

Such complete drawings and specifications shall show at least the following:

#### **STORE SUBMISSION REQUIREMENTS**

The Tenant shall provide complete working plans and specifications in the following form:

- (a) Floor plan to scale.
- (b) Reflecting ceiling to scale.
- (c) Store front and show window elevation and sections to scale.
- (d) Store front and show window details to scale.
- (e) Interior elevations to scale.
- (f) Interior finishing schedule.
- (g) Sign and related lighting and equipment as outlined in Sign Directive.
- (h) Any other special facilities or installations that affect the building.
- (i) Sprinkler and other fire protection devices.
- (j) Underfloor electrical or plumbing.
- (k) Electrical wiring plan.
- (l) Ductwork for connection to Landlord's air conditioning system, toilet exhaust system and any other ventilation system required by the Tenant.

All required drawings and specifications shall be submitted for approval within a reasonable time and in any event within fifteen (15) days of written request for by the Landlord therefor. No Tenant's Work may proceed prior to the Landlord's written approval, which will not be unreasonably withheld nor unduly delayed. In the event that the completion of the Landlord's Work and/or Tenant's Work is delayed as a result of the failure by the Tenant to comply with its obligations contained herein, the Fixturing Period shall be reduced by the length of delay caused or contributed to by the Tenant.

**ALL TENANT DRAWINGS MUST BE IN TRACING OR SEPIA FORM TO FACILITATE REPRODUCTION BY THE LANDLORD. ALL MECHANICAL DRAWINGS AND SPECIFICATIONS SHALL BE STAMPED BY AN ENGINEER QUALIFIED TO PRACTICE IN THE PROVINCE IN WHICH THE SHOPPING CENTRE IS LOCATED. ALL ELECTRICAL DRAWINGS AND SPECIFICATIONS (INCLUDING LIFE SAFETY AND FIRE SAFETY) SHALL BE STAMPED BY AN ELECTRICIAN QUALIFIED TO PRACTICE IN THE PROVINCE IN WHICH THE SHOPPING CENTRE IS LOCATED. ANY CHANGES TO THE PLANS AND SPECIFICATIONS THAT HAVE BEEN APPROVED BY THE LANDLORD SHALL BE STAMPED BY AN ARCHITECT OR ENGINEER QUALIFIED TO PRACTICE IN THE PROVINCE IN WHICH THE SHOPPING CENTRE IS LOCATED AND SHALL ALSO BE SUBJECT TO THE PRIOR WRITTEN APPROVAL OF THE LANDLORD. ANY INCREASE IN THE COST OF COMPLETING THE LANDLORD'S WORK RESULTING FROM CHANGES REQUESTED BY THE TENANT SHALL BE TO THE ACCOUNT OF THE TENANT AND THE LANDLORD SHALL BE REIMBURSED FOR SAME IMMEDIATELY UPON PRESENTATION OF AN INVOICE IN RESPECT THEREOF.**

## SCHEDULE "D"

### RULES AND REGULATIONS

- I. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by the Landlord.
- II. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Leased Premises and/or the Shopping Centre.
- III. All garbage and refuse shall be kept in the kind of containers specified by the Landlord and shall not be burned in or about the Leased Premises.
- IV. No radio, television, telegraphic or telephone or similar device and no water pipe, gas pipe or electric wire shall be installed or connected without obtaining in each instance the written consent of the Landlord. All such connections shall be installed in accordance with the Landlord's direction and without such direction no boring or cutting for wires or pipes shall be permitted.
- V. The Tenant and its employees, suppliers and other persons not customers having business with the Tenant, shall park their cars only in those portions of the parking area designated for that purpose by the Landlord. Within five (5) days after taking possession of the Leased Premises the Tenant shall furnish the Landlord with the automobile license numbers of the Tenant and its employees and shall thereafter notify the Landlord of any changes within five (5) days after such changes occur. Should the Tenant, its employees, suppliers and other persons not customers having business with the Tenant park vehicles in areas not allocated for that purpose, the Landlord shall have the right to remove the said trespassing vehicles and the Tenant shall save harmless the Landlord from any and all damages therefrom and the Tenant shall pay the costs of such removal.
- VI. The plumbing facilities shall not be used for any other purpose than that for which they are intended, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by the Tenant.
- VII. The Tenant shall use at the cost of the Tenant such pest extermination contractor as the Landlord may direct and at such intervals as the Landlord may require.
- VIII. The Tenant, its employees or agents, shall not mark, paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone or iron without the written consent of the Landlord.
- IX. Except as permitted in this Lease to which these rules and regulations are annexed, the Tenant shall not permit any cooking in the Leased Premises without the written consent of the Landlord.
- X. No mall, sidewalk, entry, passageway, elevator or staircase shall be obstructed or used by the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees for any purpose other than ingress to and egress from the Leased Premises.
- XI. The Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees shall not bring in or take out, position, construct, install or move any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the Shopping Centre by moving or using any such safe, heavy equipment or furniture shall be repaired at the expense of the Tenant. The moving of all equipment and furniture shall occur only during those hours when the Shopping Centre shall not be open for business or any other time consented to by the Landlord and the persons employed to move the same in and out of the Leased Premises shall be acceptable to the Landlord.
- XII. All persons entering and leaving the building in which the Leased Premises are situated at any time other than during normal business hours shall register in the books kept by the Landlord and the Landlord will have the right to prevent any person from entering or leaving such building unless provided with a key to the premises to which such person seeks entrance or a pass in a form to be approved by the Landlord. Any persons without such key or passes will be subject to the surveillance of the employees and agents of the Landlord. The Landlord shall be under no responsibility for failure to enforce this rule.
- XIII. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Leased Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord.

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- XIV. No one shall use the Leased Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for the purposes permitted by this Lease to which these rules and regulations are annexed.
- XV. The Tenant shall permit window cleaners to clean the windows of the Leased Premises from time to time and at reasonable times.
- XVI. Any hand trucks, carryalls or similar appliances used in any building in the Shopping Centre shall be equipped with rubber tires, side guards and such other safeguards as the Landlord shall require.
- XVII. No animals or birds shall be brought into the Leased Premises except as permitted by this Lease to which these rules and regulations are annexed.
- XVIII. Except as permitted in this Lease to which these rules and regulations are annexed, the Tenant shall not permit the delivery of any food or beverage to the Leased Premises without the approval of the Landlord.
- XIX. The Tenant shall not solicit business in the common areas or distribute any handbills or other advertising matter in the common areas or in automobiles parked in the parking areas.
- XX. The Tenant shall keep the Leased Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
- XXI. The Tenant shall not keep or display any merchandise on or otherwise obstruct the common areas adjacent to the Leased Premises.
- XXII. The Tenant shall not use or permit any part of the Leased Premises to be used in such a manner as to cause annoying noises or vibrations or offensive odours.
- XXIII. The Tenant shall keep its display windows and signs lit in a manner satisfactory to the Landlord until 11:00 p.m. local time, on each evening except if prevented by reasons beyond the control of the Tenant or unless otherwise approved by the Landlord.

**SCHEDULE "E"**

**PRE-AUTHORIZED PAYMENT PLAN AUTHORIZATION**

<u>HEAD OFFICE OR PROPRIETOR'S NAME</u>		<u>ACCOUNT RECEIVABLE NUMBER</u>
<u>STORE NAME AND NUMBER</u>	<u>DATE OF LEASE</u>	<u>MONTHLY CHARGES</u>
<u>STORE ADDRESS</u>		<u>DATE OF LAST PAYMENT</u>
<u>HEAD OFFICE ADDRESS</u>		<u>BANK ACCOUNT NUMBER</u>
<u>TRANSIT NUMBER</u>	<u>BANK AND BRANCH</u>	
<u>NAME IN WHICH ACCOUNT STANDS IN BANK RECORDS</u>		
<u>SIGNING OFFICER SIGNATURE</u>		

**REQUEST FOR PRE-AUTHORIZED PAYMENTS**

I authorize \_\_\_\_\_ (hereinafter referred to as the "Company")  
and/or \_\_\_\_\_ to debit the account of the undersigned  
maintained with the financial institution indicated above, monthly, in accordance with the PAYMENT  
AUTHORIZATION below, for the purpose of paying monthly rentals as noted above.

**"PLEASE ENCLOSE AN UNSIGNED SAMPLE CHEQUE FROM YOUR BANK OR TRUST COMPANY"**

**AUTHORIZATION TO HONOUR PAYMENTS**

NAME OF BANK \_\_\_\_\_  
ADDRESS \_\_\_\_\_

You are hereby requested and authorized to pay and debit my/our account at your office, or at another  
branch of your institution if it is transferred there; all cheques drawn on you on my behalf and made  
payable to the Company or drawn on you by \_\_\_\_\_; and all amounts  
specified on any magnetic or computer produced paper tapes requesting you to pay the Company or  
\_\_\_\_\_.

In consideration of your acting as aforesaid, it is agreed that your treatment of each cheque and/or tape  
and your rights with respect to it shall be the same as if it were signed by the undersigned personally,  
authorizing and requesting you to pay and credit such amount to the said Company or  
\_\_\_\_\_ debiting my account and failure to pay shall give no liability on your part,  
regardless of the loss or damage.

If the financial institution indicated above is not a bank in which THE BANK ACT OF CANADA applies,  
"cheque" as used in this authorization shall include an "Order" that would be a cheque within the meaning  
of section 165 in THE BILLS OF EXCHANGE ACT (CANADA).

Any delivery of this authorization to you will constitute delivery by the undersigned.

(The signature appearing below must be the same as the signature appearing in the signature file of the financial institution  
identified above.)

DATE: \_\_\_\_\_ 20 \_\_\_\_\_  
AUTHORIZED SIGNATURE(S) \_\_\_\_\_

## SCHEDULE "F"

### PROHIBITED USES

The Tenant acknowledges and agrees that it will not allow or cause the use of any part of the Leased Premises for any of the following businesses or activities:

1. the sale of secondhand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
2. the sale of food or beverages;
3. an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder);
4. liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale;
5. any advertising or selling procedures which would, or any sale or business conduct or practice which would, because of the merchandising methods or quality of operation likely to be used, in either case in the Landlord's opinion, tend to lower the character of the Shopping Centre or harm or tend to harm the business or reputation of the Landlord or reflect unfavourably on the Shopping Centre, the Landlord or other tenants in the Shopping Centre or tend to confuse, deceive, mislead or be fraudulent to the public;
6. a mail order business or a department store, junior department store or variety store;
7. a dollar store or armed services surplus store;
8. the sale of firecrackers or fireworks; and
9. a deposit taking or loaning financial institution or other organization, including, without limitation, a mortgage, insurance, investment, or trust company or credit union making loans or selling retirement savings plans or income savings plans pursuant to the *Income Tax Act*.

## SCHEDULE "G"

### ADDITIONAL PROVISIONS

#### 1. Options to Extend Term

The Tenant shall be entitled to extend the Term of this Lease for two (2) further periods of five (5) years each (with the first, being the "First Extension Term", commencing on the day after the expiry date of the original Term, and the second, being the "Second Extension Term", commencing on the day after the expiry date of the First Extension Term, and each an "Extension Term"), provided that, as preconditions to the Tenant exercising each such option, the Tenant shall:

- (a) have duly and regularly performed all of the covenants, terms and conditions on its part to be performed in this Lease;
- (b) have given written notice to the Landlord of the exercise of each option at least twelve (12) months prior to the expiry of the original Term or the First Extension Term, as the case may be.

Each Extension Term shall be on the same terms and conditions as set out in this Lease, save and except that:

- (i) there shall be no further or other option of extension or renewal after the Second Extension Term;
- (ii) there shall be no tenant allowance, inducement, rent free period or fixturing period, and no obligation by the Landlord to perform or complete any Landlord's Work or other construction or renovations in the Leased Premises;
- (iii) the Minimum Rent shall be in such amount as the Landlord and the Tenant may agree, based upon the then current market rent for similar premises in the vicinity of the Shopping Centre; and
- (iv) if required by the Landlord, the Tenant agrees to undertake, at its sole expense, renovations to the Leased Premises as deemed necessary by the Landlord, acting reasonably, and all such renovations by the Tenant shall be professionally executed and shall be subject to the Landlord's prior written consent.

In the event that the Landlord and the Tenant are unable to agree upon the Minimum Rent to be paid by the Tenant during the relevant Extension Term by a date which is three hundred and sixty (360) days prior to the expiry of the original Term, or the First Extension Term, as the case may be, then the Minimum Rent shall be determined by a single arbitrator in accordance with the *Arbitration Act* of Ontario. If submitted to arbitration in accordance with the foregoing provisions, the arbitrator's decision shall be final and binding with no further appeal and the costs of the arbitration shall be shared equally by the parties unless the arbitrator determines that it is equitable to do otherwise in light of the circumstances.

For greater certainty, if the Minimum Rent has not been determined by the commencement of the Extension Term, the Tenant shall continue to pay Minimum Rent at the annual rate payable immediately prior to the expiry of the original Term, or the First Extension Term, as the case may be, until such Minimum Rent is determined, and within ten (10) days after the Minimum Rent for the Extension Term is determined, the Tenant shall pay to the Landlord any amount retroactively owing from the commencement of such Extension Term.

Further, if the Tenant fails to give the appropriate notice within the time limit set out herein for extending the original Term or the First Extension Term, as the case may be, then the within option to extend the Term of this Lease shall be null and void and of no further force and effect, and the Tenant shall surrender the Leased Premises to the Landlord in accordance with the terms of this Lease upon the expiry of the original Term or the First Extension Term, as the case may be.

#### 2. Minimum Rent Free Period

Notwithstanding anything to the contrary contained in this Lease, the Tenant shall not be obligated to pay Minimum Rent during the first month of the Term ("Minimum Rent Free Period") provided that during the Minimum Rent Free Period, the Tenant shall be bound by all of the other terms, covenants and conditions contained in this Lease including, without limitation, the obligation to pay all Additional Rent due and payable hereunder. However, if this Lease is disclaimed pursuant to Section 65.2(1) of the Bankruptcy and Insolvency Act, as amended or replaced from time to time (the "Act"), then for the purposes of Section 65.2(4) of the Act, the Tenant's obligation to pay Minimum Rent for the whole of the Minimum Rent Free Period will be deemed to have been reinstated effective as of the day before the effective date of the disclaimer of this Lease, and the Minimum Rent payable under this Lease shall be deemed to be the Minimum Rent payable under Section 3.01 of this Lease for the entire Term.

### 3. Exclusive Covenant

Provided that: (i) the Tenant is not in default under the terms of this Lease after the expiry of all applicable cure periods; (ii) the Tenant is in occupation of and operating in the whole of the Leased Premises; and (iii) the Leased Premises are being used for the purposes set out in paragraph (e) of the Special Provisions of this Lease, then the Tenant shall have the exclusive right in the Shopping Centre to sell, at retail, eyeglasses and contact lenses as a principal business. It is agreed that the foregoing restriction: (a) shall not prohibit the sale or rental of such items by other tenants in the Shopping Centre on an ancillary or incidental basis; (b) shall not apply to any leases or offers to lease in respect of, or tenants in possession of, premises in the Shopping Centre as of December 13, 2004; (c) shall not apply to any tenants in the Shopping Centre occupying premises of 15,000 square feet or more; and (d) shall not apply to any expansion of the Shopping Centre after the Commencement Date. In addition to the foregoing, the Tenant acknowledges and confirms that the exclusive covenant granted herein shall become null and void and of no further force or effect upon: (1) the Tenant defaulting in the carrying out of any of its covenants and obligations under the terms of this Lease; or (2) the Tenant assigning this Lease, subletting or parting with possession of the Leased Premises, or otherwise vacating the Leased Premises. It is further agreed that neither party shall be obliged to enforce the provisions contained in this paragraph against any person, firm or corporation if by doing so either party shall be in breach of any laws, rules, regulations or enactments from time to time in force, it being the understanding and agreement of the parties hereto, that the provisions of this paragraph are not intended to apply or to be enforceable to the extent that such provision would give rise to an offence under the *Competition Act* (Canada) or any statute that may be substituted therefor or may be enacted with similar intent, as from time to time amended.

APPENDIX "A"

INDEMNITY AGREEMENT

THIS AGREEMENT is dated the 18<sup>th</sup> day of April, 2005.

BETWEEN:

RIOCAN HOLDINGS INC.  
("Landlord")

- and -

BRUCE BERGEZ  
("Indemnifier")

In order to induce the Landlord to sign the lease between the Landlord and SHS Optical Ltd., as Tenant, dated April 18, 2005 (the "Lease"), the Indemnifier agrees with the Landlord that:

1. Throughout the Term of the Lease and any extension or renewal, the Indemnifier will (i) promptly pay all Rent and any other amounts payable by the Tenant under the Lease, whether to the Landlord or anyone else; (ii) promptly perform each and every obligation of the Tenant under the Lease; and (iii) indemnify and protect the Landlord from any losses or costs incurred by the Landlord (including legal fees) if the Tenant fails to pay the Rent or other amounts or to perform any of its obligations under the Lease.

2. Even if there is an Early Termination, the Indemnifier will remain obligated under this Agreement throughout the Term and any renewals or extensions as though the Early Termination had not occurred. An "Early Termination" means a disaffirmance, disclaimer, repudiation, rejection or termination of the Lease (as a result of court proceedings or otherwise), or a surrender of the Lease which the Landlord did not accept in writing, which occurs prior to the originally specified expiry date of the Term or renewal or extension. If there is an Early Termination, the Indemnifier will, at the Landlord's option, become the Landlord's tenant on the terms of the Lease.

3. This indemnity is absolute and unconditional. The Indemnifier's obligations under this Agreement will not be affected by (a) any modifications to the Tenant's rights or obligations under the Lease; (b) the fact that the Landlord does not enforce any of the terms of the Lease; (c) any Transfer of the Lease by the Tenant or by any trustee, receiver or liquidator; (d) any consent which the Landlord gives to any Transfer; (e) any waiver by the Tenant of its rights under the Lease; (f) any additional security accepted by the Landlord from the Tenant; (g) the expiry of the Term or any extension or renewal thereof; (h) the release or discharge of the Tenant by the Landlord or in any receivership, bankruptcy, winding-up or other creditors' proceedings or by operation of law; or (i) lack of notice of any of the foregoing. The Indemnifier's obligations will not be affected by any repossession of the Leased Premises by the Landlord, except that if the Landlord re-lets the Leased Premises then the payments received by the Landlord (after deducting all costs and expenses of repossessing and reletting the Leased Premises) will be credited by the Landlord against the Indemnifier's obligations under this Agreement.

4. The Landlord is not required to notify the Indemnifier that the Landlord has accepted this Agreement or that the Tenant has failed to perform any of its obligations under the Lease. Nevertheless, if the Landlord wishes to send any notice to the Indemnifier, it will deliver it or mail it by prepaid registered mail addressed to the Indemnifier at 286 York Road, Dundas, Ontario L9H 6L8 or, at the Landlord's option, at the Leased Premises. Any notice will be considered to have been given on the day it was delivered, or if mailed, three (3) days after the date it was mailed. The Indemnifier may notify the Landlord in writing of a substitute address for the above address. If two or more parties are named as Indemnifier, the Landlord may give any notice to be given to the Indemnifier to only one of the parties, and in doing so both of them will be considered to have been notified.

5. If there is a default under the Lease or under this Agreement, the Landlord will not be required to (a) proceed against or pursue anything against the Tenant first; (b) proceed against any security of the Tenant held by the Landlord; or (c) pursue any other remedy whatsoever. The Indemnifier is not a mere guarantor; the Indemnifier is primarily responsible for the Tenant's obligations under the Lease.

6. Even though the Landlord may have already taken action against the Indemnifier under this Agreement because of a default under the Lease, and whether or not that action has succeeded or been completed, the Landlord may take further action against the Indemnifier under this Agreement if there is any further default under the Lease.

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7. This indemnity can only be modified in writing, signed by both the Indemnifier and the Landlord.
8. If two or more parties are named as Indemnifier, each party is responsible for the obligations of the Indemnifier, both individually and together with the others.
9. All of the terms of this Agreement apply to the Indemnifier and to his or her heirs, executors, administrators, personal legal representatives, successors and assigns, and may be enforced by the Landlord, its successors and assigns, and any holder of any mortgage or charge over all or any part of the lands on which the Leased Premises are located. This Agreement may be assigned by the Landlord free of any equities.
10. The expressions "Rent", "Term", "Transfer" and "Leased Premises" used in this Agreement have the meanings they are given in the Lease.
11. This Agreement will be governed by the laws of the Province in which the Shopping Centre is located.

THE LANDLORD AND INDEMNIFIER HAVE SIGNED BELOW, to confirm the terms of this Agreement.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Witness as to the signature  
of Bruce Bergez:

[Signature]  
Name of Witness  
ALEXUS TITIAN  
Name of Witness (please print)  
728 HWY #6 HAMILTON  
Address of Witness

RIOCAN HOLDINGS INC.

(Landlord)

Per. [Signature] Authorized Signature  
Per. [Signature] Authorized Signature

I/We have authority to bind the corporation.

[Signature]  
BRUCE BERGEZ (Indemnifier)

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**RETAIL LEASE**

**BETWEEN**

**FIRST CAPITAL (ST. CATHARINES) CORPORATION**

**("Landlord")**

**- and -**

**SHS OPTICAL LTD.**

**("Tenant")**

**New Fairview Mall  
St. Catharines, Ontario**

**FAIRVIEW  
June 21, 2005**

## RETAIL LEASE

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THIS LEASE is dated the 16<sup>th</sup> day of June, 2005.

BETWEEN:

FIRST CAPITAL (ST. CATHARINES) CORPORATION

(the "Landlord")

OF THE FIRST PART,

- and -

SHS OPTICAL LTD.

(the "Tenant")

OF THE SECOND PART.

#### ARTICLE 1

#### LEASED PREMISES, TERM AND CONSTRUCTION OF LEASED PREMISES

##### Section 1.01 LEASED PREMISES

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, certain store premises in the Shopping Centre which are shown outlined in red on the plan attached as Schedule "A". A certified Rentable Area of the Leased Premises of one thousand, five hundred and seven (1,507) square feet and is subject to verification by the Landlord.

##### Section 1.02 USE OF ADDITIONAL AREAS

The Tenant's use of the Leased Premises includes the non-exclusive right of the Tenant and Persons having business with the Tenant in common with the Landlord and all others entitled, to the use of those Common Areas and Facilities as are required for the purpose of the Tenant's business operations.

