.04
8/86	B-84 PCT RNT ACTL		8/01/86	8/31/86	543.86	8/01/86	1,215.74	8/01/86	570.83	543.86
8/86	C-CAM	INV 8298			14,017.78	8/31/86	27,003.11			16,222.95
8/86	C-CAM	INV 8298				8/31/86	28,583.37			
8/86	C-CAM	INV 8298				8/31/86	2,776.00			
8/86	C-CAM	INV 8298				8/31/86	4,340.07			
8/86	D-CAM-YRLY ADJUST	INV 8019			2,102.34	7/29/86	543.86			6,442.41
8/86	I-INTERIM RENT	INV 8392			543.86	8/31/86	945.00			945.00
8/86	I-INTERIM RENT	INV 8298				8/31/86	401.14			
8/86	I-INTERIM RENT	INV 8298				8/31/86	75.00	8/01/86	75.00	825.00
8/86	P-PROMOTION	INV 8298	8/01/86	8/31/86	450.00	8/31/86	2,175.00			
8/86	P-PROMOTION	INV 8298				8/31/86	1,800.00			
8/86	P-PROMOTION	INV 8298				8/31/86	450.00			
8/86	Q-R/E TAX-YRLY AD	INV 8019			13.45	7/29/86	575.19			561.74
8/86	R-R/E TAX	INV 8298	8/01/86	8/31/86	6,148.45	8/01/86	344.24	8/01/86	339.89	2,113.37
8/86	R-R/E TAX	INV 8298				8/31/86	13,551.81			
8/86	R-R/E TAX	INV 8298				8/31/86	9,512.38			
8/86	R-R/E TAX	INV 8298				8/31/86	3,695.19			
8/86	S-MINIMUM RENT	INV 8298	8/01/86	8/31/86	19,349.28	8/01/86	3,834.60	8/01/86	3,834.60	24,518.20
8/86	S-MINIMUM RENT	INV 8298				8/31/86	98,713.88			
8/86	S-MINIMUM RENT	INV 8298				8/31/86	103,882.80			
8/86	S-MINIMUM RENT	INV 8298				8/31/86	9,003.52			
8/86	U-UTILITIES				447.01					447.01
8/86	X-TENANT REIMB.				447.01					447.01
8/86	-MONTHLY TOTALS				44,063.04		12,700.35		4,820.32	51,943.07
9/86	B-84 PCT RNT ACTL		9/01/86	9/30/86	543.86	9/01/86	1,215.74	9/10/86	26.14	543.86
9/86	C-CAM				18,222.95					17,412.55
9/86	D-CAM-YRLY ADJUST				6,442.41					6,442.41
9/86	I-INTERIM RENT				945.00					945.00
9/86	P-PROMOTION		9/01/86	9/30/86	825.00	9/01/86	75.00	8/28/86	75.00	750.00
9/86	P-PROMOTION							9/10/86	75.00	
9/86	P-PROMOTION								150.00	
9/86	Q-R/E TAX-YRLY AD				561.74					561.74
9/86	R-R/E TAX		9/01/86	9/30/86	2,113.37	9/01/86	344.24	8/26/86	368.03	1,751.69
9/86	R-R/E TAX							9/10/86	339.89	
9/86	R-R/E TAX								705.92	
9/86	S-MINIMUM RENT		9/01/86	9/30/86	24,518.20	9/01/86	3,834.60	8/26/86	3,834.60	20,683.60
9/86	S-MINIMUM RENT							9/10/86	3,834.60	
9/86	S-MINIMUM RENT								7,669.20	
9/86	U-UTILITIES				447.01					447.01
9/86	X-TENANT REIMB.				447.01					447.01
9/86	-MONTHLY TOTALS				51,943.07		5,469.58		8,551.26	48,861.39
10/86	B-84 PCT RNT ACTL		10/01/86	10/31/86	543.86	10/01/86	1,215.74			543.86
10/86	C-CAM				17,412.55					18,628.29
10/86	D-CAM-YRLY ADJUST				6,442.41					6,442.41
10/86	I-INTERIM RENT				945.00					945.00