##### Section 1.03 GRANT AND TERM

The Tenant will, subject to this Lease, have and hold the Leased Premises during the Term which is the period commencing on August 20, 2005 (the "Commencement Date") and expiring August 31, 2015. The Tenant shall be responsible for the performance of all terms, covenants and conditions contained in the Lease on its part to be performed during any period that the Tenant is in possession of the Leased Premises before the Commencement Date save and except for the payment of any Minimum Rent, Taxes, Operating Costs or the HVAC Basic Charge (but the Tenant will be responsible for the cost of Utilities and for business taxes).

##### Section 1.04 CONSTRUCTION OF THE LEASED PREMISES

(a) The Landlord will complete the work designated as the "Landlord's Work" in accordance with Schedule "B". Notwithstanding the foregoing, if requested by the Landlord's Project Manager the Tenant shall within ten (10) days after request, provide all information required in order to enable the Landlord to complete the Landlord's Work, and if the Tenant delivers such information after the expiry of the ten (10) day period, then the thirty (30) day period set forth in Section 1.03(b) will be reduced by the length of the delay. The Tenant shall commence the Tenant's Work in the Leased Premises no later than five (5) Business Days after receipt of the Landlord's notice of substantial completion and will thereafter continuously and diligently proceed to complete the Tenant's Work.

(b) The Tenant will complete the work designated as the "Tenant's Work" in accordance with Schedule "B", and will pay, as Additional Rent, all charges specified in that Schedule. The Tenant will perform its work in a good and workmanlike manner, in compliance with all applicable laws, by-laws, rules and other governmental requirements and subject to the Landlord's approval of all plans, specifications and trades.

(c) If there is a dispute as to (i) the completion of the Landlord's Work, or (ii) the availability of the Leased Premises for possession by the Tenant, or (iii) the Rentable Area of the Leased Premises, a certificate of the Landlord's Project Manager or Architect will be final and binding on the parties.

(d) The Tenant will examine the Leased Premises before taking possession and unless the Tenant furnishes the Landlord with written notice specifying any defects within 10 days after taking possession, the Tenant will be deemed to have examined the Leased Premises and to have agreed that they are in good order. There is no promise, representation or undertaking by or binding upon the Landlord with respect to any alteration, remodelling or redecorating of or installation of equipment or fixtures in the Leased Premises, unless expressly set forth in this Lease.

#### **Section 1.05 NON-COMPLETION**

Notwithstanding the provisions of Section 1.03, if due to the failure of the Landlord to complete the Landlord's Work, the Leased Premises or any part thereof are not ready for occupancy on the date set forth in Section 1.03(c), then the Commencement Date will be extended for a period equal to the length of the delay. During the extended period, Rent will abate and full Rent will not commence or accrue until the date set forth in Section 1.03 (a) or (b) whichever has first occurred. However, if a portion of the Leased Premises can be occupied, then Rent will only abate proportionately (having regard to the portion of the Leased Premises which is unoccupiable) during the extended period. The Tenant agrees to accept this abatement of Rent in full settlement of all claims which the Tenant might otherwise have by reason of the Leased Premises not being ready for occupancy on the date stipulated in Section 1.03(c). If the Leased Premises or any part thereof are not ready for occupancy by the expiry of 6 months from the date set out in Section 1.03(c), then the Landlord has the option to terminate this Lease upon 15 days' written notice to the Tenant. A certificate of the Landlord's Project Manager or Architect as to the date of substantial completion of the Landlord's Work will be conclusive and binding on the parties.

### **ARTICLE II**

#### **RENT**

##### **Section 2.01 COVENANT TO PAY**

The Tenant will pay Minimum Rent, Percentage Rent and Additional Rent.

##### **Section 2.02 MINIMUM RENT**

The Tenant will pay the following Minimum Rent to the Landlord in equal consecutive monthly instalments on the first day of each calendar month, namely:

(a) During the period from August 20, 2005 up to and including August 31, 2010, the annual sum of Forty-Eight Thousand, Two Hundred and Twenty-Four Dollars (\$48,224.00), payable in monthly instalments of Four Thousand and Eighteen Dollars and Sixty-Seven Cents (\$4,018.67) each, based upon an annual rate of Thirty-Two Dollars (\$32.00) per square foot of the Rentable Area of the Leased Premises; and

(b) During the period from September 1, 2010 up to and including August 31, 2015, the annual sum of Fifty-Two Thousand, Seven Hundred and Forty-Five Dollars (\$52,745.00), payable in monthly instalments of Four Thousand, Three Hundred and Ninety-Five Dollars and Forty-Two Cents (\$4,395.42) each, based upon an annual rate of Thirty-Five Dollars (\$35.00) per square foot of the Rentable Area of the Leased Premises.

##### **Section 2.03 ADVANCE RENT**

The Landlord acknowledges receipt of Ten Thousand Dollars (\$10,000.00) inclusive of GST, which the Landlord will apply on account of the Minimum Rent and GST in the amount of Four Thousand, Two Hundred and Ninety-Nine Dollars and Ninety-Eight Cents (\$4,299.98), payable for the first month of the Term, and Five Thousand, Seven Hundred Dollars and Two Cents (\$5,700.02), inclusive of GST on account of Rent payable for the last complete calendar month(s) of the Term.

##### **Section 2.04 PERCENTAGE RENT**

(a) The Tenant will pay to the Landlord, during each Rental Year, as Percentage Rent, a sum equal to five percent (5%) of the Tenant's Gross Revenue, if any, for the Rental Year in excess of the Minimum Rent payable for such Rental Year.

(b) Percentage Rent payments will be made within 10 days after the end of each 3 calendar month period of the Term, including the 10th day of the month following the end of the Term. The amount of each payment of Percentage Rent will be equal to the percentage set out in Section 2.04(a) of the amount of the Gross Revenue at the end of the first 3 calendar month period in each Rental Year in excess of 1/4 of the Minimum Rent, and, with respect to all other 3 calendar month periods in that Rental Year, the percentage set out in Section 2.04(a) of the amount of the cumulative quarterly total of the Gross Revenue for that Rental Year in excess of the Minimum Rent multiplied by a fraction having as its numerator the number of 3 calendar month periods elapsed in that Rental Year and as its denominator the number 4, but in each case, less all instalments of Percentage Rent paid with respect to the prior 3 calendar month

periods of that Rental Year. If the Tenant's Gross Revenue statements for any Rental Year disclose that the total Percentage Rent paid by the Tenant for the Rental Year exceeds or is exceeded by the total Percentage Rent required to be paid for the Rental Year, then the Landlord will pay the excess to the Tenant (unless an audit by the Landlord is in progress), or the Tenant will pay the deficiency to the Landlord as the case may be, in any event, within 10 days after the Tenant's delivery of the statement.

#### **Section 2.05 GROSS REVENUE REPORTS**

(a) Within 10 days after each calendar month end, the Tenant will deliver to the Landlord a written statement (the "Monthly Statement") signed by the Tenant which will (i) state that Gross Revenue as reported in the Monthly Statement is in accordance with the definition of Gross Revenue; (ii) contain a certification by the Tenant that the Monthly Statement is true and correct; (iii) be in such detail and form as the Landlord reasonably determines; and (iv) show the amount of Gross Revenue for the preceding month, the Gross Revenue for all preceding months of the Rental Year, and the quarterly payments made on account of Percentage Rent for the Rental Year.

(b) Within 60 days after each Rental Year end, the Tenant will deliver to the Landlord a written statement (the "Annual Statement") signed by the chief financial officer of the Tenant, if the Tenant is a corporation, by each partner in the Tenant, if the Tenant is a partnership, (signed by the chief financial officer of each corporation which is a partner), and by the Tenant if the Tenant is neither a corporation nor a partnership. The Annual Statement will conform with the requirements in Sections 2.05(a)(i), (ii) and (iii) and will also show, on a month-by-month basis, the amount of Gross Revenue during the preceding Rental Year.

(c) The Tenant will, within 60 days after the Landlord's request, deliver to the Landlord a written statement showing the amount of Gross Revenue during the preceding Rental Year, duly audited by an independent accountant, whose professional opinion will, without qualification, state specifically that he has examined the report of Gross Revenue for the preceding Rental Year, and that his examination included a general review of the Tenant's accounting procedures and such tests of the Tenant's books and records and other supporting evidence as he or the Landlord considered necessary in the circumstances, and that in his opinion, his report presents fairly and accurately the Gross Revenue of the preceding Rental Year in accordance with the provisions of this Lease and generally accepted accounting principles applied on a basis consistent with that of the Rental Year immediately preceding (if any).

#### **Section 2.06 OCCASIONAL STATEMENTS**

The Landlord may, on infrequent occasions, require the Tenant to deliver, within one (1) week of the request, a statement of the approximate amount of Gross Revenue on a daily basis for the week preceding the date on which the statement is to be delivered. These statements will be used to analyze special promotions or sales trends and not to calculate Percentage Rent.

#### **Section 2.07 TENANT'S RECORDS**

For the purposes of ascertaining the amount payable as Percentage Rent, the Tenant will prepare and keep on the Leased Premises or at the Tenant's principal office in the Province in which the Shopping Centre is located for at least 3 years following the end of each Rental Year, all books and records which are required to satisfy the requirements, if any, of the income and sales tax authorities and any additional material which would normally be examined by an independent chartered accountant pursuant to accepted auditing standards in performing a detailed audit of the Tenant's sales. The Tenant will ensure that these records are kept by all other Persons doing business from the Leased Premises. The Tenant and all other Persons conducting business from the Leased Premises will use cash registers having a sealed cumulative total and such other control features as are required and approved by the Landlord, acting reasonably.

#### **Section 2.08 RIGHT TO EXAMINE**

The Landlord's receipt or use of any Gross Revenue statement or a Percentage Rent payment based on the statement will not amount to the Landlord's acceptance of the accuracy of the statement or of the Percentage Rent payment. The Landlord and its agents are entitled to examine the Tenant's Gross Revenue books, records and procedures during regular business hours, and are also entitled to have a Person on the Leased Premises to verify Gross Revenue, or to examine accounting records and procedures.

#### **Section 2.09 AUDIT**

The Landlord and its authorized auditor or chartered accountant (the "Auditor") may at any reasonable time, upon 48 hours' prior notice, audit the Tenant's affairs and records relating to Gross Revenue. If the Auditor reports that in his professional opinion, the Tenant's records and procedures are insufficient to permit a determination of Gross Revenue, or if the Tenant is not complying with each of the applicable provisions of Article II, then the Tenant will immediately after notice take all steps needed to remedy the default. If the Tenant does not satisfy the objections contained in the Auditor's report within 5 days, the Landlord may deliver the Tenant an estimate (which will be binding on the Tenant) made by the Landlord of Gross Revenue for the period under consideration and the Tenant will immediately pay to the Landlord any amount shown to be owing on account of Percentage Rent.

If the Auditor reports that the Tenant is in default pursuant to the requirements of this Article II or that in his professional opinion, the Tenant's records and procedures are not sufficient to permit a determination of Gross Revenue, the Tenant will immediately pay to the Landlord the cost of the audit in addition to the deficiency in Percentage Rent. If the audit discloses that Gross Revenue for the period in question is understated by 3% or more, the Tenant will



immediately pay to the Landlord the cost of the audit plus 150% of the deficiency in Percentage Rent. The Auditor's report is final and binding on the parties.

#### **Section 2.10 TENANT'S FAILURE**

If the Tenant fails to deliver, when required, any Monthly or Annual Statements or any audited statements, if requested, the Landlord, in addition to its other rights or remedies, may, upon 5 days' notice, employ an Auditor to examine the Tenant's books and records and the Tenant will pay the cost of the examination together with any sums shown to be owing on account of Percentage Rent. The Tenant will pay to the Landlord an administration fee of \$100.00 per written enquiry or other notice sent to the Tenant.

#### **Section 2.11 POST-DATED CHEQUES - AUTOMATIC ACCOUNT DEBIT**

On or before the Commencement Date, and on or before the commencement of each anniversary of the Commencement Date, the Tenant will deliver to the Landlord a series of 12 post-dated cheques representing the Minimum Rent and Additional Rent (as estimated by the Landlord) payable for the 12 calendar month period in question. The Tenant agrees, at the Landlord's option, in lieu of providing post-dated cheques, to permit the Landlord or its bankers to automatically debit the Tenant's bank account on the first day of each calendar month by an amount representing the monthly Minimum Rent and estimated Additional Rent payable under this Lease. To give effect to this, the Tenant will within 5 days of request sign whatever documents are required by the Landlord from time to time to activate and maintain the automatic debiting procedure including, without limitation, a form of application which is the same or similar to Schedule "I" attached hereto.

#### **Section 2.12 RENT PAST DUE**

If the Tenant fails to pay any Rent when due, the unpaid amounts bear interest calculated from the due date to the date which is the later of 30 days thereafter or the actual date of payment at an annual rate 5 percentage points above the minimum lending rate to prime commercial borrowers current at that time charged by the Landlord's chartered bank (which will be deemed to be Bank of Nova Scotia until such time as the Landlord advises the Tenant otherwise), calculated and compounded monthly. In addition to interest charges as previously set out, the Tenant will pay the Landlord a charge of \$150.00 in respect of each late payment representing overhead and administration fees.

### **ARTICLE III**

#### **ADDITIONAL RENT**

##### **Section 3.01 TAXES PAYABLE BY THE TENANT**

(a) The Tenant will pay to the Landlord, or to the Taxing authorities if the Landlord directs, all Taxes for the Leased Premises together with its Proportionate Share of all Taxes for the Common Areas and Facilities. If there are separate assessments or assessor's working papers available which indicate a separate assessment or valuation for the Leased Premises or if the assessor's working papers are available to the Landlord and show a separate valuation or apportionment of the total Shopping Centre valuation in respect of the Leased Premises, then the Tenant's Tax obligations with respect to the Leased Premises will, if the Landlord elects (this right to elect shall be at the Landlord's sole option and the method of Taxing billing may be revised from time to time by the Landlord at its sole discretion), be as set out in the separate assessments, valuations or apportionment, and the Tenant's Tax obligations with respect to the Common Areas and Facilities will be payable in accordance with Section 3.04. If there are no separate assessments, valuations or apportionments for the Leased Premises, or if the Landlord elects not to bill taxes as set out in the separate assessments or apportionments, then the Tenant will pay its Proportionate Share of all Taxes levied against the Shopping Centre. The Tenant shall not be entitled to receive a credit with respect to vacant space refunds received by the Landlord.

(b) The Tenant will deliver to the Landlord receipts for payment of all Taxes payable by the Tenant pursuant to Section 3.01, and if applicable, will furnish the Landlord with copies of any notices of assessment or any separate assessments and tax bills which are received by the Tenant.

(c) The Tenant will be prohibited from contesting or appealing any Taxes for the Leased Premises or the Shopping Centre without first obtaining the Landlord's approval, which will not be unreasonably withheld. The Landlord will be entitled, as a condition of granting its approval, to request that the Tenant forward the Landlord reasonable security for the contested Taxes. The Tenant will indemnify and hold the Landlord harmless from any increase in Taxes relating to any portion of the Shopping Centre which may result directly or indirectly out of the Tenant's appeal or contestation.

##### **Section 3.02 BUSINESS TAXES AND RENTAL TAXES**

(a) The Tenant will pay to the lawful taxing authorities, or to the Landlord, if the Landlord directs, all business taxes, personal property taxes, license fees or other similar rates and assessments levied or assessed against or in relation to the Tenant's business, assets and improvements in the Leased Premises.

(b) The Tenant will, together with the Minimum Rent, pay to the Landlord, as the Landlord directs, all sales, rental, value added, goods and services or other taxes, charges or levies imposed by governmental authorities on or in connection with the Rent payable hereunder.

### Section 3.03 TENANT'S PROPORTIONATE SHARE OF OPERATING COSTS

The Tenant will pay, in accordance with Section 3.04, the Tenant's Proportionate Share of Operating Costs as defined in Schedule "E".

### Section 3.04 PAYMENT OF TAXES AND OPERATING COSTS

(a) The amounts payable by the Tenant under Sections 3.01 and 3.03 may be estimated (and estimates may be revised) by the Landlord and the Tenant agrees to pay the Landlord the Tenant's Proportionate Share as estimated, in monthly instalments in advance. If bills for Taxes or Operating Costs are received during the course of a Rental Year and the costs incurred by the Landlord according to the bills exceed the estimated payments received to that date, then the Landlord can immediately bill the Tenant for its Proportionate Share of the deficiency.

(b) Within 180 days after the end of the period for which the estimated payments have been made, the Landlord will determine and advise the Tenant by statement of the exact amount of the Tenant's Taxes and Operating Costs payable by the Tenant, and if necessary, an adjustment will be made (by way of a cheque equal to the difference between the exact amount payable and the estimated payments received by the Landlord) between the parties within 15 days after the Tenant has been advised of the actual amounts. The Landlord's failure to furnish any statements within the time period set out herein does not limit, constitute a waiver of, or otherwise affect the Landlord's rights or the Tenant's obligations to re-adjust on account of the Tenant's Taxes and Operating Costs.

### Section 3.05 CHARGES FOR UTILITIES

(a) The Tenant will pay to the Landlord, or as the Landlord otherwise directs, the aggregate, without duplication, of: (i) all electricity, water, steam charges and other utility charges applicable to the Leased Premises, including the Tenant's signage (the "Utilities"); (ii) the costs of any other charges levied or assessed in lieu of or in addition to Utilities; and (iii) all costs incurred by the Landlord in determining or allocating the charge for Utilities, including, without limitation, professional engineering and consulting fees, together with an administration fee of 15% of the cost of the Utilities.

(b) Charges for Utilities will be paid in equal monthly instalments in advance on the basis of estimates determined by the Landlord or its engineers on a reasonable basis, and the parties will make the appropriate adjustments 10 days after the Landlord or its engineers have made a final determination of Utility charges for the period in question.

(c) If there are separate meters for the Leased Premises, Utility charges will be determined on the basis of those meters. Otherwise the Landlord or its engineers will determine in an equitable manner (with the determination being final and binding) the Utility charges for the Leased Premises on the basis of check meters if they exist, hours of usage, square footage, connected load and other factors conforming to good engineering practice. The Tenant will pay for the cost of any metering which the Tenant requests the Landlord to install or which the Landlord wishes to install in the Leased Premises or the Shopping Centre for the purpose of assisting in determining the consumption of any Utility in the Leased Premises.

### Section 3.06 PROMOTION FUND

(a) The Tenant will pay to the Landlord, as Additional Rent in each Rental Year for the purpose of the creation and maintenance of a common fund (the "Promotion Fund") for the promotion or benefit of the Shopping Centre, an annual payment equal to the greater of (i) One Dollar and Twenty-Five Cents (\$1.25) per square foot of the Rentable Area of the Leased Premises; or (ii) One Thousand Dollars (\$1,000.00), in both cases subject to a C.P.I. increase on the Commencement Date by multiplying such amounts by a fraction which has as its numerator the C.P.I. for the first month of the first Rental Year of the Term and as its denominator the C.P.I. for the month of December, 1998 and thereafter, subject to C.P.I. increases on each January 1st by multiplying the annual amounts payable during the preceding year by a fraction which has as its numerator the C.P.I. for the month of January during the then current Rental Year and as its denominator the C.P.I. for the month of January in the immediately preceding Rental Year. The Promotion Fund payment will be made in equal monthly instalments in advance on the first day of each calendar month.

(b) ~~In addition to the foregoing, the Tenant will participate in the promotion and advertising during the grand re-opening of the Shopping Centre and during the opening period of any phase of an expansion of the Shopping Centre that the Leased Premises are located in, and will pay to the Landlord, on demand, a single payment equal to the greater of: (i) \$1.00 per square foot of the Rentable Area of the Leased Premises; or (ii) \$1,000.00.~~

(c) The Promotion Fund will be used by the Landlord for the promotion or benefit of the Shopping Centre in such a manner as the Landlord from time to time decides. The Landlord may pay all or any part of the Promotion Fund to the Association (described in Section 3.07) and this payment will discharge the Landlord's obligation in respect of the amount paid. The Landlord will be entitled to reimbursement from the Promotion Fund for salaries, office, administrative and other expenses incurred in connection with or allocated by the Landlord to promotional activities. If any monies paid by the Tenant to the Landlord under this provision are paid by the Landlord to the Association, the payment to the Association is in payment or in part payment of any assessment by the Association upon the Tenant unless the assessment is levied by the Association as supplementary to the Promotion Fund.

So long as the Tenant and occupant of the Premises is SHS Optical Ltd., and it is not in default of the terms of the Lease, then during the Term, the Tenant shall not be required to pay the Promotion Fund payment as contained herein.

#### Section 3.07      **MERCHANTS' ASSOCIATION**

If and when an association or corporation of tenants (the "Association") is formed, comprising tenants of the Shopping Centre, the Tenant will become a member of the Association, and retain its membership in the Association throughout the Term and will abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association, including any dues and assessments levied by the Association which are in addition to the Tenant's Promotion Fund contribution. The Tenant will, if required by the Landlord, join with other such tenants in an application for Letters Patent (in accordance with the provisions of the Corporations Act (Ontario) and amendments thereto) incorporating the Association. Nothing in the by-laws, rules and regulations of the Association will be in conflict with or derogate from the provisions of this Lease or in any way affect the rights of the Landlord, and all by-laws and regulations will at all times be subject to the prior approval of the Landlord. The Landlord is entitled to be a member of the Association and of its executive committee.

#### Section 3.08      **ADVERTISING**

The Tenant will pay to the Landlord an annual payment (the "Advertising Payment") for each Rental Year, as a contribution to print campaign or other types of media campaigns designated by the Landlord for the purpose of promoting the Shopping Centre, equal to the greater of: (i) **One Thousand Dollars (\$1,000.00)** or (ii) **One Dollar and Twenty-Five Cents (\$1.25)** per square foot of the Rentable Area of the Leased Premises subject to increases at the same time as the Promotion Fund by the greater of (i) annual C.P.I. increases calculated in accordance with Section 3.06(a); and (ii) the annual percentage increase in the electronic, television, radio, print and other advertising media costs within the City of St. Catharines as determined by the Landlord's promotion director. This determination will be made in a manner that is consistent with previous years' determinations so as to ensure a fair and equitable calculation in each case. The Advertising Payment will be made in equal monthly instalments in advance on the first day of each calendar month.

#### Section 3.09      **FOOD COURT COSTS – Intentionally Deleted.**

### **ARTICLE IV**

#### **OPERATION OF THE SHOPPING CENTRE**

##### **Section 4.01      OPERATION OF THE SHOPPING CENTRE**

(a) The Landlord will operate and maintain the Shopping Centre in a first-class manner as would a prudent landlord of a similar shopping centre having regard to size, age and location.

(b) The Shopping Centre is at all times subject to the exclusive control, management and operation of the Landlord. The Landlord has the right, in its control, management and operation of the Shopping Centre or in order to comply with governmental authorities, to at any time or times:

- (i) obstruct or close off all or any part of the Shopping Centre for the purpose of maintenance, repair or construction;
- (ii) make any relocations, rearrangement of or modifications to the site plan, the buildings and improvements on the Shopping Centre lands or the Common Areas and Facilities;
- (iii) redevelop and expand the Shopping Centre, construct additional buildings and improvements, add additional levels to the Shopping Centre or any part of it, and demolish parts of the Shopping Centre;
- (iv) use parts of the Common Areas and Facilities for merchandising, display, decorations, entertainment and structures, permanent or otherwise, designed for retail selling or special features or promotional activities;
- (v) regulate, acting reasonably, all aspects of loading and unloading, delivery and shipping of fixtures, equipment and merchandise, and all aspects of garbage collection and disposal. The Tenant is responsible for pick-up and disposal of its garbage at its cost. If the Landlord provides facilities or designates a commercial service for the pick-up and disposal of garbage instead of, or in addition to the service provided by the local municipality, the Tenant will use such facilities and commercial service at its cost;
- (vi) impose or permit to be imposed reasonable charges upon any Person (including the general public) for the use of parking facilities that may at any time be part of the Common Areas and Facilities;
- (vii) change the area, level, location, arrangement or use of the Shopping Centre;
- (viii) install kiosks and other installations, permanent or otherwise, in or on the Common Areas and Facilities; and

(ix) diminish, alter, relocate or rearrange the Leased Premises from that shown on Schedule "A". If the Landlord elects to relocate the Leased Premises from its existing location at any time after the Tenant has opened for business, then the Landlord agrees to pay the Tenant all reasonable third party out-of-pocket moving expenses directly incurred by the Tenant in connection with the relocation or rearrangement and to provide the Tenant with new premises in the same or similar state of condition in which the Leased Premises were delivered by the Landlord to the Tenant on initial occupancy of the Leased Premises. The Tenant acknowledges that the sole purpose of Schedule "A" is to show the approximate location of the Leased Premises.

(c) In the exercise of its rights under this Section 4.01, the Landlord will use its best efforts to ensure that traffic ingress and egress to and from the Leased Premises is not unreasonably interfered with.

(d) The Landlord will proceed as expeditiously as possible to complete its work and other activities so as to minimize interference with the Tenant's business. Notwithstanding the foregoing, the Landlord is not subject to any liability, nor is the Tenant entitled to any compensation or abatement of Rent as a result of the Landlord's exercise of its rights conferred under Section 4.01 or any other provisions of this Lease.

#### **Section 4.02 REDEVELOPMENT**

If at any time during the Term or any renewal the Landlord desires to renovate, alter, demolish and/or redevelop all or any part of the Shopping Centre (the "Redevelopment"), the Tenant agrees that if the Landlord determines in its sole discretion that it requires vacant possession of the Leased Premises in connection therewith, then the Landlord shall be entitled, at its option, to terminate this Lease upon written notice to the Tenant without obligation or liability to the Tenant. Such termination notice shall be given at least six (6) months prior to the effective date of termination. On the effective date, (a) the Tenant shall deliver up vacant possession of the Leased Premises in accordance with its obligations under this Lease, and (b) the Landlord shall reimburse the Tenant for the unamortized balance of the actual hard costs incurred by the Tenant in constructing its leasehold improvements at the Commencement Date (to the extent such costs are substantiated to the Landlord by copies of paid invoices satisfactory to the Landlord and calculated by amortizing such costs on a straight line basis over the shorter of the initial Term or a period of five (5) years from the Commencement Date) less the aggregate of any rental concessions conferred on the Tenant, any allowance or inducement paid by the Landlord to the Tenant or on its behalf, and any amounts then owing by the Tenant to the Landlord. If the Landlord does not elect to terminate this Lease in connection with a Redevelopment, then the Tenant shall, at Tenant's expense, upgrade and refurbish the Leased Premises, which work shall, at Landlord's option, include the renovation and/or replacement of the Tenant's storefront and signage, and painting and upgrading of interior store fixtures and improvements, all in accordance with the Landlord's then current standard design criteria for refurbishment.

### **ARTICLE V**

#### **USE OF THE LEASED PREMISES**

##### **Section 5.01 USE OF THE LEASED PREMISES**

The Tenant will use the Leased Premises solely for the purpose of conducting the business of the sale, at retail, of prescription and non-prescription eye wear and the operation of a refractionist office for the purpose of providing eye examinations by a duly qualified optometrist in compliance with all laws so long as such refractionist office does not exceed five hundred (500) square feet of the Rentable Area of the Leased Premises and the Tenant will not use or permit, or suffer the use of the Leased Premises or any part of it for any other business or purpose. If the Tenant breaches this covenant, the Landlord will, in addition to any other remedies available to it, have the immediate right to erect a fence or other barricade across the Tenant's storefront or otherwise interfere with access to the Leased Premises and/or to terminate this Lease and avail itself of all remedies conferred under Article XI. In connection with the business to be conducted by the Tenant in the Leased Premises, the Tenant will only use the advertised name "Great Glasses" and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Landlord.

##### **Section 5.02 COMMENCEMENT OF BUSINESS**

The Tenant agrees that upon receiving possession of the Leased Premises from the Landlord, it will with all due diligence proceed to install all fixtures and equipment and perform all other work as may be necessary or appropriate in order to prepare the Leased Premises for the opening of business. If the Tenant does not open the Leased Premises for the conduct of its business within 90 days after receiving possession of the Leased Premises from the Landlord, the Landlord, in addition to all other remedies, has the option of terminating this Lease by giving the Tenant written notice of the termination. The termination will be effective within 15 days after the date of the Landlord's notice, unless by that date, the Tenant has opened the Leased Premises for business.

##### **Section 5.03 CONDUCT OF BUSINESS**

The Tenant will conduct its business in the Leased Premises in a manner consistent with the best interests of the Shopping Centre as a whole. Without limiting the generality of the foregoing:

(a) The Tenant will not use or permit, or suffer the use of the Leased Premises or any part thereof for any of the following businesses or activities: (i) any sale or business which, because of the merchandising methods,

items sold or services performed, or quality of operation likely to be used, would, in the Landlord's reasonable opinion, tend to lower the character of the Shopping Centre; (ii) any act or omission which constitutes a nuisance, waste upon or damage to the Leased Premises or any other portion of the Shopping Centre; or (iii) any act or omission which in the Landlord's reasonable opinion, hinders or interrupts the flow of traffic into, within and from the Shopping Centre.

(b) If the Landlord determines that the use of the Leased Premises is (i) detrimentally affecting other tenants of the Shopping Centre or their customers and invitees, then the Landlord may, at its option, hire security personnel and the cost of such personnel shall be paid by the Tenant to the Landlord immediately upon presentation of an invoice and this cost will be collectible by the Landlord in the same manner as Rent and/or (ii) creating additional maintenance in the Shopping Centre, then the Landlord may, at its option, undertake any additional maintenance that it deems necessary and such additional costs shall be paid by the Tenant to the Landlord immediately upon presentation of an invoice and this cost will be collectible by the Landlord in the same manner as Rent.

(c) No part of the Leased Premises will be used for the sale of second hand goods or armed services surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock; the sale of firecrackers or fireworks; an auction, bulk sale (other than a bulk sale made to an assignee or sub-tenant under a permitted assignment or subletting), liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale; a sale or business conduct which, because of the merchandising methods or quality of operation likely to be used, would tend to lower the character of the Shopping Centre; any practice of unethical or deceptive advertising or selling procedures; or catalogue sales, except of merchandise that the Tenant is permitted to sell "over the counter" in or at the Leased Premises under Section 5.01.

(d) The Landlord will have the right to cause the Tenant to discontinue (and the Tenant will immediately discontinue) any business activity which the Landlord, acting reasonably, determines is either prohibited by or not permitted under Sections 5.01 and 5.03. The Tenant will: (i) at all times throughout the Term, conduct continuously, actively and diligently the business set out in Section 5.01 in the whole of the Leased Premises. The Tenant acknowledges that its continued occupancy of the Leased Premises and the regular conduct of its business therein are of the utmost importance to the Landlord in avoiding the appearance and impression generally created by vacant space in commercial buildings, in facilitating the leasing of vacant space in the Shopping Centre, in the renewal of other leases in the Shopping Centre, and in maintaining the character and quality of the Shopping Centre, and of the tenants in the Shopping Centre, and that the Landlord will suffer substantial damage and irreparable harm if the Leased Premises are left vacant or are vacated by the Tenant during the Term of this Lease, even in the event the Tenant continues to pay Rent as required hereunder and that the Tenant is viewed by the Landlord as a key and traffic attracting tenant; (ii) install in the Leased Premises and keep in good order and condition, free from liens or rights of third parties, only fixtures and equipment of first-class quality; (iii) conduct its business in the Leased Premises during the hours and on the days which the Landlord from time to time requires or permits and at no other time. However, this will not require the Tenant to carry on business when prohibited by any law or by-law regulating business hours or days.

(e) If the Tenant defaults in any of its obligations under Sections 5.01, 5.02 or 5.03, then in each such event (and in addition to the Minimum Rent and all other amounts payable hereunder) for each day during which the default occurs (or for each occurrence of default), the Tenant will pay to the Landlord to compensate the Landlord for a portion of the damages suffered as a result of the default, an amount equal to the greater of 150% of the per diem Minimum Rent payable pursuant to this Lease or Two Hundred and Fifty Dollars (\$250.00), the whole under reserve of and without prejudice to any other recourses of the Landlord. The Tenant hereby renounces all rights to have this amount reduced, even if the obligation in question has been performed in part.

(f) The Tenant shall not use or permit or suffer the use of the Leased Premises or any part thereof to generate, refine, treat, transport, store, handle, dispose of, produce, process or otherwise deal with any Hazardous Substance except in strict compliance with all applicable federal, provincial or municipal laws or regulations, including, without limitation, environmental, land use, occupational, health and safety laws, regulations, requirements or permits, and only if it has received the prior written consent of the Landlord, which consent may be unreasonably withheld.

#### Section 5.04 OBSERVANCE OF LAW

The Tenant will, at its expense, and subject to Section 7.01(b):

(a) comply with all provisions of law including without limitation, all statutes, regulations, by-laws, ordinances and other requirements of municipal, provincial, federal and other governmental bodies, agencies or departments, which now or hereafter pertain to or affect the Leased Premises and/or the Shopping Centre or require or govern the making of any repairs, alterations or other changes of or to (i) the Leased Premises, or (ii) the Tenant's use thereof, or (iii) the Shopping Centre as a result of the Tenant's use of the Leased Premises or any other portion of the Shopping Centre. The Tenant will not be required, in order to comply with the provisions of law, to correct any item of the Landlord's Work which did not comply at the Commencement Date; and

- (b) obtain all necessary permits, licenses and approvals relating to the use of the Leased Premises and the conduct of business therein, including without limitation, those required under the Business Corporations Act (Ontario) and the Investment Canada Act (Canada).

#### Section 5.05 RADIUS CLAUSE

It is a condition precedent to the execution of this Lease by the Landlord that the Tenant acknowledges that the Shopping Centre draws its customers from a large geographic area and that the success of the Shopping Centre and income of the Landlord therefrom are dependent upon the generation of gross revenue and percentage rents. Therefore, the Tenant agrees that throughout the Term and any renewals it shall not, nor shall it suffer or permit any Person under its control or connected or affiliated with it, whether as partner, shareholder, lender, employee or otherwise, to engage directly or indirectly in any business which is the same as or similar to, or in competition with, the Tenant's business in the Leased Premises within any building or building complex, any portion of which is located within a radius of 5 kilometres from any point on the perimeter of the Shopping Centre, except that any business or store of the Tenant in operation within the radius as at the Commencement Date will not be governed by this provision as long as there is no increase in the size of that business or store.

If the Tenant breaches the foregoing covenant, the Landlord, in addition to any other remedy available to it, shall be entitled to require that the gross revenue (calculated in the same manner as Gross Revenue) in respect of the other business or businesses be included in the computation of Gross Revenue hereunder, as though that gross revenue had actually been made from the Leased Premises.

### ARTICLE VI

#### INSURANCE AND INDEMNITY

##### Section 6.01 TENANT'S INSURANCE

(a) The Tenant will, at its expense, take out (effective as of the date the Landlord delivers possession of the Leased Premises to the Tenant) and maintain in the names of the Tenant, the Landlord and the Mortgagee as their respective interests appear, the following insurance:

(i) fire and standard extended coverage insurance including sprinkler leakages, earthquake, flood and collapse, in an amount equal to the full replacement cost of all improvements, equipment and property of every designation and kind in or serving the Leased Premises or for which the Tenant is legally liable, together with standard broad form boiler and machinery insurance coverage if it applies;

(ii) business interruption insurance in such amount and for such risks as would be carried by prudent tenants;

(iii) Comprehensive General Liability Insurance, to include personal injury liability, contractual liability, employers' liability, non-owned automobile liability and owners' and contractors' protective insurance coverage, written on an occurrence basis with inclusive limits of not less than \$2,000,000 for bodily injury to any one or more Persons, or property damage, and such higher limits as the Landlord, acting reasonably, or the Mortgagee requires from time to time, and containing severability of interests and cross-liability clauses;

(iv) plate glass insurance;

(v) tenant's legal liability insurance for the actual cash value of the Leased Premises including loss of use thereof;

(vi) any other form of insurance as the Tenant or the Landlord, acting reasonably, or the Mortgagee requires from time to time.

(b) The Tenant's policies will: (i) contain the Mortgagee's standard mortgage clause and contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and those for whom the Landlord is in law responsible; (ii) be taken out with insurers reasonably acceptable to the Landlord and in a form reasonably satisfactory to the Landlord; (iii) be non-contributing with and apply only as primary and not as excess to any other insurance available to the Landlord; (iv) not be invalidated as respects the interests of the Landlord and the Mortgagee by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies; and (v) contain an undertaking by the insurers to notify the Landlord and the Mortgagee in writing not less than 30 days prior to any material change, cancellation or termination. The Tenant agrees that certificates of insurance in a form reasonably acceptable to the Landlord, will be delivered to the Landlord as soon as practicable after the Commencement Date.

(c) If there is damage or destruction to the leasehold improvements in the Leased Premises, the Tenant will use the insurance proceeds for the sole purpose of repairing or restoring the leasehold improvements. If there is damage to or destruction of the Shopping Centre entitling the Landlord to terminate this Lease under Article VIII, then if the Leased Premises have also been damaged or destroyed, the Tenant will pay the Landlord all of its insurance proceeds relating to the leasehold improvements.

#### **Section 6.02 INCREASE IN INSURANCE PREMIUMS**

The Tenant covenants that neither (a) the occupancy of the Leased Premises; (b) the conduct of business in the Leased Premises; nor (c) any acts or omissions of the Tenant in the Shopping Centre or the Leased Premises will cause or result in any increase in premiums for the Landlord's insurance. If the Tenant breaches this covenant, then the Tenant will pay the increase in premiums within 5 days after invoices for additional premiums are rendered by the Landlord.

#### **Section 6.03 CANCELLATION OF INSURANCE**

If any insurance policy in respect of the Shopping Centre is cancelled or threatened by the insurer to be cancelled, or the coverage reduced by the insurer by reason of the use and occupation of the Leased Premises and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within 48 hours after notice by the Landlord, the Landlord may, at its option, either (a) exercise its rights of re-entry including termination under Article XI, or (b) at the Tenant's expense, enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction.

#### **Section 6.04 LOSS OR DAMAGE**

(a) The Landlord shall not be liable for any damage to property, death or injury to any Person or any other loss whatsoever arising from or out of any occurrence in or relating to the Shopping Centre or damage to property of the Tenant or of others wherever located (collectively or separately referred to as "Damage"), whether or not resulting from (i) the negligence or willful act or omission of the Landlord or those for whom it is in law responsible except to the extent set out in Section 6.04 (b), (ii) the acts or omissions of any other tenant or occupant of the Shopping Centre, (iii) the exercise by the Landlord of any of its rights under this Lease, or (iv) any other causes whatsoever, including without limitation, theft, damage by steam, water, rain, snow, backing up or malfunctioning of sewers, drains or plumbing systems or malfunctioning of climate control or electrical systems, or (v) the existence of any Hazardous Substance which is or has been located, stored or incorporated in or on any part of the Leased Premises. The intent of this Section is that the Tenant (and all other Persons having business with the Tenant) is to look solely to its insurers to satisfy any claim, and otherwise releases and holds the Landlord harmless from all damages, losses and other liabilities which may arise on account of Damage irrespective of its cause.

(b) Notwithstanding the provisions of Section 6.04 (a) or the other provisions of this Lease, the Landlord shall be responsible to the Tenant for Damage to the extent caused or contributed to by the negligence of the Landlord or those for whom it is in law responsible, but only to the extent that (i) the Damage is not covered by insurance which the Tenant is obligated to maintain under Section 6.01, and (ii) the Damage is not otherwise covered by insurance actually maintained by the Tenant, in each case without taking into account any deductible or co-insurance provisions or clauses contained in the Tenant's policy or policies.

#### **Section 6.05 LANDLORD'S INSURANCE**

(a) The Landlord shall at all times throughout the Term carry: (i) insurance on the Shopping Centre (excluding the foundations and excavations) and the equipment contained in or servicing the Shopping Centre against damage by fire and extended perils; (ii) public liability, property damage and rental loss insurance with respect to the Landlord's operations in the Shopping Centre; and (iii) other forms of insurances considered advisable by the Landlord and its Mortgagee, in each case, in such reasonable amounts and with such reasonable deductions as would be carried by a prudent owner of a similar shopping centre.

(b) Notwithstanding the Landlord's covenant and the Tenant's contribution to the cost of the Landlord's insurance premiums, (i) the Tenant shall not be relieved of any liability arising from or contributed to by its negligence or its willful acts or omissions, (ii) no insurable interest or other benefit shall be conferred upon the Tenant under the Landlord's insurance policies, and (iii) the Tenant shall have no right to receive proceeds from the Landlord's insurance policies.

#### **Section 6.06 INDEMNIFICATION OF THE LANDLORD**

(a) The Tenant will indemnify the Landlord and save it harmless from and against all loss (including loss of Rent), claims, actions, damages, costs, liability and expense in connection with loss of life, personal injury, damage to property (including any portion of the Shopping Centre and its equipment, machinery, services and improvements) or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in the Leased Premises, or the Tenant's occupancy of the Leased Premises or the Shopping Centre, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises or the Shopping Centre by the Tenant including, without limitation, the manufacturing, transportation, storage or disposal of any Hazardous Substance by the Tenant or any other occupant of the Leased Premises (or any of their respective customers, suppliers, employees, agents, or other invitees) on or in any part of the Shopping Centre, and such indemnity shall survive the expiration or sooner termination of this Lease. If the Landlord, its officers, directors, employees or any associated or affiliated companies are without fault on its part, made a party to any litigation commenced against the Tenant, then the Tenant will protect, indemnify and hold the Landlord harmless and pay all expenses and legal fees (on a solicitor and his own client basis) incurred or paid by the Landlord or such other parties in connection with the litigation. In addition, if the Landlord, its officers, directors, employees or associated or affiliated companies are made a party to any litigation by the Tenant, any subtenant, or any associated or affiliated company or by its officers, directors, agents or those for whom the Tenant is in law responsible, and the Tenant is not ultimately successful in obtaining a Court judgment against the Landlord in the final instance, then the Tenant will pay all expenses and legal fees (on a solicitor and his own client basis) incurred by the Landlord or such

other parties in connection with the litigation together with an amount equal to 25% of such expenses and fees on account of the Landlord's (and such other parties') overhead and administration costs, and the Tenant confirms that the foregoing amount is reasonable and may be pleaded by the Landlord or such other parties as a full estoppel to any claim by the Tenant or otherwise.

(b) The Tenant's indemnity contained in Section 6.06(a) does not apply to any losses, claims, damages or other liabilities to the extent caused or contributed to by the negligence of the Landlord or those for whom it is in law responsible.

## ARTICLE VII

### MAINTENANCE, REPAIRS AND ALTERATIONS

#### Section 7.01 MAINTENANCE, REPAIRS AND ALTERATIONS BY THE TENANT

(a) The Tenant will at all times, at its expense, maintain the whole of the Leased Premises including without limitation, the storefront, doors and windows, the electrical, lighting, wiring, plumbing fixtures and equipment and the heating, ventilating and air-conditioning systems and equipment within or exclusively serving the Leased Premises in good order, first-class condition and repair, as determined by the Landlord, and the Tenant will make all needed repairs and replacements with due diligence and dispatch.

(b) The Tenant will not make any repairs, alterations, replacements, decorations or improvements ("Alterations") to any part of the Leased Premises without first obtaining the Landlord's written approval, which will not be unreasonably withheld. The Tenant will submit: (a) details of the proposed Alterations, including professionally prepared drawings and specifications; and (b) evidence reasonably satisfactory to the Landlord that the Tenant has obtained, at its expense, all necessary consents, permits, licenses and inspections from all applicable governmental authorities. All Alterations will be performed: (i) at the Tenant's expense; (ii) by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors; (iii) in a good and workmanlike manner; (iv) in accordance with the drawings and specifications approved by the Landlord, which approval will not be unreasonably withheld; and (v) subject to the reasonable regulations, controls and inspection of the Landlord.

If, however, the proposed Alterations or any of them affect the structure of the Shopping Centre or any of the electrical, mechanical or other base building systems, then the Alterations (or the appropriate portion of them) will at the Landlord's option be performed by the Landlord, at the Tenant's expense, plus 15% of the total cost representing the Landlord's overhead. Neither the Tenant nor its employees, agents or any other Person acting under the direction or control of the Tenant will be permitted on the roof of the Shopping Centre for any purposes, including without limitation, for the purpose of maintaining, repairing or replacing the heating, ventilating or air-conditioning equipment serving the Leased Premises, without the express written approval of the Landlord in each instance.

Any Alterations made by the Tenant without the prior consent of the Landlord or not made in accordance with the drawings and specifications approved by the Landlord will, if requested by the Landlord, be promptly removed by the Tenant at the Tenant's expense.

(c) At the expiration or earlier termination of the Term, the Tenant will surrender the Leased Premises to the Landlord in as good a condition as the Tenant is required to maintain them throughout the Term.