10/86	P-PROMOTION		10/01/86	10/31/86	750.00	10/01/86	75.00	10/08/86	96.79	728.21
10/86	Q-R/E TAX-YRLY AD				561.74					561.74
10/86	R-R/E TAX		10/01/86	10/31/86	1,751.69	10/01/86	344.24	10/08/86	344.24	1,751.69
10/86	S-MINIMUM RENT		10/01/86	10/31/86	20,683.60	10/01/86	3,834.60	10/08/86	3,834.60	20,683.60
10/86	U-UTILITIES				447.01					447.01
10/86	X-TENANT REIMB.				447.01					447.01
10/86	-MONTHLY TOTALS				48,861.39		5,469.58		4,275.83	50,055.34
11/86	B-84 PCT RNT ACTL	ADJ	1/01/86	10/31/86	543.86	11/24/86	543.86			.00
11/86	C-CAM	ADJ	11/01/86	11/30/86	18,628.29	11/01/86	1,215.74			11,817.53
11/86	C-CAM		1/01/86	10/31/86		11/24/86	8,028.50			
11/86	C-CAM					11/24/86	6,810.78			
11/86	D-CAM-YRLY ADJUST				6,442.41					6,442.41
11/86	I-INTERIM RENT	ADJ	1/01/86	10/31/86	945.00	11/24/86	727.95			217.05
11/86	P-PROMOTION	ADJ	11/01/86	11/30/86	728.21	11/01/86	75.00	11/12/86	96.79	53.21
11/86	P-PROMOTION	ADJ	1/01/86	10/31/86		11/24/86	853.21			
11/86	P-PROMOTION	ADJ				11/24/86	578.21			
11/86	Q-R/E TAX-YRLY AD				561.74					561.74
11/86	R-R/E TAX	ADJ	11/01/86	11/30/86	1,751.69	11/01/86	344.24	11/12/86	344.24	1,926.00
11/86	R-R/E TAX	ADJ	1/01/86	10/31/86		11/24/86	174.31			
11/86	R-R/E TAX	ADJ				11/24/86	518.55			
11/86	S-MINIMUM RENT	ADJ	11/01/86	11/30/86	20,683.60	11/01/86	3,834.60	11/12/86	3,834.60	3,834.60
11/86	S-MINIMUM RENT	ADJ	1/01/86	10/31/86		11/24/86	16,849.00			
11/86	S-MINIMUM RENT	ADJ				11/24/86	13,014.40			
11/86	U-UTILITIES	ADJ	1/01/86	10/31/86	447.01	11/24/86	447.01			.00
11/86	X-TENANT REIMB.				447.01					447.01
11/86	-MONTHLY TOTALS				50,055.34		21,603.84		4,275.63	24,176.07
12/86	B-84 PCT RNT ACTL		12/01/86	12/31/86	.00	12/01/86	1,215.74	12/24/86	675.41	.00
12/86	C-CAM				11,817.53					12,357.86
12/86	D-CAM-YRLY ADJUST				6,442.41					6,442.41
12/86	I-INTERIM RENT				217.05					217.05
12/86	P-PROMOTION		12/01/86	12/31/86	53.21	12/01/86	75.00	12/02/86	21.79	21.79
12/86	P-PROMOTION							12/15/86	96.79	
12/86	P-PROMOTION							12/24/86	75.00	
12/86	P-PROMOTION								150.00	
12/86	Q-R/E TAX-YRLY AD				561.74					561.74
12/86	R-R/E TAX		12/01/86	12/31/86	1,926.00	12/01/86	344.24	12/02/86	21.79	1,904.21
12/86	R-R/E TAX							12/15/86	344.24	
12/86	R-R/E TAX								368.03	
12/86	S-MINIMUM RENT		12/01/86	12/31/86	3,834.60	12/01/86	3,834.60	12/15/86	3,834.60	346.60
12/86	S-MINIMUM RENT							12/24/86	3,488.00	
12/86	S-MINIMUM RENT								7,320.80	
12/86	U-UTILITIES				.00					.00
12/86	X-TENANT REIMB.				447.01					447.01