(d) If required by the Landlord or any governmental authority at any time, the Tenant shall, at its expense, remove from the Leased Premises any Hazardous Substance which is or has been located, stored or incorporated in or on any part of the Leased Premises. The foregoing obligation to remove any such Hazardous Substance shall survive the expiration or earlier termination of this Lease.

#### Section 7.02 MAINTENANCE, REPAIRS AND ALTERATIONS BY THE LANDLORD

(a) The Landlord will maintain and repair the roof, bearing walls and foundations of the Leased Premises, subject to reasonable wear and tear. The cost of the foregoing maintenance and repairs will be included in Operating Costs. However, if the Landlord is required, due to the business carried on by the Tenant, to make structural repairs or replacements by reason of the application of laws, ordinances or other regulations of any governmental body, or by reason of any act, omission or default of the Tenant or those for whom the Tenant is in law responsible, then the Tenant will be liable for the total cost of those repairs or replacements plus 15% of the total cost representing the Landlord's overhead.

(b) If the Shopping Centre or any part of it, including without limitation, the Common Areas and Facilities or any equipment, machinery, facilities or improvements, the roof or the outside walls of the Shopping Centre or any other structural portions require repair or become damaged or destroyed through the negligence, carelessness or misuse by the Tenant or those for whom it is in law responsible, or by those parties in any way stopping up or damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities, then the cost of the resulting repairs, replacements or alterations, together with a sum equal to 15% of the cost representing the Landlord's overhead, will be paid by the Tenant to the Landlord immediately upon presentation of an invoice.

(c) The Landlord and its agents shall have the right upon reasonable advance notice to enter the Leased Premises during business hours (except in the event of an emergency, when the Landlord can enter at any time) to (a) inspect the Leased Premises or any part thereof for the existence of any Hazardous Substance and to conduct an environmental



audit or any testing required to satisfy itself that the Tenant's operation is being run in compliance with the applicable environmental laws, by-laws, rules and regulations, (b) show them to prospective purchasers, tenants or Mortgagees, and (c) to examine them and make repairs, alterations or changes to the Leased Premises or the Shopping Centre as the Landlord considers necessary, including, without limitation, excavations adjacent to the Leased Premises and repairs, alterations or changes to the pipes, conduits, wiring, ducts, sprinkler systems and other installations in or beneath the Leased Premises where necessary to serve another part of the Shopping Centre. For that purpose, the Landlord may take all required material into the Leased Premises. The Rent will not abate while any repairs, alterations or changes are being made due to loss or interruption of the business of the Tenant or otherwise, and the Landlord will not (subject to Section 6.04(b)) be liable for any damage, injury or death caused to any Person, or to the property of the Tenant or of others located on the Leased Premises as a result of the entry.

#### **Section 7.03 REMOVAL AND RESTORATION BY THE TENANT**

(a) All Alterations made by the Tenant, or made by the Landlord or others on the Tenant's behalf (other than the Tenant's trade fixtures) immediately become the property of the Landlord upon affixation or installation and will not be removed from the Leased Premises at any time unless permitted or required by the Landlord. The Landlord is under no obligation to repair, maintain or insure the Alterations. The Tenant will, at the expiration of the Term, at its cost, remove all of its trade fixtures and those leasehold improvements and fixtures which the Landlord requires the Tenant to remove.

(b) Notwithstanding the provisions of Section 7.03(a), the Tenant at all times throughout the Term retains a leasehold interest in all Alterations paid for by the Tenant and is entitled to take the benefit of all Capital Cost Allowance and depreciation in respect of the Alterations to the extent permitted under the Income Tax Act (Canada).

(c) The Tenant will install and during the Term maintain in the Leased Premises first-class trade fixtures and furniture appropriate for the Tenant's business and the general character of the Shopping Centre. Only new and unused trade fixtures will be installed and the Tenant agrees to obtain the prior written approval (which will not be unreasonably withheld) of the Landlord as to the nature of the trade fixtures and the layout of them in the Leased Premises before they are installed. If the Tenant is not in default, then it will have the right at the expiration of the Term to remove its trade fixtures provided that it makes good any damage to the Leased Premises or the Shopping Centre caused as a result of their installation or removal.

(d) If the Tenant does not remove its trade fixtures at the end of the Term or earlier termination thereof, the trade fixtures will, at the Landlord's option, become the property of the Landlord and may be removed from the Leased Premises at the Tenant's expense and sold or disposed of by the Landlord in such manner as it deems advisable.

(e) For greater certainty, the Tenant's trade fixtures exclude: (i) heating, ventilating, air-conditioning, electrical, plumbing and other similar systems, facilities and equipment, including washroom fixtures; (ii) floor coverings affixed to the floor of the Leased Premises; (iii) light fixtures; (iv) internal stairways and doors; (v) ceilings and sprinkler systems and equipment; (vi) the storefront or doors; (vii) escalators or elevators; and (viii) any fixtures, facilities, equipment or installations which were in the Leased Premises when they were delivered to the Tenant or were installed by or at the expense of the Landlord; all of which are deemed to be leasehold improvements.

(f) The Tenant shall, prior to the end of the Term, at its sole cost, remove from the Leased Premises any Hazardous Substance which is or has been located, stored or incorporated in or on any part of the Leased Premises. This provision shall survive the expiration or earlier termination of this Lease.

#### **Section 7.04 CONSTRUCTION LIENS**

If any construction or similar lien is made, filed or registered against title to the Shopping Centre lands (or part of it) or against the Tenant's leasehold interest, as a result of any work, materials or services supplied or performed by or on behalf of the Tenant or otherwise in respect of the Leased Premises, then the Tenant will discharge it forthwith at the Tenant's expense. If the Tenant fails to discharge the lien, then in addition to any other right or remedy of the Landlord, the Landlord may elect to discharge the lien by paying the amount claimed to be due (and any additional amounts as may be required at law or otherwise) into Court or directly to the lien claimant and the amount paid by the Landlord and all costs and expenses including all solicitor's fees incurred as a result of the lien including the costs of procuring its discharge will be immediately paid by the Tenant to the Landlord.

#### **Section 7.05 SIGNS AND ADVERTISING**

The Tenant will not cause or permit any sign, picture, advertisement, notice, lettering or decoration to be painted, affixed or displayed on any part of the exterior of the Leased Premises or anywhere in the interior of the Leased Premises where the item is visible from the exterior of the Leased Premises without, in each instance, the prior written approval of the Landlord, which will not be unreasonably withheld so long as it is not inconsistent with the Landlord's sign criteria for the Shopping Centre. The Tenant is specifically prohibited from affixing or displaying on any part of the exterior of the Leased Premises or anywhere in the interior, including the window of the Leased Premises, any signs or other material advertising the Leased Premises or any part thereof for lease, sublease or any other form of Transfer without the Landlord's prior written consent. Any sign, picture or other item described above which is painted, fixed or displayed without the Landlord's written approval will be immediately removed upon written demand. The Tenant will erect an identification sign or signs of a type or types and in a location or locations specified in writing by the Landlord and in accordance with the Landlord's sign policy for the Shopping Centre. All such signs will remain the property of the Tenant and will be maintained by the Tenant at its sole cost and expense. At the expiration or earlier termination of

the Term, the Tenant will remove its sign(s), excluding the sign box, from the Leased Premises and will promptly repair all damage caused by the removal. The Landlord may from time to time modify the sign criteria for the Shopping Centre, in which case the Tenant shall, at its expense, modify its signage accordingly.

#### **Section 7.06 HEATING AND AIR-CONDITIONING**

(a) The Tenant covenants to heat and air-condition the Leased Premises with the heating and air-conditioning equipment (if applicable) serving the Leased Premises. The Tenant will enter into a maintenance contract with a heating and air-conditioning contractor designated by the Landlord, at the Tenant's expense. The Tenant will, subject to the provisions of the following sentence, be solely responsible for all maintenance, repairs and replacements with regard to the heating and air-conditioning equipment. Notwithstanding the foregoing, the Landlord retains the right, at its option, to elect to maintain, repair and/or replace the heating and air-conditioning unit(s) serving the Leased Premises and other premises in the Shopping Centre, and in such event, the costs and expenses incurred by the Landlord will form part of Operating Costs. The Landlord may at any time subsequently elect to have the Tenant re-assume sole responsibility for the maintenance, repair and replacement of such equipment.

(b) The Landlord shall be entitled to regulate those parts of the heating, ventilating and air-conditioning facilities within the Leased Premises (including the distribution system for the Leased Premises) that are not part of the Common Areas and Facilities so as to maintain reasonable conditions of temperature and humidity within the Leased Premises and to avoid direct or indirect appropriation of heating, ventilating or air-conditioning from the Common Areas and Facilities. Any variable air volume valve, thermostat or fan coil unit in the Leased Premises and any items (including but not limited to, booster units and make-up air units) installed by or on behalf of the Tenant that are located outside the Leased Premises will be maintained solely by the Tenant, or at the Landlord's option, by the Landlord at the expense of the Tenant, and the Tenant will pay to the Landlord an administration fee of fifteen percent (15%) of that expense.

(c) The cost of maintaining and repairing exhaust systems or make-up air systems that serve more than one (1) tenant will be allocated by the Landlord amongst the tenants using them in accordance with the recommendations of the Landlord's engineer.

(d) The Tenant will pay, monthly in advance, the charges under Schedule "F".

#### **Section 7.07 ELECTRICAL**

The Tenant will not install or use any electrical or other equipment or electrical arrangement which may overload the electrical or other service facilities available unless it first obtains the prior written consent of the Landlord, and if necessary, at its own expense, makes whatever changes are necessary to comply with the reasonable requirements of the Landlord, the Landlord's insurance underwriters and all applicable governmental authorities.

#### **Section 7.08 USE OF SYSTEMS**

The Tenant will not allow any refuse, garbage or other loose or objectionable material to accumulate in or about the Leased Premises or any portion of the Shopping Centre and will at all times keep the Leased Premises in a clean and wholesome condition. The plumbing fixtures will not be used for any other purpose than that for which they are constructed and no foreign substance of any kind shall be thrown in the plumbing fixtures. The expense of any breakage, stoppage or damage shall be borne exclusively by the Tenant if caused or contributed to by the Tenant or those for whom it is in law responsible.

### **ARTICLE VIII**

#### **DAMAGE AND DESTRUCTION AND EXPROPRIATION**

##### **Section 8.01 DESTRUCTION OF THE LEASED PREMISES AND THE SHOPPING CENTRE**

(a) If the Leased Premises are destroyed or damaged as a result of fire or other casualty not caused by the Tenant, then if:

(i) the Leased Premises are rendered wholly or partially untenable, this Lease will continue in effect and the Landlord will commence diligently to restore the Leased Premises to the extent only of the Landlord's Work set out in Schedule "B", and then only to the extent of insurance proceeds received by the Landlord, and only Minimum Rent (but not Percentage Rent or Additional Rent) will abate entirely or proportionately, as the case may be, to the portion of the Leased Premises rendered untenable from the date of the destruction or damage until the earlier of (A) the date the Tenant opens for business in the previously untenable portion of the Leased Premises, or (B) 30 days after the Landlord has substantially completed its restoration work; or

(ii) the Leased Premises are not rendered untenable in whole or in part, this Lease will continue in effect, the Rent and other amounts payable by the Tenant will not abate and the Landlord will commence diligently to restore the Leased Premises to the extent required by Section 8.01(a)(i).

(b) Notwithstanding Section 8.01(a), if either (i) during the last 2 years of the Term the Leased Premises are damaged or destroyed by any cause whatsoever, or (ii) at any time the food supermarket, or any department store or 25% or more of the Rentable Area of the Shopping Centre is damaged or destroyed by any cause whatsoever, and if in either case in the Landlord's reasonable opinion the damage or destruction cannot be repaired or restored within 90 days

of the damage or destruction, the Landlord may, at its option, elect to terminate this Lease by giving the Tenant within 30 days after the damage or destruction notice of termination, and thereupon Rent will be apportioned and paid to the date of termination unless the provisions of Section 8.01(a) apply, in which case the Minimum Rent will abate to the extent prescribed in that Section.

(c) Once the Landlord has substantially completed its restoration work, the Tenant will complete all work required to fully restore the Leased Premises for business.

#### **Section 8.02 NO INSURANCE PROCEEDS**

Notwithstanding the provisions of Section 8.01, if damage or destruction occurs by reason of any cause in respect of which there are no proceeds of insurance, or if the proceeds of insurance actually received by the Landlord are not (in the Landlord's opinion) sufficient to pay for the costs of repairing or restoring the damage and destruction, then the Landlord may terminate this Lease on 30 days' prior written notice.

#### **Section 8.03 EXPROPRIATION**

Both the Landlord and the Tenant agree to co-operate with the other regarding an expropriation of the Leased Premises or the Shopping Centre or any part of it, so that each may receive the maximum award to which they are respectively entitled at law. To the extent that any portion of the Shopping Centre other than the Leased Premises is expropriated, then the full proceeds accruing or awarded as a result will belong to the Landlord and the Tenant will abandon or assign to the Landlord any rights which the Tenant may have or acquire by operation of law to those proceeds or awards and will execute all documents which the Landlord requires to give effect to this intention.

### **ARTICLE IX**

#### **TRANSFER AND SALE**

##### **Section 9.01 TRANSFER BY THE TENANT**

(a) The Tenant will not: (i) assign this Lease, (ii) sublet, share or part with possession of all or any part of the Leased Premises, nor (iii) mortgage or encumber this Lease or the Leased Premises, to or in favour of any Person (collectively, a "Transfer") without the prior written consent of the Landlord which consent may be unreasonably withheld by the Landlord for any proposed Transfer during the first three (3) years of the initial Term and during a period of three (3) years from the last Transfer. Thereafter, such consent will not be unreasonably withheld. The consent by the Landlord to any Transfer will not constitute a waiver of the necessity for consent to subsequent Transfers. This prohibition against a Transfer includes any change in the partners (or their respective partnership interests) comprising the Tenant, an assignment by operation of law and also includes a change in the direct or indirect effective voting control of the Tenant from the Persons holding voting control at the date of this Lease (or if the Tenant is not a corporation, at the date of the assignment of this Lease to a corporation), resulting from a sale, transfer, other disposition or issue of shares of the Tenant or any corporation owning or controlling shares of the Tenant.

(b) If the Tenant intends to effect a Transfer, then the Tenant will give prior written notice to the Landlord of its intent, specifying the proposed Transferee and providing such additional information as the Landlord requires including, without limitation, information concerning financial or business history relating to the Transferee. The Landlord will, within 30 days after having received notice of the proposed Transfer and all necessary information, notify the Tenant in writing either that (i) it consents or does not consent to the Transfer, or (ii) it elects to cancel this Lease in preference to giving consent. If the Landlord elects to cancel this Lease, the Tenant will notify the Landlord in writing within 15 days thereafter of the Tenant's intention either to refrain from the Transfer or to accept the cancellation of this Lease. If the Tenant fails to deliver its notice within the 15 day period, this Lease will be terminated upon the expiration of the 15 day period. If the Tenant advises the Landlord it intends to refrain from the Transfer, then the Landlord's election to cancel this Lease will be void and this Lease will remain in effect.

(c) If there is a Transfer, the Landlord may collect Rent from the Transferee and apply the net amount collected to the Rent required to be paid pursuant to this Lease, but no acceptance by the Landlord of any payments by a Transferee will be a waiver of this covenant, or the acceptance of the Transferee as the Tenant, or a release of the Tenant from the further performance by the Tenant of its covenants or obligations. The Landlord will not be responsible for any costs, damages or other liabilities incurred by the Tenant or any other parties, directly or indirectly, due to the Landlord withholding its consent to a proposed Transfer. Any document evidencing the Transfer will be prepared by the Landlord or its solicitors, and all legal costs incurred by the Landlord in connection with the Transfer and the Landlord's administration fee related thereto, as determined by the Landlord from time to time, will be paid by the Tenant to the Landlord. As a condition of the Landlord's consent, the Tenant will be required to pay to the Landlord an amount sufficient (as determined by the Landlord, acting reasonably) to be held in escrow by the Landlord, to be utilized to pay any readjustments, if any, on account of Additional Rent, with the balance after determination and payment of such readjustments to be returned to the Tenant, and at the Landlord's option: (i) the Tenant and/or Transferee will be required to provide the Landlord with an additional security deposit (in addition to any security deposits, advance rent or other sums or security then being held by the Landlord) in such amount as is determined by the Landlord in its sole discretion, and/or (ii) the Tenant shall exercise its next ensuing option to renew the Term of this Lease, if applicable. In addition to the foregoing, the Landlord shall have the right, in its sole discretion, as a condition of the Landlord's consent to the Transfer, to require any or all shareholders or principals of any Transferee, to enter into an indemnity agreement on the Landlord's standard form, whereby such parties jointly and severally agree to indemnify the Landlord with respect to the Tenant's observance and performance of all terms, covenants and conditions contained in this Lease.

Notwithstanding a Transfer, the Tenant will be jointly and severally liable with the Transferee on this Lease and will not be released from performing any of its obligations notwithstanding any subsequent amendments or other modifications to the Lease agreed to between the Landlord and any Transferee. The Landlord's consent to any sublease or similar occupancy transaction will be conditional upon the subtenant agreeing in writing with the Landlord that if the subtenant exercises its rights pursuant to Section 39(2) of the Landlord and Tenant Act (Ontario) or any similar successor or replacement legislation, then notwithstanding any laws to the contrary, it will be a condition precedent to the subtenant's exercise of its rights that the subtenant pay all arrears of rent owing by the Tenant pursuant to the terms of this Lease.

(d) If the Tenant receives consent under Section 9.01, it will in any event be subject to the condition that the Minimum Rent payable by the Transferee thereafter will be not less than the greater of (i) an amount equal to the average annual combined Minimum Rent and Percentage Rent payable by the Tenant during the 3 full 12-month Rental Years immediately preceding the Transfer, or (ii) the highest annual combined Minimum Rent and Percentage Rent since the Commencement Date if the Tenant at the time of the Transfer has been occupying the Leased Premises less than 3 full 12-month Rental Years, or (iii) the Minimum Rent payable pursuant to Section 2.02(a) increased to equal the amount obtained by multiplying the Minimum Rent by a fraction, which has as its numerator the C.P.I. for the calendar month immediately preceding the Transfer and as its denominator, the C.P.I. for the calendar month immediately preceding the calendar month in which the Commencement Date occurs.

#### **Section 9.02 PERMITTED TRANSFERS**

Notwithstanding the provisions of Section 9.01(a), the Tenant will not require the Landlord's consent (but will give the Landlord 30 days prior written notice) in connection with an assignment of this Lease or a subletting of the whole of the Leased Premises to a holding body corporate, subsidiary body corporate or affiliated body corporate of the Tenant (as those terms are defined in the Canada Business Corporations Act), however, consent in accordance with Section 9.01 will be required in connection with a subsequent Transfer unless the original and subsequent Transferee remains a holding body corporate, subsidiary body corporate or affiliated body corporate of the Tenant. In the case of any such assignment or subletting, all provisions of Section 9.01, except Section 9.01(b), will apply. No subletting pursuant to this Section 9.02 will be permitted or effective until the subtenant signs the agreement referred to in the last sentence of Section 9.01(c).

#### **Section 9.03 TRANSFER BY THE LANDLORD**

The Tenant acknowledges that the Landlord which executed this Lease and any subsequent owner of the Shopping Centre remains liable for the performance of the Landlord's obligations only during the period of its ownership of the Shopping Centre. If there is a sale, lease or other disposition by the Landlord of the Shopping Centre or any part of it, or an assignment by the Landlord of this Lease or any interest of the Landlord hereunder, then the Landlord will, thereupon and without further agreement, be relieved of all further liability with respect to its covenants and obligations.

### **ARTICLE X**

#### **TITLE MATTERS**

#### **Section 10.01 STATUS STATEMENT**

Within 10 days after written request by the Landlord, the Tenant will deliver in a form supplied by the Landlord, a status statement or a certificate to any proposed purchaser, assignee, lessor or Mortgagee of the Shopping Centre, or to the Landlord, which will be in the form attached as Schedule "H", or at the Landlord's option, will be in an alternate form containing such acknowledgments and information as are customarily called for in status statements and estoppel certificates delivered in conjunction with commercial tenancies, or as may be required by the Mortgagee or a purchaser.

#### **Section 10.02 SUBORDINATION AND ATTORNMENT**

(a) This Lease and the Tenant's rights hereunder are, and will at all times be, subordinate to Encumbrances, or any renewals, extensions or replacements thereof, from time to time against the Shopping Centre (or any part of it). Upon request, the Tenant will subordinate this Lease in such form as the Landlord requires to any Encumbrance and, if requested, the Tenant will attorn to the holder of the Encumbrance.

(b) The Tenant will, if possession is taken under, or any proceedings are brought for possession under or the foreclosure of, or in the event of the exercise of the power of sale under, any Encumbrance, attorn to the Encumbrancer or the purchaser upon any such foreclosure, sale or other proceeding and recognize the Encumbrancer or the purchaser as the Landlord under this Lease.

(c) Upon request by the Tenant, the Landlord will use its reasonable efforts to obtain a non-disturbance agreement from all Mortgagees holding Encumbrances registered in priority to this Lease. The Tenant will reimburse the Landlord for all costs (including legal fees) incurred by the Landlord in obtaining non-disturbance agreements and acknowledges that the non-disturbance agreements will, if required, be on the Mortgagee's standard form.

#### **Section 10.03 ATTORNEY**

The Tenant will, upon request of the Landlord, execute and deliver promptly any statements, instruments and certificates required to carry out the intent of Sections 10.01 or 10.02. If 10 days after the date of a request by the

Landlord, the Tenant has not executed the same, the Tenant hereby irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver in the name of the Tenant the instruments or certificates.

#### **Section 10.04 FINANCIAL INFORMATION**

The Tenant will, upon request, provide the Landlord with such information as to the Tenant's or the Indemnifier's financial standing and corporate organization as the Landlord or the Mortgagee, both acting reasonably, requires.

#### **Section 10.05 SEVERANCE**

The Tenant covenants that notwithstanding any statutory right to the contrary, it will not object to the severance of any portion of the Shopping Centre lands for lease, sale or mortgage purposes or the registration in priority to the Tenant's interest of any easements, rights-of-way or similar agreements affecting the severed lands and/or the Shopping Centre lands.