CLIENT	CLIENT NAME	TENANT IDENTIFICATION	PAGE NUMBER: 4,314	DATE
8118	WESTERN MANAGEMENT CORP	833-005-0040-1 GREAT F	HARDWAR	12/31/88
DEV.	DEVELOPMENT NAME	REPORT NO.	PG-CLI	PG-DEV
833	SOUTH LAKES VILLAGE CENTER	CMS223EOM	8118000833	537 40 3

MO/YR	DESCRIPTION	REF.	PERIOD		BALANCE FORWARD	CHARGES		PAYMENTS		ENDING BALANCE
			FROM	THRU		DATE	AMOUNT	DATE	AMOUNT	
12/88	-MONTHLY TOTALS				24,178.07 ..		5,489.58 ..		8,512.04 ..	21,133.61 ..
	SUMMARY FOR	833-005-0040-1								
	B-84 PCT RNT ACTL				543.88		543.88-		.00	.00
	C-CAM				1,647.14		14,941.83		4,231.11	12,357.88
	D-CAM-YRLY ADJUST				2,102.34		4,340.07		.00	6,442.41
	I-INTERIM RENT				.00		217.05		.00	217.05
	P-PROMOTION				.00		921.79		943.58	21.79-
	Q-R/E TAX-YRLY AD				13.45		575.19-		.00	561.74-
	R-R/E TAX				1,634.09		3,730.00		3,459.88	1,904.21
	S-MINIMUM RENT				.00		46,586.20		46,247.60	348.60
	X-TENANT REIMB.				447.01		.00		.00	447.01
	BAL ADJUSTMENTS						.00 J			
	RECOVERY BILLING						.00 Y			
	TENANT TOTALS				6,387.89		69,627.89		54,882.17	21,133.61
	GRAND TOTALS				6,387.89		69,627.89		54,882.17	21,133.61

A=ALLOWANCE, B=BAD DEBTS, Y=RECOVERY BILLING

F=SEC FORFEITURE, H=REDEPOSIT, N=NON-CASH, R=REFUND, X=N.S.F., J=ADJ.

CMO

SOUTH LAKES VILLAGE  
CAM RECOVERY  
1987 BUDGET

SUITE #	TENANT	BILLING FORMULA	CAM POOL PER FORMULA	S.F. OF CENTER PER FORMULA	TENANT S.F.	ANNUAL SHARE	MONTHLY SHARE
0001	PERPETUAL AMERICAN	* 6	201106	103341	1600	3120	260
0002	FIRST VIRGINIA BANK	* 6	201106	103341	2400	4680	390
0003	SAFWAY	@.35/S.F.	-	-	40822	14288	@
0010	CHURCH'S CHICKEN	N	186818	62519	1738	5197	433
0020	PEOPLES DRUG STORE	* 6	201106	103341	9245	18028	1502
0030	CROWN BOOKS	* 6	174875	103341	2970	5019	418
0040	GREAT FALLS HARDWARE	N	186818	62519	5229	15635	1303
0050	MODERN ATHLETE	6	201106	103341	756	1474	123
0060	DISCOUNT FRAME GALLERY	N	186818	62519	1164	3480	290
0065	SUBWAY	N	186818	62519	1416	4234	353
0070	HARVEST TRADING	6	201106	103341	3520	6864	572
0075	BUFFA'S DANCE STUDIO	6	201106	103341	2350	4583	382
0080	VIDEO MOVIE OUTLET	N	186818	62519	2997	8961	747
0090	BLUE CHANNEL INN	6	201106	103341	4012	7823	652
0100	FANTASTIC FAMILY	N	186818	62519	3080	9209	767
0110	TOWN AND COUNTRY	N	186818	62519	1800	5382	449
0120	RESTON FLORAL DESIGN	N	186818	62519	1200	3588	299
0130	VILLAGE CLASSICS	6	201106	103341	1900	3705	309
0135	FOTOMAT	N	186818	62519	888	2655	221
0140	KEMP MILL RECORDS	* N	186818	62519	1400	4186	349
0145	RESTON SHOE / NEW TENANT	N	186818	62519	1379	4123	344
0150	U.S. FISH/LITTLE CAESAR'S	N	186818	62519	1263	3776	315
0160	HAIRCUTTERY	* N	186818	62519	1275	3812	318
0170	HALLMARK CARDS	* N	186818	62519	2113	6318	527
0180	NEW VISTA SCHOOL	6	201106	103341	1769	3450	288
0190	ANITA'S KIDS PLACE	* N	186818	62519	3455	10330	861
0200	CREST CLEANERS	* N	186818	62519	1600	4784	399
TOTAL					103341	168704	12871

\* EXCLUDES ADMINISTRATIVE FEE AND MANAGEMENT FEE

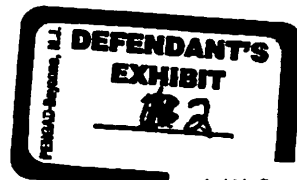
\* EXCLUDES MANAGEMENT FEE

@ SAFEWAY PAYS \$.35 P.S.F.

LUMP SUM RECOVERED IN APRIL, 1988.

NOTE: MANAGEMENT FEE WAS WAIVED FOR ALL TENANTS DUE TO HIGH CAM COSTS

PLF-DEB-EX # 2  
DATE 04-13-87  
JUDGE 2. H. H.  
CASE # 98538



SOUTH LAKES VILLAGE  
MONTHLY CAM RECOVERY  
1987 BUDGET

SUITE	TENANT	S.F.	COMM DATE	JAN	FEB	MAR	APR	MAY	JUN	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
0001	PERPETUAL AMERICAN	1600	03/12/84	260	260	260	260	260	260	260	260	260	260	260	260	3120
0002	FIRST VIRGINIA BANK	2400	11/14/83	390	390	390	390	390	390	390	390	390	390	390	390	4680
0003	SAFEMAY	@ 40822	12/07/83	0	0	0	0	0	0	0	0	0	0	0	0	0
0010	CHURCH'S CHICKEN	1738	02/24/84	433	433	433	433	433	433	433	433	433	433	433	433	5196
0020	PEOPLES DRUG STORE	9245	02/04/84	1502	1502	1502	1502	1502	1502	1502	1502	1502	1502	1502	1502	18024
0030	CROWN BOOKS	2970	02/04/84	418	418	418	418	418	418	418	418	418	418	418	418	5016
0040	GREAT FALLS HARDWARE	5229	01/22/84	1303	1303	1303	1303	1303	1303	1303	1303	1303	1303	1303	1303	15636
0050	MODERN ATHLETE	756	11/25/83	123	123	123	123	123	123	123	123	123	123	123	123	1476
0060	DISCOUNT FRAME GALLERY	1164	03/31/84	290	290	290	290	290	290	290	290	290	290	290	290	3480
0065	SUBWAY	1416	10/01/84	353	353	353	353	353	353	353	353	353	353	353	353	4236
0070	HARVEST TRADING	3520	12/09/83	572	572	572	572	572	572	572	572	572	572	572	572	6864
0075	BUFFA'S DANCE STUDIO	2350	03/12/84	382	382	382	382	382	382	382	382	382	382	382	382	4584
0080	VIDEO MOVIE OUTLET	2997	12/03/83	747	747	747	747	747	747	747	747	747	747	747	747	8964
0090	BLUE CHANNEL INN	4012	09/01/84	652	652	652	652	652	652	652	652	652	652	652	652	7824
0100	FANTASTIC FAMILY	3080	01/18/84	767	767	767	767	767	767	767	767	767	767	767	767	9204
0110	TOWN AND COUNTRY	1800	12/02/83	449	449	449	449	449	449	449	449	449	449	449	449	5388
0120	RESTON FLORAL DESIGN	1200	11/25/83	299	299	299	299	299	299	299	299	299	299	299	299	3588
0130	VILLAGE CLASSICS	1900	02/11/84	309	309	309	309	309	309	309	309	309	309	309	309	3708
0135	FOTOMAT	888	12/11/83	221	221	221	221	221	221	221	221	221	221	221	221	2652
0140	KEMP MILL RECORDS	1400	01/19/84	349	349	349	349	349	349	349	349	349	349	349	349	4188
0145	RESTON SHOE / NEW TENANT	1379	06/01/87	344	344	0	0	0	344	344	344	344	344	344	344	3096
0150	U.S. FISH/LITTLE CAESAR'S	1263	03/01/87	0	0	315	315	315	315	315	315	315	315	315	315	3150
0160	HAIRCUTTERY	1275	02/07/83	318	318	318	318	318	318	318	318	318	318	318	318	3816
0170	HALLMARK CARDS	2113	11/30/83	527	527	527	527	527	527	527	527	527	527	527	527	6324
0180	NEW VISTA SCHOOL	1769	07/09/84	288	288	288	288	288	288	288	288	288	288	288	288	3456
0190	ANITA'S KIDS PLACE	3455	11/19/83	861	861	861	861	861	861	861	861	861	861	861	861	10332
0200	CREST CLEANERS	1600	01/20/84	399	399	399	399	399	399	399	399	399	399	399	399	4788
TOTAL		103341		12556	12556	12527	12527	12527	12871	12871	12871	12871	12871	12871	12871	152790

@ SAFEMAY PAYS LUMP SUM RECOVERED IN APRIL 1988.