### **ARTICLE XI**

#### **DEFAULT**

#### **Section 11.01 RIGHT TO RE-ENTER**

If and whenever:

(a) the Tenant fails to pay Rent on the day or dates appointed for payment (provided the Landlord first gives 5 days' written notice to the Tenant of the Tenant's failure for the first failure to pay Rent in any Rental Year, with the Tenant specifically acknowledging that no notice will be required in connection with the second or any subsequent failure to pay Rent in any Rental Year); or

(b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subparagraph (c) for which no notice shall be required), provided the Landlord first gives the Tenant 10 days' written notice of the Tenant's failure (or such shorter period of time as is otherwise provided in this Lease), and the Tenant within the 10 day (or shorter) period fails to commence diligently and thereafter to proceed diligently to cure its failure; or

(c) the Tenant or any affiliated company or any Indemnifier becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; a receiver or a receiver-manager is appointed for all or a portion of the Tenant's or any affiliated company's or the Indemnifier's property; the Tenant or any affiliate is in default of any of its obligations under an offer to lease/lease for other premises owned by the Landlord or an affiliate of the Landlord; any steps are taken or any action or proceedings are instituted by the Tenant or by any other party to dissolve, wind-up or liquidate of the Tenant or its assets; the Tenant makes a bulk sale of its assets on the Leased Premises other than in conjunction with a permitted Transfer and in compliance with the Bulk Sales Act (Ontario); the Tenant abandons the Leased Premises, or sells or disposes of the trade fixtures, goods or chattels of the Tenant or removes them from the Leased Premises so that there would not in the event of such sale or disposal be sufficient trade fixtures, goods or chattels of the Tenant on the Leased Premises subject to distress to satisfy all Rent due or accruing hereunder for a period of at least 3 months; the Leased Premises become and remain vacant for a period of 5 consecutive days; the Tenant effects or permits a Transfer without the Landlord's consent where required; this Lease or any of the Tenant's assets are taken under any writ of execution; or re-entry is permitted under any other terms of this Lease,

then the Landlord, in addition to any other rights or remedies available to it, has the immediate right of re-entry upon the Leased Premises and it may repossess the Leased Premises and enjoy them as of its former estate and may expel all Persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned.

#### **Section 11.02 RIGHT TO RELET**

(a) If the Landlord elects to re-enter the Leased Premises, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may without terminating this Lease make any alterations and repairs as are necessary in order to relet the Leased Premises. Upon each reletting all rent received by the Landlord will be applied, first to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of reletting including brokerage fees and solicitor's fees and the costs of alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, will be held by the Landlord and applied in payment of future Rent as it becomes payable hereunder. If there is any deficiency between the rent received on a reletting and the Rent payable under this Lease, then the Tenant will be liable for the deficiency. No re-entry or taking possession of the Leased Premises will be construed as an election on the Landlord's part to terminate this Lease unless a written notice of that intention is given to the Tenant, and

the Landlord reserves the right to subsequently terminate this Lease for the previous breach where it elected not to initially terminate.

(b) If the Landlord terminates this Lease, in addition to other remedies available, it may recover from the Tenant all damages which the Landlord incurs by reason of the Tenant's breach, including the cost of recovering the Leased Premises, all solicitor's fees and including the worth at the time of the termination of the excess, if any, of the amount of Minimum Rent and Additional Rent required to be paid pursuant to this Lease for the remainder of the Term over the Minimum Rent and Additional Rent payable to the Landlord upon the reletting of the Leased Premises, if applicable, for the remainder of the Term, all of which amounts will be immediately due and payable by the Tenant to the Landlord. In any of the events referred to in Section 11.01(a), (b) or (c), in addition to all other rights, the full amount of the current month's instalments of Minimum Rent and Additional Rent payments, together with the next 3 months' instalments of Minimum Rent and Additional Rent, all of which will be deemed to be accruing due on a day-to-day basis, will immediately become due and payable as accelerated rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

#### **Section 11.03 EXPENSES**

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent, or because of the breach of any other of the Tenant's obligations, the Tenant will pay to the Landlord all expenses incurred therefor, including a solicitor's fee (on a solicitor and his client basis), unless a court otherwise awards. The Tenant will also pay all costs, expenses and legal fees (on a solicitor and his client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease.

#### **Section 11.04 WAIVER OF EXEMPTION FROM DISTRESS**

Notwithstanding anything contained in Section 30 of the Landlord and the Tenant Act (Ontario), or any statute or provision subsequently passed to take the place of or amend the Act, none of the goods and chattels of the Tenant which are on or have at any time been on the Leased Premises will be exempt from levy by distress for Rent in arrears by the Tenant.

#### **Section 11.05 LANDLORD'S RIGHTS**

If the Tenant fails to pay when due any Additional Rent payable to third parties, the Landlord, after giving 5 days' notice in writing to the Tenant, may, but will not be obligated to, pay all or any part of the same. If the Tenant is in default in the performance of any of its other covenants or obligations under this Lease, the Landlord may, at its option, after giving such notice as it considers sufficient (or without notice in the case of an emergency), perform or cause to be performed any of the unperformed covenants or obligations. All expenses incurred and expenditures made by the Landlord plus a sum equal to 15% representing the Landlord's overhead will be paid by the Tenant within 5 days after demand and collectible in the same manner as Rent.

#### **Section 11.06 SECURITY DEPOSIT**

- (a) (i) The Tenant has deposited Four Thousand, Two Hundred and Eighty Dollars (\$4,280.00) inclusive of GST (the "Security Deposit") with the Landlord. The Security Deposit will be held by the Landlord, throughout the Term, without liability for interest, as security for the faithful performance by the Tenant of all of its covenants and obligations.
- (ii) If any portion of the Rent is at any time overdue and unpaid, or if the Tenant fails to keep and perform any terms, covenants and conditions of this Lease, then the Landlord at its option may, in addition to any other rights it has, appropriate and apply the entire Security Deposit, or as much of it as is necessary to compensate the Landlord for loss of damage sustained or suffered by the Landlord due to the Tenant's breach. If the entire Security Deposit, or any portion of it, is appropriated and applied by the Landlord, then the Tenant will, upon demand, immediately remit to the Landlord a sufficient amount in cash to restore the Security Deposit to the original sum deposited. If the Tenant complies with all of the terms, covenants and conditions and promptly pays all of the Rent, the Security Deposit will be returned in full to the Tenant within 60 days after the end of the Term.
- (iii) The Landlord may deliver the Security Deposit to any purchaser of the Landlord's interest in the Leased Premises or the Shopping Centre, in which case, the Landlord is thereafter relieved of all further liability with respect to the Security Deposit.
- (iv) If the Tenant is in default under this Lease more than 2 times within any 12 month period, irrespective of whether or not such default is cured, then, without limiting the Landlord's other rights and remedies provided for in this Lease or at law or equity, the Security Deposit shall automatically be increased by an amount equal to 3 months Minimum Rent which shall be paid by the Tenant to the Landlord forthwith on demand.
- (b) ~~The Tenant will furnish to the Landlord an irrevocable letter of credit from one of the six largest Canadian chartered banks, in a form acceptable to the Landlord. The letter of credit will be for a term of at least one (1) year renewable annually throughout the Term at least thirty (30) days prior to the expiry of the letter of credit (failing which it may be drawn in full by the Landlord) and for a principal amount equal to the aggregate Minimum Rent and Additional Rent payable during the first year of the Term. The letter of credit will be held by the Landlord as additional security for the performance by the Tenant of its obligations under this Lease. Upon receipt of such letter of credit, the Landlord~~

will refund the last month's advance rent and security deposit, if any, being held pursuant to Sections 2.03 and 11.06(a) of this Lease.

#### **Section 11.07 REMEDIES GENERALLY**

Mention in this Lease of any particular remedy of the Landlord does not preclude the Landlord from any other remedy, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy will be exclusive or dependent upon any other remedy, and the remedies are cumulative and not alternative.

#### **Section 11.08 LANDLORD'S SECURITY INTEREST**

(a) As security for the Tenant's performance of its obligations under this Lease including, without limitation, the payment of Rent and Sales Taxes, the Tenant grants to the Landlord by way of security interest, mortgage, pledge, charge, assignment and hypothec a continuing, specific and immediately attaching security interest (the "Security Interest") in all of the Tenant's present and after-acquired personal property including, without restriction, all inventory, fixtures, chattel paper, documents of title, goods, instruments, money, securities, accounts and intangibles (each as defined in the personal property security legislation of the Province) and any improvements which the Tenant effects on or in respect of the Leased Premises (collectively the "Collateral"). The Tenant may, however, sell or dispose of its inventory to retail customers in the ordinary course of business in accordance with this Lease without the Landlord's consent prior to the occurrence of and default by the Tenant in the performance of any of its obligations under this Lease (an "Event of Default"). The Tenant will promptly execute whatever additional documents and will provide whatever additional information is required from time to time by the Landlord to perfect this Security Interest. The Tenant authorizes the Landlord to file a financing statement or any other form of document required to evidence the Landlord's Security Interest and to protect and preserve its Security Interest. The Landlord's Security Interest is in addition to and not in lieu of its right of distress or any of its other rights under this Lease or at law.

(b) All cash allowances, inducement payments and the value of any other benefit paid to or conferred on the Tenant by or on behalf of the Landlord in connection with the Leased Premises or this Lease are recoverable in full as Additional Rent and are payable to the Landlord on demand should an Event of Default occur. The Landlord's Security Interest extends to the Tenant's obligations under this Section 11.08(b).

(c) The Landlord may enforce its Security Interest upon an Event of Default in the manner set out in Schedule "J" or in any other manner authorized by law for a secured creditor.

#### **Section 11.09 RENTAL AGREEMENT**

The Tenant acknowledges that (a) the Rent payable by the Tenant has been established through negotiation and mutual agreement between the Landlord and Tenant, (b) the Tenant itself has determined that the amount of Rent payable and the Leased Premises are suitable for its intended business purposes, (c) the Landlord has not made any representations, warranties or other statements or assurances regarding the volume of business, profit or cashflow which the Tenant can expect to generate from the Leased Premises, (d) the Rent payable under this Lease may at times throughout the Term be greater than or less than the then current fair market rental for the Leased Premises, and (e) the Tenant's continued payment of Rent in full, without threat, condition, request or other indication that the Landlord will, or will be required to or will be requested to reduce, abate or otherwise receive a lesser amount (even if by way of deferment) on account of Rent, was a material factor inducing the Landlord to lease the Leased Premises to the Tenant. In consideration of the foregoing, the Tenant agrees that if at any time during the Term or any renewals the Tenant forwards a written notice, request or other communication whereby the Tenant either (i) advises the Landlord that it is a requirement of the Tenant's continued occupancy of the Leased Premises, (ii) requires that the Landlord agree as a condition of receiving or cashing any Rent payments, or (iii) otherwise requests, that the Landlord renegotiate the Lease or modify, whether permanently or temporarily, the Tenant's obligations such that the Landlord will accept or receive a reduced, abated or deferred (in whole or in part) Rent payment(s), then such action by the Tenant will be deemed to constitute an irrevocable offer by the Tenant, open for acceptance by the Landlord for a period of 90 days after the Landlord's receipt of the Tenant's written communication, to surrender the Leased Premises to the Landlord. If the Landlord accepts the Tenant's offer, the Lease will be terminated effective on the date specified in the Landlord's acceptance notice, and on the termination date, the parties will be released from all further obligations under this Lease except for any Rent then in arrears, any readjustments owing on account of Additional Rent, and the Tenant's obligation to pay the Landlord an amount equal to 12 months Minimum and Additional Rent payable under this Lease representing a genuine pre-estimate of the costs to be incurred by the Landlord in reletting the Leased Premises.

### **ARTICLE XII**

#### **MISCELLANEOUS**

#### **Section 12.01 RULES AND REGULATIONS**

The Rules and Regulations adopted and promulgated by the Landlord from time to time including, without limitation, those set out in Schedule "D", are made a part of this Lease as if they were embodied herein, and the Tenant will comply with and observe them. The Landlord reserves the right from time to time to amend or supplement the Rules and Regulations applicable to the Leased Premises or the Shopping Centre as in the Landlord's judgment are from time to time needed for the safety, care, cleanliness and efficient operation of the Shopping Centre. Notice of the Rules and Regulations and amendments and supplements, if any, will be given to the Tenant and the Tenant will thereupon comply with and observe them provided that they do not contradict any terms, covenants and conditions of this Lease.

## Section 12.02 EMPLOYEE PARKING

The Landlord may, at its discretion, provide for an employee parking area and/or delivery area in the parking facilities of the Shopping Centre, and the Tenant, and its employees, agents and suppliers are to use only these designated areas for their designated purpose.

## Section 12.03 INTENT AND INTERPRETATION

### (a) NET LEASE

The Tenant acknowledges that it is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly herein set out, that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof and the Tenant will pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises.

### (b) OBLIGATIONS AS COVENANTS

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

### (c) PARTIAL INVALIDITY

If any term, covenant or condition of this Lease or its application is to any extent held or rendered invalid, unenforceable or illegal, then that term, covenant or condition: (i) is deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of the Lease or any part thereof; and (ii) continues to be applicable to and enforceable to the fullest extent permitted by law except to the extent that its application has been held or rendered invalid, unenforceable or illegal. Neither party is obliged to enforce any term, covenant or condition of this Lease against any Person, if or to the extent by so doing, such party is caused to be in breach of any laws, rules, regulations and enactments from time to time in force.

### (d) ENTIRE AGREEMENT

This Lease and the Schedules, and Riders, if any, attached together with the Rules and Regulations set forth all covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and the Shopping Centre and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. No alteration or amendment to this Lease will be binding upon the Landlord or the Tenant unless in writing and signed by the Tenant and by an authorized representative of the Landlord.

### (e) GOVERNING LAW

This Lease will be construed in accordance with and governed by the laws of the Province of Ontario.

### (f) TIME OF THE ESSENCE

Time is of the essence of this Lease and of every part of it.

### (g) RENTAL ADJUSTMENT

The Landlord's failure or delay in notifying the Tenant of any rental adjustments, including, without limitation, adjustments to Minimum Rent and readjustments on account of estimated Additional Rent, will not constitute a waiver of the Landlord's rights nor affect the Tenant's obligations to pay such adjusted amounts. Notwithstanding any other provision of this Lease, no claim for any readjustment in respect of any payment made by the Tenant under this Lease shall be made unless claimed in writing prior to the expiration of one (1) year from the date of said payment. Where the Minimum Rent is increased either through mutual agreement, an adjustment formula specified in this Lease or through arbitration proceedings, then interest will become payable retroactively from the date upon which the adjustment is to take effect, with interest calculated at an annual rate one (1) percentage point above the average daily prime bank commercial lending rate charged during such Rental Year by the Landlord's chartered bank, calculated, adjusted and compounded monthly.

### (h) LIMITATION

Any claim, demand, right or defense by the Tenant that arises out of this Lease or the negotiations that preceded this Lease, including any claim or alleged claim for any readjustment to the Rentable Area of the Leased Premises or any overpayment of Rent, shall be barred unless the Tenant commences an action thereon with 1 year after the date of the inaction, omission, event or action that gave rise to such claim, demand, right or defence. In addition, the Tenant covenants that it will not object to any applications to: (a) amend the Official Plan designation(s) of the Shopping Centre or any adjacent or contiguous lands owned by the Landlord or an affiliate, (b) amend the zoning bylaw(s) applicable to the Shopping Centre or any adjacent or contiguous lands owned by the Landlord or an affiliate, (c) obtain minor variances or committee of adjustment consents pertaining to the Shopping Centre or any adjacent or contiguous lands owned by the Landlord or an affiliate or (d) amend the site plan or site



plan agreement(s) pertaining to the Shopping Centre or any adjacent or contiguous lands owned by the Landlord or an affiliate. A breach by the Tenant of the covenant contained in this paragraph shall be an event of default under this lease entitling the Landlord to exercise all remedies provided for herein.

(i) SOCIAL INSURANCE NUMBER

The Tenant hereby consents to the use by the Landlord of the Tenant's Social Insurance Number for identification purposes.

(j) AGENT

The Tenant acknowledges that where the Landlord is not the registered owner of the Shopping Centre, then the Landlord has executed this Lease solely in its capacity as manager and/or agent on behalf of the owner(s) of the Shopping Centre.

(k) GST REGISTRATION NUMBERS

(i) The Landlord confirms that its GST Registration Number is 87120 0366 RT0001.

(ii) The Tenant confirms that its GST Registration Number is 10933-0373.

(l) COMMISSIONS

It is acknowledged and agreed that any commission or fee, caused by the action of the Tenant that may be payable to any person resulting from the execution of the Lease, shall be payable by the Tenant and the Tenant shall and does hereby indemnify and hold harmless the Landlord in the event of any claims relating thereto.

(m) CONFIDENTIALITY, PERSONAL INFORMATION

Any Tenant or Indemnifier that is an individual person consents to the collection and use of their personal information, as provided directly or collected from third parties, for the purposes of the Landlord considering the Tenant's offer to lease and/or lease and determining the suitability of the Tenant or Indemnifier, as applicable, (both initially and on an on-going basis), including the disclosure of such information to existing and potential lenders, investors and purchasers.

**Section 12.04 SURVIVAL OF COVENANTS**

Any obligations of the Landlord or Tenant to make any payments to or make any readjustments on account of Rent will survive the expiration or earlier termination of this Lease.

**Section 12.05 OVERHOLDING - NO TACIT RENEWAL**

If the Tenant remains in possession of the Leased Premises after the end of the Term without having signed a new lease or an extension of Term agreement, there is no tacit renewal of this Lease or the Term, notwithstanding any statutory provisions or legal presumptions to the contrary, and the Tenant will be deemed to be occupying the Leased Premises as a tenant from month-to-month, terminable by the Landlord on at least 30 days' prior written notice, at a monthly Minimum Rent equal to twice the monthly amount of Minimum Rent payable during the last month of the Term, and otherwise, upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of Percentage Rent and Additional Rent) so far as these are applicable to a monthly tenancy.

**Section 12.06 SUCCESSORS**

All rights and liabilities under this Lease extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and assigns of the Tenant, as the case may be. No rights, however, will enure to the benefit of any Transferee of the Tenant unless the Transfer has been consented to or is otherwise permitted. If there is more than one Tenant, they are all bound jointly and severally.

**Section 12.07 TENANT PARTNERSHIP**

If the Tenant is a partnership (the "Tenant Partnership") each Person who is presently a member of the Tenant Partnership, and each Person who subsequently becomes a member of any successor Tenant Partnership will be and continue to be liable jointly and severally for the full and complete performance of, and will be and continue to be subject to, the terms, covenants and conditions of this Lease, whether or not the Person ceased to be a member of the Tenant Partnership or successor Tenant Partnership.

**Section 12.08 WAIVER**

The waiver by either party of any breach of the other is not deemed to be a waiver of any subsequent breach of the same or of any other term, covenant or condition. The subsequent acceptance of Rent by the Landlord or payment of Rent by the Tenant is not deemed to be a waiver of any preceding breach by the Tenant or the Landlord, as the case may be, regardless of the Landlord's or Tenant's knowledge of the preceding breach at the time of acceptance or payment of the Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless the

waiver is in writing by the Landlord. No delivery by the Tenant or acceptance by the Landlord of any keys shall be deemed to be or construed as a surrender or other termination of the Lease or the Landlord's acceptance of a surrender or termination, unless a written surrender agreement has been entered into by both the Tenant and the Landlord.

#### **Section 12.09 ACCORD AND SATISFACTION**

No payment by the Tenant or receipt by the Landlord of a lesser amount than the monthly payment of Rent stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgment of full payment or accord and satisfaction, and the Landlord may accept and cash any cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent due or to pursue any other remedy provided in this Lease.

#### **Section 12.10 FORCE MAJEURE**

Notwithstanding anything in this Lease, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles; inability to procure materials or services; power failure; restrictive governmental laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the performance of that term, covenant or act is excused for the period of the delay and the party delayed will be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of the delay. However, the provisions of this Section do not operate to excuse the Tenant from the prompt payment of Rent.

#### **Section 12.11 NOTICES**

(a) Any notice, demand, request or other instrument which may be or is required to be given under this Lease (a "Notice") will be delivered in person or sent by registered mail postage prepaid and will be addressed (i) if to the Landlord, to BCE Place, Canada Trust Tower, 161 Bay Street, 23<sup>rd</sup> Floor, Toronto, Ontario M5J 2S1, Attention: Leasing Department, or to such other Person or at such other address as the Landlord designates by written notice, and (ii) if to the Tenant, to the Leased Premises or, at the Landlord's option, to the Tenant's head office at 286 York Road, Dundas, Ontario, L9H 6L8, Attention: Mr. Bruce Bergez. A Notice is conclusively deemed to have been received on the day upon which it is delivered or sent via facsimile, or, if mailed, then 3 Business Days following the date mailing, as the case may be. Either party may give written notice of any change of its address and thereafter the new address is deemed to be the address of that party for the giving of notices. If the postal service is interrupted or is substantially delayed, all Notices will be delivered.

(b) Acceptance and execution of this document may be validly effected by transmittals via facsimile or by one or more parties signing facsimile transmissions of documents containing the signatures of the other party(ies) to this document.

#### **Section 12.12 REGISTRATION**

Neither the Tenant nor any one on the Tenant's behalf or claiming under the Tenant will register this Lease against the lands or any part thereof comprising the Shopping Centre or the Leased Premises. If either party intends to register a document for the purpose only of giving notice of this Lease (the "Notice of Lease"), then, upon request, and if required by the Land Registry Office both parties will join in the execution of the Notice of Lease which will (a) be prepared by the Landlord or its solicitors at the Tenant's expense, and (b) only describe the parties, the Leased Premises and the Commencement Date and the expiration date of the Term, and any options to renew. In the event a Notice of Lease is registered against the lands or any part thereof comprising the Shopping Centre or the Leased Premises, the Tenant shall be responsible on or before the expiry of earlier termination of this Lease, to sign and register a discharge (or other instrument having similar effect) of the Notice of Lease at its sole cost and expense. Until the Notice of Lease has been discharged and the Landlord notified in writing of such discharge, the Tenant acknowledges that it will remain responsible for payment of Rent calculated on a per diem basis, as applicable, from the expiry of this Lease or earlier termination thereof to the date the Notice of Lease is discharged and notice provided to the Landlord as aforementioned.

#### **Section 12.13 COMPLIANCE WITH THE PLANNING ACT**

It is a condition of this Lease that the subdivision control provisions of the Planning Act (Ontario), and amendments thereto, be complied with if they apply. If the provisions of the Planning Act do apply, then until any necessary consent to the Lease is obtained, the Term (including any extensions thereof) and the Tenant's rights and entitlement granted by this Lease are deemed to extend for a period not exceeding 21 years less 1 day from the Commencement Date.