SOUTH LAKES VILLAGE  
1986 YEAR-END CAM RECOVERY  
1987 BUDGET

SUITE #	TENANT	BILLING FORMULA	CAM POOL PER FORMULA	S.F. OF CENTER PER FORMULA	TENANT S.F.	ANNUAL SHARE	1986 BILLINGS	AMOUNT RECOVERED
0001	PERPETUAL AMERICAN	* G	198180	103341	1500	3072	3008	64
0002	FIRST VIRGINIA BANK	* G	198180	103341	2400	4638	4512	96
0003	SAFEMAY	@.35/S.F.	-	-	40822	14288	0	14288
0010	CHURCH'S CHICKEN	N	183892	62519	1738	5110	5005	105
0020	PEOPLES DRUG STORE	* G	198180	103341	9245	17750	8598	9152
0030	CROWN BOOKS	* G	172330	103341	2970	4960	3623	1337
0040	GREAT FALLS HARDWARE	N	183892	62519	5229	15373	14589	784
0050	MODERN ATHLETE	G	198180	103341	755	1452	1421	31
0060	DISCOUNT FRAME GALLERY	N	183892	62519	1164	3422	3352	70
0065	SUBWAY	N	183892	62519	1416	4153	4078	85
0070	HARVEST TRADING	G	198130	103341	3521	5753	5615	140
0075	SUFFA'S DANCE STUDIO	G	198130	103341	2350	4512	6765	-2253
0080	VIDEO MOVIE OUTLET	N	183892	62519	2997	8811	8631	180
0090	BLUE CHANNEL INN	G	198180	103341	4012	7703	11555	-3852
0100	FANTASTIC FAMILY	N	183892	62519	3080	9055	8870	185
0110	TOWN AND COUNTRY	N	183892	62519	1800	5292	5184	108
0120	RESTON FLORAL DESIGN	N	183892	62519	1200	3528	3456	72
0130	VILLAGE CLASSICS	G	198180	103341	1900	3648	3572	76
0135	FOTOMAT	N	183892	62519	888	2611	2557	54
0140	KEMP MILL RECORDS	* N	183892	62519	1400	4116	4032	84
0145	RESTON SHOE BOUTIQUE	N	183892	62519	1379	4054	3972	82
0150	U.S. FISH/NEW TENANT	G	183892	62519	1263	3713	3637	76
0160	HAIRCUTTERY	* N	183892	62519	1275	3749	3672	77
0170	HALLMARK CARDS	* N	183892	62519	2113	6212	6085	127
0180	NEW VISTA SCHOOL	G	198180	103341	1769	3396	5095	-1699
0190	ANITA'S KIDS PLACE	* N	183892	62519	3455	10158	9950	208
0200	CREST CLEANERS	* N	183892	62519	1600	4704	4608	96
TOTAL					103341	166218	146448	19770

\* EXCLUDES ADMINISTRATIVE FEE AND MANAGEMENT FEE  
\* EXCLUDES MANAGEMENT FEE

@ SAFEMAY PAYS \$.35 P.S.F.  
LUMP SUM RECOVERED IN APRIL, 1988.

NOTE: MANAGEMENT FEE WAS WAIVED FOR ALL TENANTS DUE TO HIGH CAM COSTS

CLIENT  
 8118  
 DEV.  
 803

 CLIENT NAME  
 WESTERN MANAGEMENT CORP.  
 DEVELOPMENT NAME  
 SOUTH LAKES VILLAGE CENTER

 LEASE EXPIRATION REPORT  
 REPORT NO. CMS175EOM  
 KEY 8118000833

 3/31/87  
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LEASE EXPIRATION DATE	TENANT IDENTIFICATION	TENANT NAME	GLA SQ. FOOTAGE	BASE RENT	YTD-RENT PROJECTED	YRLY RENT P.S.F.	12 MONTH MOVING SALES P.S.F.	NO.OF MONTHS	SECURITY ON HAND	EXECUTION DATE
7-09-1987	833-004-0180-1	NEW VISTA SCHOOL	1,769	1,105.63	3,316.89	7.500			.00	8/24/83
			1,769	1,105.63						
		TOTAL FOR 1987	1,769	1,105.63	3,316.89					
11-12-1988	833-004-0140-1	KEMP MILL RECORDS	1,400	2,121.00	25,452.00	18.180			.00	8/12/82 ✓
11-23-1988	833-004-0120-1	RESTON FLORIST	1,200	1,800.00	21,600.00	18.000			.00	6/06/83
11-25-1988	833-005-0050-1	SUPERSHOE ATHLETIC	756	1,260.00	15,120.00	19.992			.00	6/01/83
			3,356	5,181.00						
12-02-1988	833-004-0110-1	TOWN AND COUNTRY	1,800	2,250.00	27,000.00	15.000			.00	3/11/83 ✓
12-11-1988	833-004-0135-1	FOTOMAT CORPORATION	888	1,332.00	15,984.00	18.000			.00	6/01/83
			2,688	3,582.00						
		TOTAL FOR 1988	6,044	8,763.00	105,156.00					
2-22-1989	833-004-0145-1	RESTON SHOE BOUTIQUE	1,379	2,298.33	27,579.96	19.992			.00	11/14/83
			1,379	2,298.33						
3-12-1989	833-005-0075-1	BUFFA'S DANCE	2,350	3,035.42	36,425.04	15.492			.00	
3-12-1989	833-001-0001-1	PERPETUAL	1,600	3,362.50	40,350.00	25.212			.00	10/05/83
3-31-1989	833-005-0060-1	DISCOUNT FRAME GAL	1,164	1,746.00	20,952.00	18.000			.00	6/01/83
			5,114	8,143.92						
12-03-1989	833-005-0080-1	VIDEO MOVIE OUTLET	2,997	3,496.50	41,958.00	13.992			.00	6/01/83
			2,997	3,496.50						
		TOTAL FOR 1989	9,490	13,938.75	167,265.00					
11-30-1990	833-004-0170-1	HALLMARK CARDS & G	2,113	2,817.33	33,807.96	15.996			.00	8/06/82 ✓
			2,113	2,817.33						

 (dm) PLF-DEP-EX # 3  
 DATE 04-13-87  
 JUDGE 2111  
 CASE # 98538




LEASE EXPIRATION DATE	TENANT IDENTIFICATION	TENANT NAME	GLA SQ. FOOTAGE	BASE RENT	YTD-RENT PROJECTED	YRLY RENT P.S.F.	12 MONTH MOVING SALES P.S.F.	NO.OF MONTHS	SECURITY ON HAND	EXECUTION DATE
		TOTAL FOR 1990	2,113	2,817.33	33,807.96					
11-14-1991	833-002-0002-1	FIRST VIRGINIA BANK	2,400	3,333.33	39,999.96	16.656			.00	12/03/82 ✓
			2,400	3,333.33						
		TOTAL FOR 1991	2,400	3,333.33	39,999.96					
2-11-1992	833-004-0130-1	VILLAGE CLASSICS	1,900	2,166.66	25,999.92	13.680			.00	7/06/83
			1,900	2,166.66						
		TOTAL FOR 1992	1,900	2,166.66	25,999.92					
11-19-1993	833-003-0190-1	ANITA'S KIDS PLACE	3,455	3,742.92	44,915.04	12.996			.00	6/21/82 ✓
			3,455	3,742.92						
12-07-1993	833-004-0160-1	HAIRCUTTERY	1,275	1,753.13	21,037.56	16.500			.00	5/05/82 ✓
12-09-1993	833-005-0070-1	HARVEST TRADING	3,520	3,258.50	39,102.00	11.100			.00	8/05/83
			4,795	5,011.63						
		TOTAL FOR 1993	8,250	8,754.55	105,054.60					
1-18-1994	833-004-0100-1	FANTASTIC FAMILY R	3,080	4,106.67	49,280.04	15.996			.00	9/29/82 ✓
1-20-1994	833-003-0200-1	CREST CLEANERS	1,600	2,266.67	27,200.04	16.992			2,666.67	4/05/82 ✓
1-22-1994	833-005-0040-1	GREAT FALLS HARDWAR	5,229	3,834.60	46,015.20	8.796			.00	5/17/83
			9,909	10,207.94						
2-04-1994	833-005-0030-1	CROWN BOOKS #836	2,970	2,475.00	29,700.00	9.996			.00	2/22/83 ✓
2-04-1994	833-005-0020-1	PEOPLES DRUG STORE	9,245	6,985.77	83,829.24	9.060			.00	7/28/83
			12,215	9,460.77						
		TOTAL FOR 1994	22,124	19,668.71	236,024.52					

8118
DEV.
833



WESTERN MANAGEMENT CORP.
DEVELOPMENT NAME
SOUTH LAKES VILLAGE CENTER

LEASE EXPIRATION REPORT	
REPORT NO.	KEY
CMS175EQM	8118000833

3/31/87
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LEASE EXPIRATION DATE	TENANT IDENTIFICATION	TENANT NAME	GLA SQ. FOOTAGE	BASE RENT	YTD-RENT PROJECTED	YRLY RENT P.S.F.	12 MONTH MOVING SALES P.S.F.	NO.OF MONTHS	SECURITY ON HAND	EXECUTION DATE
10-01-1996	833-005-0065-1	SUBWAY	1,416	.00	.00				2,124.00	7/07/83
			1,416	.00						
		TOTAL FOR 1996	1,416	.00	.00					
9-01-1999	833-005-0090-1	BLUE CHANNEL INN	4,012	4,346.33	52,155.96	12.996			.00	10/25/83
			4,012	4,346.33						
		TOTAL FOR 1999	4,012	4,346.33	52,155.96					
12-09-2003	833-003-0003-1	SAFEWAY	40,822	29,766.04	EXPIRED	8.748			.00	5/03/82 ✓
			40,822	29,766.04						
		TOTAL FOR 2003	40,822	29,766.04						
6-30-2006	833-005-0010-1	CHURCH'S CHICKEN	1,738	3,548.41	EXPIRED	24.492			.00	6/07/83
			1,738	3,548.41						
		TOTAL FOR 2006	1,738	3,548.41						