#### **Section 12.14 EXPANSION OF THE SHOPPING CENTRE**

Notwithstanding anything to the contrary contained in this Lease, the Landlord may construct additional leasable premises and Common Areas and Facilities in the Shopping Centre (the "Expansion"), in which event the following apply:

(a) After sixty (60) days' written notice to the Tenant, the Landlord may enter the Leased Premises to perform, at the Landlord's cost, construction and related activities required for the Expansion (the "Expansion Work"). The Expansion Work may include, without limitation, reinforcement of the walls and ceiling in the Leased Premises,

construction of additional structural columns in the Leased Premises, alteration of electrical, mechanical, plumbing, sprinkler and other base building systems located in or serving the Leased Premises and modification (including expansion and reduction) of portions of the Leased Premises and the Common Areas and Facilities. The Landlord will, after finishing the Expansion Work, restore the Leased Premises as far as practicable to the condition in which they existed prior to the Expansion Work.

(b) The Landlord will complete the Expansion Work reasonably expeditiously taking appropriate measures to minimize interference with the Tenant's business. The Shopping Centre will remain temporarily disrupted. The Landlord will not be liable for any loss, damages or liabilities incurred by the Tenant, including without limitation, loss of business or profits lost or claimed by the Tenant to be lost as a result of the Expansion or the Expansion Work.

(c) If, as a result of the Expansion Work, The Tenant must cease business operations entirely in the Leased Premises, then all Minimum Rent, Percentage Rent and Additional Rent will abate from the date the Tenant ceases business operations entirely in the Leased Premises until the Tenant is again able to carry on business in any part of the Leased Premises.

(d) If the Landlord determines that it must permanently use part of the Leased Premises (the "Required Area"), then it may send written notice to the Tenant (the "Notice") requiring the Tenant to vacate the Required Area on a date (the "Possession Date") at least sixty (60) days from the Tenant's receipt of the Notice. In that event, the Tenant will vacate the Required Area on the Possession Date, but this Lease will nevertheless remain in effect with respect to the remainder of the Leased Premises, and Rent will be reduced on a pro rata basis.

(e) If it is determined (as mutually agreed between the Landlord and the Tenant, or failing agreement, as determined by an independent retail business consultant or architect selected by the Landlord, whose decision will be binding) that after the loss of the Required Area, the operation of the Tenant's business will be materially and detrimentally affected so that the Tenant will be unable to operate its business in the balance of the Leased Premises, the Tenant may (by written notice given to the Landlord within thirty (30) days after the Tenant has received the Notice), terminate this Lease on the Possession Date. In that event, sixty (60) days after the Tenant vacates the Leased Premises in accordance with the terms of this Lease, the Landlord will pay the Tenant the undepreciated capital cost of those leasehold improvements installed in the Leased Premises by the Tenant at the Tenant's expense which the Tenant is required by this Lease to leave in the Leased Premises, calculated for each item on the basis of the initial cost thereof to the Tenant (as substantiated to the Landlord by reasonable evidence) depreciated for the period which shall have elapsed between its installation and the date the Tenant terminates this Lease pursuant to this paragraph, on the basis of an assumed rate of depreciation on a straight-line basis to zero (and at least to the maximum extent permitted under the Income Tax Act of Canada) over (i) the normal life of each such item, (ii) the Term of the Lease remaining unexpired at the date of its installation, or (iii) five (5) years, whichever is the shortest period of time, less any residual or salvage value if the Tenant is permitted or required to remove it and less the amount of any encumbrance thereon (but this shall not imply any authority to the Tenant to create any encumbrance prohibited by this Lease).

#### Section 12.15 QUIET ENJOYMENT

If the Tenant pays the Rent and observes and performs all its obligations under this Lease, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the Term hereby demised without hindrance or interruption by the Landlord, or any other Person lawfully claiming by, through or under the Landlord, unless otherwise permitted under the terms of this Lease. The exercise by the Landlord of any of its rights under this Lease will be deemed not to constitute a breach of quiet enjoyment.

#### Section 12.16 EXTENSION OF TERM

If the Tenant:

- (i) pays the Rent as and when due and punctually observes and performs its covenants, obligations and agreements under and in accordance with the terms of this Lease;
- (ii) is not in breach or default under the terms of this Lease;
- (iii) gives the Landlord at least twelve (12) months prior to the expiry of the initial Term of its intention to extend the Term;
- (iv) is SHS Optical Ltd. and is itself in physical occupation of and conducting business in the whole of the Leased Premises; and
- (v) the Tenant has paid Percentage Rent in each of the two (2) preceding Rental Years of not less than twenty-five percent (25%) of the annual Minimum Rent (the Landlord reserving, in its sole discretion, its right to waive compliance with any or all of the foregoing conditions to the Tenant's exercise of these options to extend such waiver to be evidenced by the Landlord's written acceptance of the Tenant's exercise of the extension option),

then the Tenant will have the right to extend the Term upon the expiry of the initial Term for a further period of five (5) years (the "Extended Term") upon the same terms and conditions as are set out in this Lease, except that:

- (a) there will be no further right to extend the Term;
- (b) any Fixturing Period or requirement on the Landlord's part to do any Landlord's Work or pay to the Tenant any construction allowance, inducement, loan or other amount in connection with this Lease or improvements installed in the Premises, set out in this Lease, shall not apply to the Extended Term and the Tenant agrees to take the Leased Premises on an "as is" basis;
- (c) if the Landlord requires, the Tenant will promptly (1) execute a new net lease for the Extended Term on the Landlord's then current standard form of net lease for the Shopping Centre, which form may include the then current definitions and formulae for the sharing of the Landlord's costs and expenses of operating the Shopping Centre such by way of example those that are set out in Section 3.03, the allocation of Taxes and other costs and charges relating to the operation of the Shopping Centre, or (2) execute an extension agreement prepared by the Landlord at the Tenant's expense, giving effect to the Extended Term;
- (d) the Tenant agrees to refurbish the Leased Premises at its own cost within the first six (6) months of the Extended Term, in accordance with the Landlord's then-current design criteria; and
- (e) (i) the annual Minimum Rent for the first year of the Extended Term shall be mutually

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agreed upon between the Landlord and the Tenant based upon the then-prevailing fair market net rental for similar premises in similar vicinities at the commencement of the Extended Term, provided that the Minimum Rent for the first year of the Extended Term shall in no event be less than the annual Minimum Rent and Percentage Rent payable by the Tenant for the last twelve (12) months of the initial Term, and if the parties are unable to agree on the Minimum Rent rate by no later than three (3) months prior to the expiry of the initial Term, at the Landlord's option either (1) this option to extend shall be null and void; or (2) the Minimum Rent shall be determined by a single arbitrator in accordance with the Arbitrations Act of Ontario as amended or replaced. If submitted to arbitration in accordance with the foregoing provisions, the arbitrator's decision shall be final and binding with no further appeal and the costs of the arbitration shall be shared equally by the parties unless the arbitrator determines that it is equitable to do otherwise in light of the circumstances. If the arbitration decision is not rendered prior to the commencement of the Extended Term, the Tenant shall pay Minimum Rent at the rate applicable to overholding as set out in Section 12.05 and within ten (10) days after the Minimum Rent for the Extended Term is determined, the Tenant shall pay to the Landlord any amount retroactively owing from the commencement of the Extended Term, together with interest thereon at the rate set out in Section 2.12 calculated from the first day of the Extended Term to the date of payment; and

(ii) if the Landlord has not deemed the option to extend null and void as set out in (i) above, the Minimum Rent for the second and subsequent Rental Years of the Extended Term will be the annual Minimum Rent payable for the immediately preceding Rental Year increased by the greater of (1) the Minimum Rent for the immediately preceding Rental Year increased by six percent (6%); or (2) the percentage increase in CPI from the last calendar month before the commencement of the then-current Rental Year.

Notwithstanding anything to the contrary, if the Tenant has made three (3) or more late payments of Rent at any time during the initial Term, then from and after the date of such third late payment, this Section and the Tenant's right to exercise the option to extend shall, at the Landlord's sole option, shall automatically be null and void and of no further force or effect without the requirement of the Landlord to notify the Tenant of the revocation of the option to extend the Term.

IN WITNESS WHEREOF the Landlord and the Tenant have signed and sealed this Lease

SIGNED, SEALED AND DELIVERED  
in the presence of

FIRST CAPITAL (ST. CATHARINES)  
CORPORATION

(Landlord)

Per: [Signature]

Name: Monique M. Dubord  
Title: Vice President

c/s

Per: [Signature]

Name: Marta O. Lewycky  
Title: Vice President, Legal Affairs

I/We have authority to bind the Corporation.

SHS OPTICAL LTD.

(Tenant)

Per: [Signature]

Name: Bence Bence  
Title: CFO

c/s

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

Name:  
Title:

I/We have authority to bind the Corporation.

### FLOOR PLAN OF THE SHOPPING CENTRE

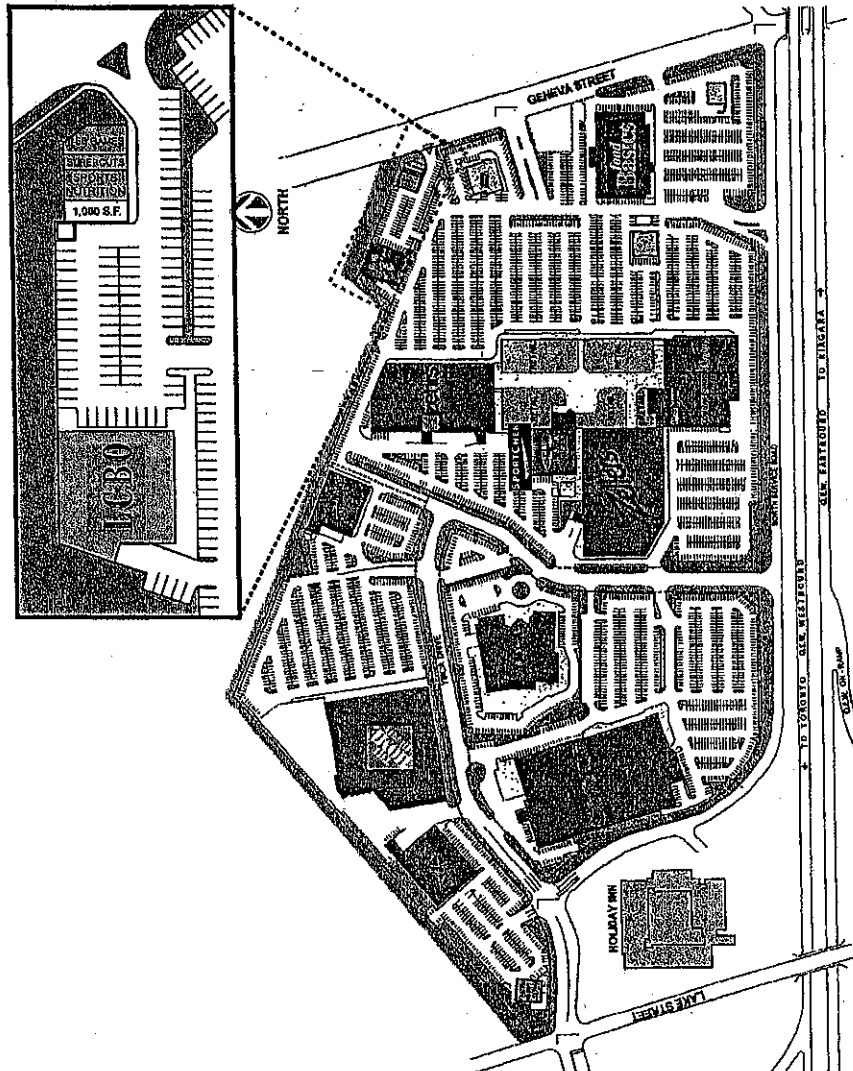
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FAIRVIEW MALL  
ST. CATHARINES, ONTARIO

# SCHEDULE "A-1"

## SITE PLAN OF THE SHOPPING CENTRE

TENANT: SHS Optical Ltd.  
 DATE: June 16, 2005



THIS SITE PLAN IS PREPARED SOLELY FOR THE PURPOSE OF IDENTIFYING THE APPROXIMATE LOCATION OF THE BUILDING'S PRESENTLY CONTEMPLATED BY THE OWNER'S LAND, AND BUILDING DIMENSIONS, ACCESS AND PARKING AREAS. EXISTING TENANT LOCATIONS AND IDENTITIES ARE SUBJECT TO CHANGE AT THE OWNER'S DISCRETION.

**Shopping for Everyday Life.**  
 For Leasing Enquiries Contact:  
 Evan Williams  
 Director of Leasing, Capital Centre  
 Tel: 1-877-504-4114  
 Email: ewilliams@capitalcentre.ca

**FAIRVIEW MALL**  
**ST. CATHARINES, ONTARIO**



## SCHEDULE "B"

### CONSTRUCTION OF THE LEASED PREMISES

TENANT: SHS Optical Ltd.

DATE: June 16, 2005

#### I. TENANT'S ACKNOWLEDGEMENTS

- 1.01 Manual - The Landlord will provide to the Tenant a manual containing design criteria (the "Design Criteria") for the Tenant's Work as well as procedures, rules and regulations (the "Manual") relating to the construction of Leasable Premises in the Shopping Centre and the Tenant agrees to comply with and to cause its contractors and sub-contractors to comply with the Manual in addition to the other requirements set out in this Schedule. The Landlord may waive any of the Design Criteria, or introduce additional or revised Design Criteria at any time. In addition, the Landlord may, in its discretion, determine not to implement or establish a Manual and/or the Design Criteria, and in such case, all references throughout this Offer to the Manual and/or Design Criteria, as the case may be, will be deemed deleted and all procedures, rules, regulations and other requirements previously governed or established or to have been governed or established by the Manual and/or the Design Criteria will be replaced by procedures, rules, regulations and other requirements established from time to time by the Landlord's Project Manager or Architect which will have the same force and effect as if contained in the Manual and/or the Design Criteria, as the case may be.
- 1.02 Timely Performance and Security for Performance by the Tenant — The time periods set out in the Manual and this Schedule for completing the Tenant's obligations represent maximum allowable time periods. The Tenant agrees to proceed expeditiously and to complete the Tenant's obligations as much in advance of the maximum allowable time periods as possible. Despite the time periods provided for in Article IV of this Schedule, if the Landlord establishes an Official Opening Date for the Shopping Centre or for a phase or section of it in which the Leased Premises are located, the Tenant will schedule and complete its design and construction work so as to enable the Leased Premises to open on that Official Opening Date.
- 1.03 Access — The Landlord will be entitled to continue with its construction activities in the Leased Premises and in the Shopping Centre at all times, including the Fixturing Period.
- 1.04 Architect's Opinion — The opinion in writing of the Architect or the Landlord's Project Manager is binding on both the Landlord and the Tenant respecting all matters of dispute regarding the Landlord's Work and the Tenant's Work, including the state of completion and whether or not work is completed in a good and workmanlike manner and in accordance with the Manual and this Schedule.
- 1.05 Liens — The Tenant will not allow any construction liens or other liens or encumbrances to be registered against or otherwise affect the Shopping Centre or the Leased Premises, or any part of them or the Landlord's or the Tenant's interest in the Leased Premises in respect of materials supplied or work constituting part of the Tenant's Work, and if the Tenant fails to promptly discharge or cause any such lien to be discharged, then in addition to any other rights or remedies of the Landlord, the Landlord may, but will not be obliged to, discharge the lien by paying the amount claimed into court or directly to the lien claimant, and the amount so paid and all costs and expenses (including the legal fees and expenses) plus interest at the rate of two (2) percentage points in excess of the Prime Rate, calculated daily and compounded monthly, will be immediately due and payable by the Tenant to the Landlord on demand as Additional Rent.

#### II. LANDLORD'S WORK

- 2.01 Prior to the commencement of Fixturing Period, the Landlord will on a "once only" basis, substantially complete the following Landlord's Work (which Landlord's Work is not included in the context of the Landlord's rebuilding or repair obligation with respect to the Premises under Section 8.01 of the Lease, such Landlord's Work being limited to the items set out in Section 2.01(a) below), at its expense and in accordance with the Landlord's plans and criteria for the Shopping Centre, using materials and contractors chosen by the Landlord in its sole discretion:
- (a) install one (1) two (2) piece washroom;
  - (b) install a separate electrical panel; hook-up all existing lights to panel;
  - (c) repair damaged ceiling;
  - (d) cover base or alternatively repair damage caused by the new demising wall;
  - (e) complete interior demising wall to the window, and repair the bulkhead above the window;
  - (f) install demising walls and doorway for the refractionist office;
  - (g) install four (4) receptacles along the new demising walls; and
  - (h) install new HVAC hook-up to the existing duct work.
- 2.02 Floors — Concrete floor slab with smooth trowelled finish designed to support live load up to one hundred



(100) pounds per square foot uniformly distributed.

- 2.03 Demising Walls — The demising walls shall consist of 3 5/8" metal studs, 16" oc., 5/8" gypsum board, both sides (to underside) of steel deck, taped, sanded and ready for paint finish up to ten (10) feet. Structural columns may, at the Landlord's option, be exposed or clad in drywall or masonry.
- 2.04 Ceilings — No ceiling shall be provided by the Landlord within the Leased Premises other than the exposed structure.
- 2.05 Service Doors — A 3' x 7' service door to the Leased Premises shall be provided only if required by the applicable codes complete with hardware in a location designated by the Landlord, as shown on Outline Drawings.
- 2.06 Electrical Service — An electrical service to accommodate a lighting load of six (6) watts per square foot plus the HVAC fan coil unit and electric heater duct load to the standards as detailed in Section 2.08(a). The service will be located in the Landlord's electrical room and the conductors will be brought to the entry point terminating at a main fused disconnect switch in the Leased Premises at the approximate location shown on the Outline Drawings. Service will be 600-volt, 3-phase, 3-wire, 60-cycle alternating current. In the event the Landlord elects to provide the Tenant with 200 volt service the Tenant shall, within five (5) days after receipt of an invoice, reimburse the Landlord for \$6,000.00 on account of the transformer and panel.
- 2.07 Plumbing and Drainage
- (a) For all Leasable Premises having a Leasable area in excess of five hundred (500) square feet, other than restaurants and Food Court Premises located within the designated Food Court, the Landlord shall install one (1) sanitary sewer connection (below the floor slab) and one (1) sanitary vent (at the ceiling space), adequate to accommodate a standard two (2) piece washroom, at one (1) point within the Leased Premises as designated by the Landlord and shown on the Outline Drawings contained in the Manual. The Tenant shall make all connection to the sanitary sewer and sanitary vent at its own expense. Areas designated as "Structural Slab on Grade" will have sanitary sewer connections terminated above the floor slab. If a false floor is required in these locations to accommodate the drainage, such floor shall be supplied and installed by the Tenant, at the Tenant's expense.
- (b) One (1) domestic cold water line of 1/2" diameter will be brought to one point within the Leased Premises as designated by the Landlord. Individual water meters may be required for each Leasable Premises at the Landlord's discretion, the cost for the supply and installation of the water meter to be borne by the Tenant.
- 2.08 Heating, Ventilating and Air Conditioning - A heating and air conditioning unit with a cooling capacity of one (1) ton per 400 square feet of area to be installed on the roof of the Leased Premises. All duct work and other work required to hook up the system to be completed by the Tenant at its own expense. The Tenant is required to make its own inquiries regarding the adequacy of the HVAC capacity provided by the Landlord above. The Tenant will be responsible for the costs of any additional HVAC equipment which it requires.
- 2.09 Sprinklers and Fire Protection — A sprinkler branch piping system will be provided by the Landlord, at the Tenant's expense, with building standard sprinkler heads in a symmetrical 10' x 10' grid pattern, in accordance with the N.F.P.A. code for ordinary hazard occupancy, as open space and maintain the overall fire rating of the Shopping Centre. Any work relating to the relocation of existing heads or additional heads required due to improvement layout or partitions will be performed solely by the base building sprinkler contractor, at the Tenant's expense. Portable fire extinguishers or other fire extinguishment systems in the Leased Premises shall be provided by the Tenant, at its expense.
- 2.10 Communications — An empty telephone conduit 3/4" in diameter will be installed by the Landlord, terminating to one point within the Leased Premises designated by the Landlord.
- 2.11 Storage Area — Any storage area leased to the Tenant shall be provided with the following: demising walls to the underside of the deck or structure above. Consisting of masonry, drywall, metal security screen or a combination thereof, at the Landlord's option; concrete floors; lockable 3' — 0" service door (and rear emergency door if required by applicable codes); sprinklers as per Section 2.09 of this Schedule, and minimum lighting (1.5 watts per square foot) all in accordance with the Landlord's choice of materials. Any additional requirements of the Tenant in respect of its storage area, if approved by the Landlord, shall be provided and installed by the Tenant at its expense, save and except sprinkler work.

### III. TENANT'S WORK

Prior to commencing with any renovations in or at the Leased Premises, the Tenant agrees to provide the Landlord with professional plans detailing their proposed renovations, including, but not limited to interior improvements, color schemes and materials.

All renovations are subject to the Landlord's prior written approval, which approval shall not be

unreasonably withheld.

- 3.01 The Tenant will provide and carry out, in accordance with the Manual and this Schedule, at its expense, all equipment and work other than the Landlord's Work required to be provided in order to render the Leased Premises complete and suitable to open for business (the "Tenant's Work") including, but not limited to:

3.02 Storefront, Sign and Flooring

- (a) The Tenant's storefront and signage shall be furnished and installed by the Tenant in accordance with the Design Criteria. Only one (1) sign on a storefront elevation is permitted.
- (b) Where the closure line is not the lease line the Landlord will require the floor area between the lease line and the closure line to be finished in the same materials as the mall floor finish, as shown in the Design Criteria. Such work to be done by the Landlord at the Tenant's expense. The Tenant's floor finish elevation shall be the same as the mall finish floor elevation.
- (c) The Tenant's fixturing layout must provide access to mechanical clean outs as shown on the Outline Drawings.