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THE GREAT FALLS HARDWARE COMPANY  
OF RESTON,

Complainant,

vs.

SOUTH LAKES VILLAGE CENTER ASSOCIATES,  
LIMITED PARTNERSHIP,

Defendant.

Chancery No. 98538

JUDGMENT ORDER

This 13th day of April, 1987, came the parties hereto, by counsel respectively, for the trial of the above-captioned matter upon Complainant's Bill of Complaint for Declaratory Judgment and Injunctive Relief, Defendant's Answer, Defendant's Counterclaim and Plaintiff's Answer to the Counterclaim.

UPON CONSIDERATION WHEREOF, the Court, having fully heard the evidence and the arguments of counsel, finds that the Complainant, The Great Falls Hardware Company of Reston, owes but has failed to pay to Defendant various monthly installments ~~of rent and additional rent, more particularly the monthly minimum rental payment due and owing for April, 1987, and additional rent~~ in the form of common area maintenance charges and real estate taxes in the amount of ~~Twenty-Four Thousand Two Hundred Ninety-Two Dollars and Eighty-Two Cents (\$24,268.45)~~ *Nineteen Thousand Nine Hundred Ninety-Two Dollars and Eighty-Two Cents (\$19,992.82)*.

*19,992.82*

AND THE COURT FURTHER FINDS that the lease provisions at issue in this matter, contained in Sections 5.02 and 7.01 of the Lease entered into between the parties on May 17, 1983 stating "this provision shall be effective only so long as at least ninety-five percent (95%) of the other tenants of the shopping center are also required to comply with the terms and conditions as herein provided," is construed to mean that the Complainant herein shall be required to make monthly additional rent payments in the form of common area maintenance charges and real estate taxes so long as at least ninety-five percent (95%) of the other tenants of the shopping center are also paying such common area maintenance charges and real estate taxes pursuant to the terms and conditions set forth in their respective leases.

AND THE COURT FURTHER FINDS that at least ninety-five percent (95%) of the other tenants of the shopping center relative to this action are so complying with the payment of the common area maintenance charges and real estate taxes as of this date.

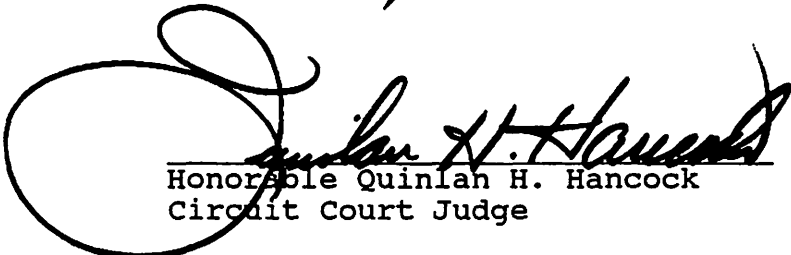
AND THE COURT FURTHER FINDS that the other allegations raised by the Complainant in its Bill of Complaint asserting grounds for non-payment of the various charges pursuant to the lease are without merit.

AND THE COURT FURTHER NOTING that the Complainant paid into the Registry of the Court, on or about September 15, 1986,

the amount of Seventeen Thousand Six Hundred Eighty Dollars and Sixty-Four Cents (\$17,680.64); it is therefore

ADJUDGED, ORDERED AND DECREED by the Court that Defendant is entitled to recover of and have judgment against the Complainant in the sum of ~~Twenty-Four Thousand Two Hundred~~ *Nineteen Thousand Nine Hundred* ~~Sixty-Eight Dollars and Forty-Five Cents (\$24,268.45)~~ *Ninety-Two Dollars and Eighty-Two Cents (\$19,992.82)* with interest thereon at the rate of twelve percent (12%) per annum from the date of entry of this judgment, until paid; ~~and it is~~

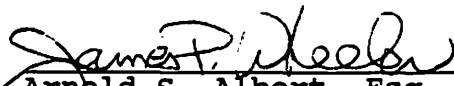
~~FURTHER ORDERED, that the Clerk of the Court be and hereby is directed to release the funds currently being held in the Registry of the Court in this matter in the amount of Seventeen Thousand Six Hundred Eighty Dollars and Sixty-Four Cents (\$17,680.64) to counsel for the Defendant, made payable to "Deso, Greenberg & Thomas, P.C. Trust Account" and transmit same to Defendant's undersigned counsel at 1750 K Street, N.W., Suite 400, Washington, D.C. 20006, in partial satisfaction of the judgment rendered herein.~~ *Such funds are to remain in the registry of this court pending the Complainant's appeal of this matter.*  
ENTERED this 15th day of May, 1987.

  
Honorable Quinlan H. Hancock  
Circuit Court Judge

WE ASK FOR THIS:

DESO, GREENBERG & THOMAS, P.C.

By:

  
Arnold S. Albert, Esq.  
James P. Wheeler, Esq.  
10521 Judicial Drive  
Suite 307  
Fairfax, VA 22030


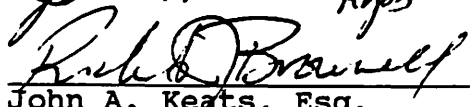
and

1750 K Street, N.W.  
Suite 400  
Washington, D.C.  
(202) 785-4428

SEEN [AND OBJECTED TO]:

KEATS, KREBS & LECKEY

By:

  
  
John A. Keats, Esq.  
651 S. Washington Street  
Alexandria, VA 22314

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THE GREAT FALLS HARDWARE COMPANY )

Complainant, )

v. )

SOUTH LAKE VILLAGE CENTER ASSOCIATES, )  
LIMITED PARTNERSHIP )

Defendant. )

Chancery No. 98538

ORDER

THIS MATTER having come before the court upon the Motion For Stay of Execution of Judgment and Bond Pending Appeal, filed by the complainant, The Great Falls Hardware Company of Reston; and

WHEREAS, the parties, by counsel tried the above-captioned matter upon the complainant's Bill of Complaint for Declaratory Judgment and Injunctive Relief on April 13, 1987, and the court found for the defendant in the same; and

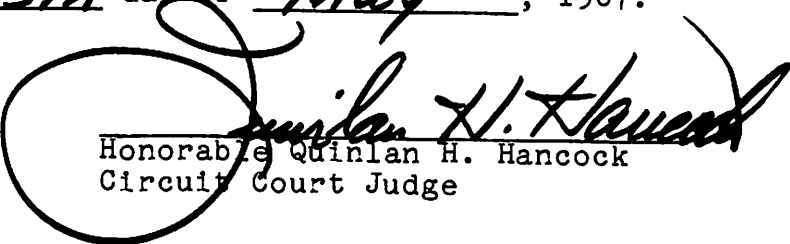
WHEREAS, the complainant intends to file a notice of appeal with the clerk of the trial court in the above-captioned matter upon entry of final judgment by the court; it is therefore

ORDERED, ADJUDGED AND DECREED that the complainant file an appeal bond in the amount of \$ 2,312.18 *in addition to funds held by the court* and that the execution of judgment in the above-captioned matter be stayed until such time as the Court of Appeals renders a decision on the complainant's appeal.


Be it further ORDERED, ADJUDGED AND DECREED that the complainant make all subsequent monthly payments in the form of common area maintenance charges and real estate taxes into an

escrow account, pending the outcome of complainants' appeal.

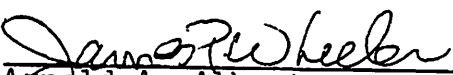
ENTERED this 15th day of May, 1987.

  
Honorab<sup>le</sup> Quinlan H. Hancock  
Circuit Court Judge

WE ASK FOR THIS:

  
John A. Keats  
Richard J. Brownell  
651 South Washington Street  
Alexandria, Virginia 22314  
(703) 836-1003  
Counsel for Complainant

~~SEEN AND OBJECTED TO:~~

  
Arnold A. Albert  
James P. Wheeler  
10521 Judicial Drive  
Suite 307  
Fairfax, Virginia 22030

and

1750 K Street, N.W.  
Suite 400  
Washington, D.C. 20006  
Counsel for Defendant



### ASSIGNMENT OF ERROR

1. The court erred when it selectively construed and interpreted only part of the contract provision at issue and failed to address the provision as a whole in order to arrive at a proper construction and interpretation of that provision.

2. The court erred when it searched beyond the specific language the parties used to express their agreement by looking to circumstances surrounding the negotiation and execution of that contract.