3.03 Electrical

- (a) A dry type transformer sized to the unit load provided by the Landlord. The transformer shall provide the 120/208-volt, 3-phase, 4-wire power for the Tenant panel, fan coil unit and electric duct heater;
- (b) For stores with exits leading directly to the outside, fire alarm pull stations located at the rear exit door(s) from the Leased Premises, connected to the base building's fire alarm system;
- (c) Hydro meters are required by local authorities to monitor electrical consumption and shall be supplied and installed by local hydro, at the Tenant's expense;
- (d) If required by code, a smoke detector and pilot light connected to the air conditioning system;
- (e) Fire alarm bells within the Leased Premises, if required by local authorities;
- (f) Connection to disconnect switch and transformer, as well as supply and installation of distribution panels, lighting panels, underfloor conduits (if any), branch wiring, outlets, receptacles, exit lights and emergency battery units;
- (g) Lighting fixtures, lamps and related equipment (exposed fluorescent light tubes are not permitted);
- (h) Wiring for all washroom equipment, as required by the Tenant, including hot water heater, baseboard heater and lighting;
- (i) If the electrical service capacity as specified in the Landlord's Work is not adequate, the Tenant shall inform the Landlord of the service capacity required in amperages based on the service voltage supplied. The Tenant shall pay for all additional costs incurred by the Landlord in providing such additional capacity

3.04 Heating, Ventilating and Air Conditioning

Provide a complete heating, ventilating and cooling distribution system in and for the Leased Premises based on the Design Criteria governing sizing of the Landlord's equipment and quantity of chilled water and electrical heat available to each Leasable Premises. The Landlord reserves the right to refuse to allow the Tenant to exceed the design electrical load specified in the Landlord's Work of this Schedule but if the Landlord is able to provide the additional cooling capacity for such excess and approves such excess, the Tenant shall pay for the cost of providing additional electrical and cooling capacities. The Tenant shall be responsible for all costs incurred in making changes to the system installed by the Landlord necessitated by the need for make-up air (unless already provided) or other special design conditions within the Leased Premises.

Outside Temperatures:

Winter: Minus 17 degrees Fahrenheit  
Summer: 88 degrees Fahrenheit D.B. and 74 degrees Fahrenheit W.B.

Inside Temperatures:

Winter: 72 degrees Fahrenheit  
Summer: 78 degrees Fahrenheit D.B. and 65 degrees Fahrenheit W.B.

People Load:

One (1) person per seventy (70) square feet of the Leased Premises.

Lighting & Miscellaneous Electrical Loads:

Maximum of six (6) watts per square foot of the Leased Premises.

3.05 Equipment Used for the Design Criteria and Performance of the Tenant's Work

Equipment used for the Design Criteria and performance of the Tenant's Work shall include, without limitation:

- (a) (i) Duct distribution system with volume dampers, diffusers, grilles, registers and ceiling fire stop dampers if required by code;
- (ii) Fire and smoke detector system as required by the code;
- (b) (i) Sanitary and general exhaust system with manual damper(s) set so that the total exhaust from the Leased Premises does not exceed 0.1 CFM per square foot of the Leased Premises. Where the nature of the Tenant's business requires additional exhaust, a separate make-up air system shall be installed by the Landlord, at the Tenant's expense;
- (ii) Objectionable odours originating in the Leased Premises shall be exhausted in such a manner so as to prevent their release into the interior Common Area and Facilities, other Leasable Premises, or short-circuiting it into any fresh air intakes;
- (iii) Where deemed necessary by the Landlord such exhaust system shall incorporate approved odour control medium;
- (iv) Thermal insulation for all piping carrying hot water, chilled water, domestic cold water and surface drains from fan-coil units. Insulation shall be minimum 3/4" thick and shall incorporate vapour barrier for all piping, except hot water piping;
- (v) If the Tenant wishes to use ceiling space as a return air plenum such use shall comply with the requirements of the Building Code for the Province in which the Shopping Centre is located,

3.06 Tenant's Ceiling

- (a) The ceiling in the Leased Premises shall be constructed from drywall, T-Bar, plaster or other approved materials to meet applicable smoke and fire regulations. No combustible materials may be used in the ceiling space. Tenant shall install appropriately sized access panels as required, at its own expense, for inspection and maintenance of all Tenant and Landlord equipment;
- (b) The Tenant's improvements, other than ceilings and ceiling fixtures, must be floor mounted, unless written approval is obtained from the Landlord.

3.07 Communication, Telephone/Alarms

The Tenant will make direct arrangements with the cable and telephone company for installation of telephone services and cable services, as the case may be, at its expense, from the point of entry in the basic building to and within the Leased Premises. Any intercom, burglar alarm and fire protection systems, including conduit, wiring and monitoring for all of the same will be provided by the Tenant, at its expense.

3.08 Interior Finishes

- (a) All interior finishes and installations, including show windows and enclosures, floor coverings, partitions, wall finishes, suspended ceiling assemblies and finishes, and trade fixtures shall be provided by the Tenant, at its own expense.
- (b) Any extra fire-rating or wall construction required by the Tenant's occupancy, shall be at the Tenant's expense.

3.09 Sprinkler and Fire Protection

Any necessary modifications to the sprinkler system installed by the Landlord referred to in Section 2.09 of this Schedule, including any upgrade to mains, if necessary, to suit the reflected ceiling layout of the Tenant, subject to compliance with the requirement of the building codes and the requirements of the Landlord's insurance company, shall require the prior written approval of the Landlord and be carried out only by the Landlord's sprinkler contractor, at the Tenant's expense;

The Tenant will, at its expense, provide any fire-fighting equipment, fire alarms, communication speakers and emergency lighting equipment needed within the Leased Premises other than what is described under Section 2.06,

2.09 and 2.10 of this Schedule, if such is required by law or recommended by fire department officials, the Landlord's insurance company or by any authority having jurisdiction.

### 3.10 Plumbing

- (a) Leasable Premises having a leasable area in excess of five hundred (500) square feet require washroom facilities. The Tenant shall provide all plumbing within the Leased Premises, including water closets, wash basins, washroom finishing, water meter (if required by the Landlord), hot water storage tank and heaters and if an additional washroom or relocation of the washroom is necessary, the rough-in for same including floor drain;
- (b) Where a hot water storage tank and heater is installed, a relief valve discharge must be installed extended to an approved sanitary line;
- (c) If plumbing service capacity, as specified in Landlord's Work is not adequate, the Tenant shall inform the Landlord of required capacity. The Tenant shall pay for any additional costs incurred by the Landlord in providing such additional capacity;
- (d) Any plumbing work and electrical tracing required outside the Leased Premises must be performed by the Landlord, at the Tenant's expense.

### 3.11 Acknowledgement

- (a) The Landlord may, at its option, perform any work forming part of the Tenant's Work, at the expense of the Tenant.
- (b) Any damage to the Leasable Premises or the Shopping Centre caused during the performance of the Tenant's Work by the Tenant, its contractors, sub-contractors, tradesmen or material suppliers shall be repaired immediately by the Tenant, or, at the Landlord's option, by the Landlord at the expense of the Tenant, and the Tenant shall pay to the Landlord upon demand as Additional Rent an administration fee of fifteen percent (15%) of the cost of the work and materials and professional fees.

### 3.12 Special Conditions

Specific and unique construction conditions may occur on certain Leasable Premises, such as, but not limited to, fire-rated mechanical enclosures, fire-rated base building structure and base building services. It is recommended that the Tenant and his designer visit the site to inspect and dimension all site conditions, prior to commencement of design work to determine pertinent localized conditions and co-ordinate with the Landlord how any such conditions will be dealt with or treated;

Leasable Premises utilizing sound systems such as stereos, radios, televisions, including, but not limited to, recording and tape machines, shall have all demising walls insulated to the underside of the roof deck or slab, in order to obtain a minimum sound transmission class of STC-41. This suppression requirement shall apply to the noise level emanating through the storefront and evident immediately within the Common Area and Facilities. Sound speakers for the individual store stereo system shall not be located within ten (10) feet of the lease line;

All work shall be carried out by the Tenant's contractor at the Tenant's expense, and to the satisfaction of the Landlord;

Any retail use which is likely to, in the sole opinion of the Landlord, produce odours of any nature, shall ventilate and make-up air, as necessary to eliminate this condition;

Under no circumstances shall the Tenant, its employees, its contractors or its contractor's employees, during the performance of Tenant's Work, enter onto the roof of the Shopping Centre. Should the Tenant require anything to be done to the roof (or any part thereof) or any part of the Shopping Centre, it shall be done by the Landlord at the expense of the Tenant as Additional Rent payable on demand;

The repair of sprayed fireproofing will be by the Landlord at the Tenant's expense.

### 3.13 Tenant's Plans, Specifications and Schedule

- (a) The design of the Leased Premises shall be carried out by a qualified professional designer. The Tenant's plans and specifications shall be prepared with strict adherence to this Schedule and the Design Criteria. The Tenant agrees to provide to the Landlord in the time frame stated in Section 4.01, four (4) prints and two (2) sets of each set of plans as set out below, on a uniform size of 24" x 36" sheets with specifications and such other information and details as may be necessary for the complete identification and approval of all work to be carried out by the Tenant and for the Landlord's Work to proceed;
- (b) The Landlord shall not be responsible for errors or omissions due to conflict between site

conditions and the Design Criteria;

(c) Such plans shall include:

- (1) Floor Plan and Interior Finish Schedule;
- (2) Interior Wall Elevations;
- (3) Storefront Elevation;
- (4) Details and Section;
- (5) Reflective Ceiling Plan;
- (6) Signage;
- (7) Plumbing;
- (8) Sprinklers;
- (9) Heating, Ventilating and Air Conditioning Systems, including Heat Gain Calculations, Heat Loss Calculations and Total C.F.M.;
- (10) Electrical Requirements, including Connected Loads;
- (11) Sample Board;
- (12) Coloured Rendering of Storefront;
- (13) Details of any special features or installations of any special facilities or installations forming part of the Tenant's Work or which affect the Landlord's facilities;
- (14) Professional Engineers Stamp; and
- (15) List and details of work requested by the Tenant to be done by the Landlord.

#### IV. SCHEDULE FOR TENANT'S WORK

- 4.01 Tenant's Plans — Within thirty (30) days after the Tenant receives the Manual and the Landlord's Outline Drawings for the Leased Premises, the Tenant will provide to the Landlord the plans, drawings, specifications and other information (the "Tenant's Plans") detailed in the Manual and within fifteen (15) days of notice by the Landlord of the changes, (if any), required, will submit complete revisions satisfactory to the Landlord. In addition, if the Tenant fails to deliver plans and specifications for the Tenant's Work to the Landlord, within the time limits required under this Offer, then the Landlord will have the right, at its sole option, upon five (5) days written notice to the Tenant, to retain an architect including the Landlord's Project Architect to prepare the Tenant's plans at the Tenant's expense.
- 4.02 Tenant's Plans Review Charge — The Tenant will pay to the Landlord on demand, as Additional Rent, an amount equal to the greater of (i) \$840.00, or (ii) the amount equal to \$0.60 per square foot of the Rentable Area of the Leased Premises, to cover the services of the Landlord's consultants in reviewing the Tenant's Plans.
- 4.03 Commencement of Tenant's Work — When the Fixturing Period has started and the Tenant has satisfied the Landlord's requirements in accordance with Section 6.01 below, the Tenant will proceed immediately to complete the Tenant's Work.

#### V. INTERIM SERVICE CHARGES AND HOARDING

- 5.01 At the start of the Fixturing Period, the Tenant will pay to the Landlord in the manner directed by the Landlord an amount equal to \$0.95 per square foot of the Rentable Area of the Leased Premises representing a fixed charge for services which the Landlord may provide to the Shopping Centre during the construction period, including temporary lighting, heating, garbage removal from designated drop-off locations, increased security forces, and insurance contracted by the Landlord in excess of that required to be contracted by the Tenant.
- 5.02 Should the Tenant fail to install storefront hoarding suitable for the Shopping Centre or in accordance with the Landlord's Design Criteria, the Landlord will install storefront hoarding suitable for the Shopping Centre, at the Tenant's expense as Additional Rent payable on demand, which amount shall not exceed \$35.00 per linear foot of frontage and \$150.00 per door and frame inclusive in the hoarding.

If the hoarding has been installed by the Landlord prior to the Tenant taking possession of the Leased Premises, the Tenant shall be responsible for paying for such hoarding in the manner as set out above.

#### VI. LANDLORD'S REQUIREMENTS FOR TENANT'S WORK

- 6.01 Requirements Prior to Commencement of Tenant's Work — The Tenant will before entering the Leased Premises for any purpose:
- (a) satisfy the Landlord that the Tenant's designer inspected the Leased Premises before preparing the Tenant's Plans;
  - (b) obtain the Landlord's written approval of the Tenant's Plans;
  - (c) provide the Landlord with certificates of insurance on the Landlord's standard form duly executed by the Tenant's insurers evidencing that the insurance required to be placed by the Tenant under this Offer has been contracted;

- (d) ensure that all work on or in respect of the Leased Premises is to be performed by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors; and
- (e) provide evidence satisfactory to the Landlord that the Tenant has obtained at its expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction, and post permits when required by law. Should the Tenant fail to obtain any required consent, permit, license, inspection or certificate, the Landlord may, but shall not be obligated to, obtain it on behalf of the Tenant, at the Tenant's expense, and the Tenant will pay to the Landlord on demand, the cost of obtaining such permits, together with an administration fee of fifteen percent (15%) of the total costs and expenses.

6.02 Requirements for Performance of Tenant's Work — In the performance of the Tenant's Work, the Tenant will:

- (a) comply with all applicable laws, building codes, permits and approvals as well as the requirements of the Landlord's insurers;
- (b) after satisfying all the requirements of Section 6.01 of this Schedule, but not before, proceed to complete the Tenant's Work in a good and workmanlike manner using new materials, the whole to the Landlord's satisfaction and in conformity with the Manual and the Tenant's Plans as approved by the Landlord. Mediocre or inferior materials or workmanship will be replaced by the Tenant, at its expense, by materials or workmanship of first-class quality, to the Landlord's satisfaction;
- (c) comply with and cause its contractors and sub-contractors, tradesmen and suppliers to comply with all the provisions of the Manual and this Schedule, or, as may be required from time to time, by the Landlord;
- (d) retain one (1) set of the Tenant's Plans with the Landlord's approval endorsed on them at all times on the Leased Premises during the period when the Tenant's Work is being performed;
- (e) indemnify the Landlord against any loss, costs or expenses arising from labour disruptions attributable to workers employed by the Tenant, its contractors, or sub-contractors, or to their activities; and
- (f) permit the Landlord, without prejudice to the Landlord's other remedies, at the Tenant's expense, to remove any Tenant's Work undertaken without the Landlord's prior written approval and to restore the Leased Premises to their prior condition, and the Tenant will pay to the Landlord, on demand, the costs of removal together with an administration fee of twenty percent (20~/-) of such cost

6.03 Requirements After Performance of Tenant's Work — The Tenant will, upon completion of the Tenant's Work and when requested by the Landlord

- (a) provide the Landlord with a statutory declaration (the "Declaration"):
  - (i) stating that the Tenant's Work has been performed in accordance with all of the provisions of the Manual and this Schedule and that all deficiencies, (if any), which the Landlord has brought to the Tenant's attention have been corrected;
  - (ii) stating that there are no construction, builder, mechanics, Workmen's Compensation Act or other liens or encumbrances affecting the Leased Premises or the Shopping Centre in respect to work, services or materials relating to the Tenant's Work; and that all accounts for work, services and materials have been paid in full with respect to all of the Tenant's Work;
  - (iii) listing each contractor and sub-contractor who did the work or provided materials in connection with the Tenant's Work;
  - (iv) confirming the date on which the last such work was performed or provided materials were supplied; and
  - (v) certifying the itemized list which is referred to in Section 6.03(b) below, and which is to be attached to the Declaration;
- (b) provide to the Landlord an itemized list showing the cost actually expended by the Tenant for completion of the Tenant's Work;
- (c) provide to the Landlord a clearance certificate issued under the Workmen's Compensation Act of the province in respect of each contractor and sub-contractor listed on the declaration;

- (d) obtain and provide to the Landlord a copy of every occupancy license and other permit which may be required by any governmental or other regulatory authority having jurisdiction, to permit the Tenant to open for business;
- (e) provide to the Landlord a certificate of substantial performance in the form prescribed by the Construction Lien Act, in respect of each contract entered into by or on behalf of the Tenant in connection with the Tenant's Work;
- (f) provide to the Landlord one set of drawings documenting "as built" conditions; and
- (g) provide to the Landlord a certificate from the designer and mechanical and electrical engineers, certifying that the Tenant's Work has been carried out in accordance with the plans and specifications approved by the Landlord and its representatives; if the Tenant does not provide such certification to the Landlord within twenty-one (21) days of completion of such installations, the Landlord shall be entitled, at the Tenant's expense, to engage its own experts for the purpose of verifying whether such work has been performed in accordance with the approved plans and specifications; and the Landlord shall be entitled to take whatever remedial measures may be required to make such work comply with the approved plans and specifications and all charges and costs incurred by the Landlord in carrying out such work, plus a supervision charge of fifteen percent (15%), shall be payable by the Tenant as Additional Rent forthwith on demand.

## VII. PAYMENT SCHEDULE

- 7.01 (a) Any equipment or work, other than that stipulated as the Landlord's Work, which is supplied or performed by the Landlord at the request of the Tenant, or any excess or additional cost in the Landlord's Work occasioned by the Tenant's requirements or revisions to such requirements, shall be paid for by the Tenant as Additional Rent within fifteen (15) days after the receipt of a request for it.
- (b) The cost of the equipment or work will include (in addition to direct labour, materials and applicable taxes) architectural, engineering and contractors fees; any costs to the Landlord which are attributable to changes to the Landlord's Work requested by the Tenant after approval of the Tenant's Plans by the Landlord, and an additional overhead charge for the Landlord's supervision equal to fifteen percent (15%) of the aggregate costs of the equipment and work.

### 7.02 Grease Disposal and Storage

Where occupancy includes cooking which results in the Tenant requiring temporary storage and disposal of vegetable and/or cooking oil, the Tenant agrees to construct a secure storage facility in a location to be specified by the Landlord. The cost for construction and maintaining the storage facility will be borne solely by the Tenant and subject to the Landlord's approval as to design and fabrication. The right to this exterior storage facility is subject to governmental and regulatory approval throughout the Term of the Lease.

### 7.03 Tender Right

The Tenant hereby grants the Landlord and/or the Landlord's designated contractor(s), the right to tender for all or a portion of the Tenant's Work. The Tenant will furnish the Landlord or its designated contractor(s), with detailed plans, specifications, and working drawings for the completion of the Tenant's Work which are of sufficient detail to allow the preparation of a tender bid. The Tenant agrees that it will accept the Landlord's (or its designated contractor's) bid if it is the lowest tender, and will otherwise advise the Landlord or any lower tender which the Tenant is prepared to accept and the Landlord will have the option for a period of five (5) business days thereafter to match such tender price in which case, it will then be awarded the construction contract for the Tenant's Work. If the Landlord or its designated contractor is awarded the contract for the Tenant's Work, the Tenant covenants to execute a formal construction contract prepared by the Landlord or contractor within five (5) days following submission of the contract to the Tenant.

### 7.04 No Warranties

The Tenant will satisfy itself that the Leased Premises in the Shopping Centre are adequately zoned for the Tenants business purposes and that building, occupancy and all other necessary permits and other governmental approvals will be available for the Tenant's Work and proposed use. The Tenant further acknowledges that the Landlord makes no representations, warranties or other claims respecting any of the foregoing matters

**SCHEDULE "C"**

**LEGAL DESCRIPTION OF THE SHOPPING CENTRE LANDS**

**TENANT:** SHS Optical Ltd.  
**DATE:** June 16, 2005

Part of Lot 17, Concession 4  
City of St. Catharines  
PIN 46236-0032(R)



## SCHEDULE "D"

### RULES AND REGULATIONS

TENANT: SHS Optical Ltd.

DATE: June 16, 2005

#### The Tenant will:

- 1) keep the inside and outside of all glass in the doors and windows of the Leased Premises clean;
- 2) keep all exterior storefront surfaces of the Leased Premises clean;
- 3) replace promptly, at its expense, any cracked or broken window glass of the Leased Premises;
- 4) maintain the Leased Premises at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;
- 5) keep any garbage, trash, rubbish or refuse in ratproof containers within the interior of the Leased Premises until removed;
- 6) remove garbage, trash, rubbish and refuse at its expense on a regular basis as prescribed by the Landlord;
- 7) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Leased Premises;
- 8) cause its employees, agents, and contractors to park only in the parts of the Common Areas and Facilities, if any, designated by the Landlord as employee parking, and
- 9) open for business during the hours and on the days determined by the Landlord from time to time.

#### The Tenant will not:

- a) commit or permit waste upon or damage to the Leased Premises or any nuisance or other act that disturbs the quiet enjoyment of other tenants or occupants of the Shopping Centre;
- b) do anything that may damage the Shopping Centre or permit odours, vapours, steam, water, vibrations, noises or other undesirable effects to come from the Leased Premises;
- c) place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises, on the adjacent footwalks or elsewhere on the exterior of the Leased Premises or the Common Areas and Facilities;
- d) permit accumulations of garbage, trash, rubbish or other refuse within or outside the Leased Premises;
- e) distribute handbills or other advertising matter to Persons in the Shopping Centre other than in the Leased Premises;
- f) permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking facilities, mall or other area of the Shopping Centre;
- g) receive, ship, load or unload articles of any kind including merchandise supplies, materials, debris, garbage, trash, refuse and other chattels except through service access facilities designated from time to time by the Landlord;
- h) use the plumbing facilities for any other purposes than those for which they are constructed;
- i) use any part of the Leased Premises for lodging, sleeping or any illegal purposes;
- j) cause or permit any machines selling merchandise, rendering services or providing, however operated, entertainment to be present on the Leased Premises unless consented to in advance in writing by the Landlord;
- k) solicit business and display merchandise except in the Leased Premises, nor do or permit anything to be done in or on the Common Areas and Facilities or the Shopping Centre that hinders or interrupts the flow of traffic to, in and from the Shopping Centre or obstructs the free movement of Persons in, to or from the Shopping Centre; or
- l) permit on the Leased Premises any transmitting device or erect an aerial on any exterior walls of the Leased Premises or any of the Common Areas and Facilities, or use travelling or flashing lights, signs or television or other

audio-visual or mechanical devices that can be seen outside of the Leased Premises, or loudspeakers, television, phonographs, radios or other audio-visual or mechanical devices that can be heard outside of the Leased Premises.

## SCHEDULE "E"

### DEFINITIONS

TENANT: SHS Optical Ltd.

DATE: June 16, 2005

In this Lease and in the Schedules:

1. **"Additional Rent"** means all sums of money or charges required to be paid by the Tenant under this Lease (except Minimum Rent and Percentage Rent), whether or not designated "Additional Rent" or payable to the Landlord or otherwise.
2. **"Architect"** means the architect or other party performing similar function from time to time named by the Landlord. The Architect will be duly licensed and qualified to practice in the Province in which the Shopping Centre is located. The decision of the Architect whenever required by this Lease (or requested by the Landlord) and any related certificate will be rendered in accordance with generally accepted architectural practices and procedures and will be final and binding.
3. **"Business Day"** means any day of the week other than a Saturday, Sunday or statutory holiday effective throughout the Province in which the Shopping Centre is located.
4. **"Common Areas and Facilities"** means those areas, facilities, utilities, improvements, equipment and installations (a) in or serving the Shopping Centre which, from time to time, are not designated or intended by the Landlord to be leased to tenants of the Shopping Centre, (b) which are leased to particular tenants of the Shopping Centre but are intended for the common use of tenants of the Shopping Centre, (c) the HVAC System of the Shopping Centre as defined in Schedule "F"; parking facilities; and the Food Court, if any, or (d) which are otherwise reasonably designated by the Landlord as Common Areas and Facilities (including heating and air-conditioning equipment which the Landlord has elected to maintain, repair and/or replace pursuant to Section 7.06) or are provided or reasonably designated by the Landlord for the use or benefit of the tenants, their employees, customers and other invitees in common with others entitled to their use or benefit.
5. **"C.P.I."** means the Consumer Price Index (All Items for Regional Cities) for the city or municipality in which the Shopping Centre is located (or where C.P.I. figures are not published for that city or municipality, then for the closest city or municipality for which C.P.I. figures are published) or any index published in substitution for the Consumer Price Index or any other replacement index reasonably designated by the Landlord if it is no longer published, published by Statistics Canada (or by any successor thereof or any other governmental agency including a provincial agency). In the case of any required substitution or where C.P.I. base years or figures are periodically adjusted or re-established at 100 (or some other base level) by Statistics Canada, the Landlord will be entitled to make all necessary conversions for comparison purposes.
6. **"Food Court"** means those portions of the Common Areas and Facilities from time to time designated by the Landlord for use in support of Food Court Tenants' operations. These portions include, but are not limited to, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use.
7. **"Food Court Tenant"** means a tenant designated from time to time by the Landlord as a Food Court Tenant.
8. **"Gross Revenue"** means the sum (without deduction) of the selling price of all merchandise sold and services rendered, or for which orders are obtained or which are delivered to the purchaser on or from the Leased Premises or by personnel based on the Leased Premises, whether at wholesale or retail, for cash, credit, exchange or merchandise or other consideration, and whether by the Tenant or any other Person, and all receipts and receivables whatsoever of all other business of every kind and nature conducted on or from the Leased Premises including, without limitation, all deposits not refunded and the selling price of all gift certificates and receipts from vending and other machines, and without any deduction for the deferred portion of any installment sale or any uncollected or uncollectable accounts (the full consideration for every sale being deemed to be received when the sale is made irrespective of when it is to be paid), but there may be excluded or deducted (a) the amount of refunds made upon merchandise purchased from the Leased Premises and returned, (b) transfers of merchandise between the Tenant's stores, (c) sales taxes and goods and services taxes collected by the Tenant as retailer and actually remitted by it to the taxing authorities, and (d) the amount received by the Tenant from the sale of its fixtures and equipment.

9. "Hazardous Substance" means any contaminant; pollutant; dangerous, potentially dangerous, noxious or toxic substance; hazardous waste; flammable, explosive or radioactive material; urea formaldehyde foam insulation, asbestos, PCBs and substances or any other materials declared or defined to be hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or other laws.

10. "Indemnifier" means the Person who has executed or agreed to execute the Indemnity Agreement which is attached to this Lease as Appendix "A".

11. "Landlord" means at any time in question, the then current registered owner of the freehold or leasehold title to the Shopping Centre lands. Wherever the word the "Landlord" is used in this Lease, it is deemed to have the same meaning as "lessor", and includes the Landlord and its duly authorized representatives.

12. "Mortgagee" means any mortgagee, chargee or other encumbrancer (including any trustee for bondholders) from time to time, of the Shopping Centre or any part of it, or the Landlord's or the owners of the Shopping Centre's interest in them. The security documents held by Mortgagees and any ground or underlying leases affecting the Shopping Centre are referred to as "Encumbrances".

13.(a) "Operating Costs" means the total amounts incurred, paid or payable whether by the Landlord or by others on behalf of the Landlord for the maintenance, operation, repair, replacement, management and administration of the Shopping Centre, including the Common Areas and Facilities. The Landlord retains the right, acting on a reasonable and equitable basis, to gross up certain Operating Costs which vary with actual occupancy, such as by way of example, garbage removal, to more accurately reflect the costs (and the Tenant's Proportionate Share thereof) which would be incurred were the Shopping Centre 95% occupied.

(b) Operating Costs include, without limitation and without duplication, the aggregate of:

(i) the total annual costs and expenses of insuring the Shopping Centre and the improvements, equipment, pylon and other sign(s) and other property servicing the Shopping Centre from time to time, owned or operated by the Landlord or for which the Landlord is legally liable, in such manner and form, with such companies and such coverage and in such amounts as the Landlord, or the Mortgagee, from time to time determines;

(ii) cleaning, snow removal, garbage and waste collection and disposal, the costs of security and supervision, the wages and salaries of on-site management, administration and other personnel, and/or an equitable allocation of wages and salaries of off-site personnel where they are employed to perform services for the Shopping Centre together with other properties including benefits, travel and other expenses related thereto, and any associated costs thereof, and parking lot striping and landscaping;

(iii) the cost of all Utilities consumed in the operation of the Shopping Centre, and all costs of operating and maintaining loudspeakers, public address and musical broadcasting systems, telephone answering services, telephone facilities and systems used in or serving the Common Areas and Facilities;

(iv) the cost of managing the Shopping Centre, including any travel expenses related thereto and a rental charge, as determined by the Landlord, on the space occupied as the on-site management and or administration office;

(v) that part of the Operating Costs of the HVAC System allocated to the Common Areas and Facilities in accordance with Schedule "F";

(vi) the cost of the purchase and rental of any equipment and signs, and the cost of supplies, used by the Landlord in the maintenance and operation of the Shopping Centre;

(vii) audit fees and the cost of accounting services and expenses incurred in the preparation of the certificates referred to in this Lease and related financial statements;

(viii) the cost of conducting any environmental audit or other testing on or in any part of the Shopping Centre and all costs and expenses incurred by the Landlord in removing any Hazardous Substance from any part of the Shopping Centre;

(ix) all costs, charges and other expenses incurred by the Landlord in maintaining, operating, replacing, servicing and repairing the Shopping Centre including the Common Areas and Facilities and the systems, facilities, equipment, pylon and other sign(s) serving the Shopping Centre;

(x) depreciation or amortization of (i) the costs and expenses, including without duplication, the cost of initial supply and installation and the repair and replacement of all equipment, meters and other

fixtures, equipment and facilities, including sprinkler and irrigation systems, serving or comprising the Shopping Centre which by their nature, require periodic or substantial repair or replacement, unless, pursuant to Paragraph 13(b)(ix), they are charged fully in the Rental Year in which they are incurred, in accordance with sound accounting principles, and (2) the costs of improvements, repairs and replacements properly charged to capital account amortized over their useful life, as determined by the Landlord in accordance with sound accounting principles;

(xi) interest calculated at 2 percentage points above the average daily prime bank commercial lending rate charged during such Rental Year by the Landlord's chartered bank upon the undepreciated or unamortized portion of the original cost of all fixtures, equipment and facilities referred to in Paragraph 13(b)(x);

(xii) all Taxes, business taxes, all Capital Taxes as defined in Paragraph 13(c) as they relate to or are allocated by the Landlord to the Shopping Centre, and business transfer and other taxes and similar charges allocated by the Landlord to the Common Areas and Facilities;

(xiii) a rental charge for any mechanical, electrical, meter, garbage, utility, storage, janitorial or other service rooms and for all corridors and management or administrative offices in the Shopping Centre based upon the average rental on a per square footage basis paid in the Shopping Centre by ground floor tenants occupying less than 2,500 square feet of Rentable Area;

(xiv) an administration fee of 15% of the costs set out in Paragraphs 13(b)(i) through 13(b)(xiii), inclusive.

From the total of the above costs, there is deducted

(1) all net recoveries which reduce Operating Costs received by the Landlord from tenants as a result of any act, omission, default or negligence of such tenants or by reason of a breach by such tenants of provisions in their respective leases (other than recoveries from such tenants under clauses in their respective leases requiring their contribution to Operating Costs);

(2) net proceeds received by the Landlord from insurance policies taken out by the Landlord to the extent that the proceeds relate to Operating Costs;

(3) contributions to Operating Costs received by the Landlord from tenants whose premises are excluded in calculating the Rentable Area of the Shopping Centre; and

(4) amounts contributed by Food Court Tenants which are incurred or allocated by the Landlord exclusively for the maintenance and operation of the Food Court (excluding those costs and expenses which would have been incurred in any case, had the Food Court been one of the Common Areas and Facilities instead of a Food Court) to the extent, if any, those costs are included under Schedule "E", Section 13(b).

(c) Capital Tax is an imputed amount presently or hereafter imposed from time to time upon the Landlord or the owners of the Shopping Centre and payable by the Landlord or the owners of the Shopping Centre (or by any entity acting on behalf of the Landlord or the owners) and which is levied or assessed against the Landlord or the owners on account of its ownership of or capital employed in the Shopping Centre. Where the Landlord or the owner(s) of the Shopping Centre is not a corporation, Capital Tax will be calculated on the basis that the Landlord and/or owner(s) is a corporate entity. Capital Tax will be imputed as if the amount of such tax were that amount due if the Shopping Centre were the only real property of the Landlord and Capital Tax includes the amount of any capital or place of business tax or other tax or assessment levied by the provincial government, federal government or other applicable taxing authority against the Landlord whether or not known as Capital Tax, Large Corporations Tax or by any other name.

14. "Person", if the context allows, includes any person, firm, partnership or corporation, or any group of persons, firms, partnerships or corporations or any combination thereof.

15. "Project Manager" means the Landlord's designated project manager for the Shopping Centre.

16. "Proportionate Share" means a fraction which has as its numerator the Rentable Area of the Leased Premises and as its denominator the Rentable Area of the Shopping Centre.

17. "Rent" means all Minimum Rent, Percentage and Additional Rent. All Rent is payable in lawful currency of Canada, without prior demand and without any deduction abatement or set-off. Rent is to be adjusted on a prorated per diem basis where any Rental Year is less than 365 days.

18. "Rentable Area of the Leased Premises" means the area measured from (a) the exterior face of exterior walls, doors and windows; (b) the exterior face of interior walls, doors and windows separating leasable premises from Common Areas and Facilities; (c) the exterior face of interior walls that are not party walls, separating leasable premises from adjoining leasable premises; and (d) the centre line of interior party walls separating leasable premises from adjoining leasable premises. The Rentable Area of the Leased Premises includes interior space even if it is occupied by projections, structures or columns, structural or non-structural, and if a store front is recessed from the lease line the area of the recess is included within the Rentable Area of the Leased Premises. The dimensions of leasable premises that are a kiosk will be determined by the Landlord. If the Leased Premises are a kiosk, the Rentable Area of the Leased Premises, for the purpose only of calculating the numerator of the fraction which is the Tenant's Proportionate Share, is two (2) times the actual Rentable Area of the Leased Premises.

19. "Rentable Area of the Shopping Centre" means the aggregate of the individual ground floor Rentable Area of all leasable premises within the Shopping Centre, excluding the area (other than the area of the Leased Premises and of other premises which are of the same category of space as the Leased Premises) occupied by the following categories of space: (a) free-standing buildings; (b) the area demised pursuant to any land leases; (c) governmental or quasi-governmental agencies; (d) the area of any single store with a ground floor area in excess of 10,000 square feet; (e) kiosks; (f) Storage Areas; (g) theatres and cinemas; (h) premises which do not front or have their primary entrance fronting onto an enclosed mall; (i) bowling lanes and recreational, sports, fitness and health or day-care facilities; and (j) basements or mezzanine areas forming part of leasable premises.

20. "Rental Year" means a period of time, the first Rental Year beginning on the Commencement Date and ending 12 months thereafter. Thereafter Rental Years consist of consecutive periods of 12 calendar months. If, however, the Landlord considers it necessary or convenient for the Landlord's accounting purposes, the Landlord may at any time and from time to time, by written notice to the Tenant, specify an annual date from which each subsequent Rental Year is to commence, and, in that event, the then current Rental Year will terminate on the day preceding the commencement of the new Rental Year. The last Rental Year of the Term will end upon the expiration or earlier termination of this Lease.

21. "Shopping Centre" means the lands described in Schedule "C", including the Common Areas and Facilities, and the buildings, improvements, equipment and facilities erected on or serving the Shopping Centre or having utility in connection therewith, as determined by the Landlord, together with any alterations or additions from time to time made to the buildings and other facilities. The Shopping Centre is municipally known as 285 Geneva Street, St. Catharines, Ontario, L2N 2G1 and generally as New Fairview Mall. The Tenant acknowledges that (i) the Shopping Centre is outlined in heavy black on Schedule "A-1", and (ii) the lands and buildings currently occupied by Zehr's, A & P, Harvey's and Tim Hortons Donuts are owned by third parties and, even if shown on Schedule "A-1", do not form part of the Shopping Centre. The Shopping Centre lands and buildings only extend to those areas legally described in Schedule "C" and such additional contiguous property as is determined by the Landlord from time to time.

22. "Storage Areas" means those areas designated by the Landlord from time to time as Storage Areas.

23. "Taxes" means all real property taxes, rates, local improvement taxes, duties and assessments, impost charges or levies, whether general or special, that are levied, rated, charged or assessed against the Shopping Centre or any part thereof from time to time (including any interest charges or other levies payable in connection with any installment payments made by the Landlord) by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property taxes whether of the foregoing character or not and whether in existence at the Commencement Date or not, and any such real property taxes levied or assessed against the Landlord or the owners on account of its interest in the Shopping Centre or any part thereof, or their ownership thereof, as the case may be, and all costs, fees and expenses incurred by the Landlord in contesting Taxes or in negotiating with taxing authorities with respect to Taxes. Taxes also include all interest incurred by the Landlord on Tax payments made in excess of then current recoveries (without deduction for non-recoveries on unleased space) from tenants of the Shopping Centre. Taxes shall in every instance be calculated on the basis of the Rentable Area of the Shopping Centre being fully assessed and taxed at applicable tax rates for fully-occupied space for the period for which Taxes are being calculated; in the event that any part of the Shopping Centre is vacant for any period and as a result, the Landlord receives a rebate or credit from the taxing authority, the Tenant shall not be entitled to any part of such rebate or credit.

24. "Tenant" means the party of the Second Part and is deemed to include the word "lessee" and to mean each and every Person mentioned as the Tenant in this Lease, whether one or more. If there is more than one Tenant, any notice required or permitted by this Lease may be given by or to any one of them and has the same force and effect as if given by or to all of them. Any reference to the "Tenant" includes, where the context allows, the servants, employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control.

## SCHEDULE "F"

### CHARGES FOR HEATING, VENTILATING AND AIR-CONDITIONING SERVICES

TENANT: SHS Optical Ltd.  
DATE: June 16, 2005

#### A. THE HVAC SYSTEM

The heating, ventilating and air-conditioning system (the "HVAC System") of the Shopping Centre is composed of all heating, ventilating and air-conditioning equipment and facilities provided or operated and maintained by the Landlord, and includes from time to time and without limitation: the buildings or areas which house any common heating, ventilating or air-conditioning facilities, and all of the equipment, improvements, installations and utilities therein; any rooftop or window heating, ventilating or air-conditioning units installed or maintained by the Landlord; the fuel and power facilities of the systems; any distribution, piping, air handling units, and common fan coil and ventilation units which form part of the system; any monitoring, energy-saving, and control systems, including the thermostat in each of the individual stores supplied by the HVAC System and those ventilation systems which serve more than one tenant; but specifically excludes: (i) the individual, self-contained heating, ventilating and air-conditioning system in any department store or other tenant premises which have such tenant-installed and maintained systems; (ii) the distribution system within each tenant's premises, installed by or for each tenant; and (iii) tenant-maintained ventilation ducts, make-up air facilities, and/or booster units which are installed by or for individual tenants, or a group of tenants, to satisfy requirements which are in excess of the standard maximum sensible cooling load established by the Landlord, or which result from the production of air which is not suitable for recirculation.

#### B. THE BASIC CHARGE

The Tenant agrees to pay in each Rental Year of the Term, for the installation and any necessary replacements of the components of the HVAC System serving the Common Areas and Facilities (whether directly, or by appropriation), a basic charge (the "Basic Charge") in the amount of one dollar and sixty-five cents (\$1.65) per annum per square foot of the Rentable Area of the Leased Premises (excluding basement areas). The Basic Charge shall be paid, as Additional Rent, in equal monthly instalments in advance on the first day of each month together with, but not as part of Minimum Rent. So long as the Tenant and occupant of the Premises is SHS Optical Ltd., and it is not in default under the terms of the Lease, then during the Term, the Tenant shall not be required to pay the Basic Charge as contained herein.

#### C. THE OPERATING CHARGE

In each Rental Year, the total costs of operating, maintaining and repairing the HVAC System (the "Operating Costs"), shall be allocated to the Common Areas and Facilities, based where appropriate on the advice of the Landlord's engineers. The Operating Costs shall include, without limitation: costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, and a fee of fifteen percent (15%) of the total of such Operating Costs for the Landlord's overhead. In the event that any repair costs are not charged in full in the Rental Year in which same is performed or purchased, there shall be charged in each Rental Year depreciation or amortization on any such depreciated or amortized costs (together with a fee of fifteen percent (15%) of such depreciation or amortization) and interest (calculated at two percent (2%) above the prime rate charged by the Landlord's banker) on the undepreciated or unamortized portion outstanding from time to time. The Operating Costs which are allocated to Common Areas and Facilities shall be included in the costs detailed in Schedule "E", paragraph 13 of the Lease.

#### D. LANDLORD'S ENGINEERS

The calculation made by the professional engineers designated by the Landlord shall in all instances be final and binding upon the Parties hereto.

**SCHEDULE "G"**

**FOOD COURT PREMISES – INTENTIONALLY DELETED**



SCHEDULE "H"

TENANT'S ESTOPPEL CERTIFICATE

TENANT: SHS Optical Ltd.  
DATE: June 16, 2005

The undersigned, the Tenant in the Lease between \_\_\_\_\_ and the undersigned, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, certifies to \_\_\_\_\_, that:

1. The Term of this Lease commenced on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and the Tenant's obligation to pay Minimum Rent pursuant to Section 2.02 of the Lease commenced on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.
2. The Lease has not been altered or amended since the time of execution and is in full force and effect in accordance with its original terms.
3. The Leased Premises measured as provided in Section 1.01 of the Lease actually comprise a Rentable Area of \_\_\_\_\_ square feet. The Minimum Rent reserved pursuant to Section 2.02 of the said Lease, adjusted having reference to the aforesaid measurement is:
4. The Tenant is in possession of the Leased Premises.
5. The Lease is a net lease and that the Tenant is paying (and has paid effective to the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_) Minimum Rent (as adjusted) and all other charges including without limitation, its Proportionate Share of Operating Costs and commenced paying the same on the date that the Tenant's obligation to pay Rent commenced as aforesaid.
6. The amount of prepaid rent or security deposit held by the Landlord is \$ \_\_\_\_\_.
7. The Leased Premises have been completed in accordance with any obligations of the Landlord and the Leased Premises are entirely satisfactory and suitable for the use thereof as contemplated by the Tenant.
8. Neither the Landlord nor the Tenant is in default in respect of the Lease.
9. The Tenant has no claims, charges, defences, rights to set-off, lien abatement or counterclaims against the Landlord in respect of rent or otherwise.

DATED at the City of \_\_\_\_\_, in the Province of \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Tenant  
(If Corporation)

SAMPLE ONLY - DO NOT SIGN

Per: \_\_\_\_\_  
c/s

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

\_\_\_\_\_  
l/s  
Tenant

**SCHEDULE "I"**

**PRE-AUTHORIZED PAYMENT AUTHORIZATION**

Name of Owner or of Head Office

Account Receivable Number

Name and Number of Store

Date of Lease

Monthly Charges

Address of Store

Date of Last Payment

Head Office Address

Bank Account Number

Transitory Number

Bank & Branch

Name Shown in Bank Records

Signature of Treasurer

**REQUEST FOR PARTICIPATION IN THE PRE-AUTHORIZED PAYMENT PROGRAM**

I hereby authorize \_\_\_\_\_ (hereinafter called the "Company") and/or \_\_\_\_\_ (insert name of Landlord's Bank) to debit my account at the financial institution designated hereunder, in accordance with the Authorization to Pay shown below, for the purpose of paying the sums due in virtue of the above-noted Lease agreement.

Please enclose a specimen cheque from your bank, your "Caisse Populaire" or a trust company.

**AUTHORIZATION TO PAY**

NAME OF BANK:

BRANCH AND ADDRESS:

I hereby request you and give you authorization to pay and debit my account at your branch or at any other branch of your institution where my account may be transferred, all cheques drawn on your institution in my name and payable to the order of \_\_\_\_\_ that will be presented to you for payment or any sums specified on any magnetic tape or any other computer tape for remittance to \_\_\_\_\_ or \_\_\_\_\_ (insert name of Landlord's Bank).

In consideration of your services for the purposes hereof, it is agreed that your handling of each cheque and/or computer tape and your rights with regard to these cheques shall be the same as if they had been signed personally by me, requesting you and giving you authorization to pay sums and to credit such sums to the said beneficiary by debiting them to my account and any default in payment shall not give rise to any responsibility on your part regardless of the loss or damage incurred.

If the financial institution mentioned above is not a bank to which the banking laws of Canada apply, the word "cheque" as it is used in the present authorization shall include any "order" which would be defined as a cheque in Article 165 of the Bills of Exchange Act, R.S.C. 1970, Chapter B-5.

Any delivery to you of the present authorization shall constitute delivery by the undersigned.

Made at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(The signature must conform to that which appears on the signature records of the financial institution concerned).

\_\_\_\_\_  
Authorized signature(s)  
\_\_\_\_\_

## SCHEDULE "J"

### LANDLORD'S SECURITY INTEREST

TENANT: SHS Optical Ltd.

DATE: June 16, 2005

1. The Landlord may, at its option, appoint any Person as receiver or as receiver and manager of all or any part of the Collateral. Hereafter the word "receiver" shall include both a receiver and a receiver and manager. The Landlord may from time to time remove or replace any receiver so appointed, or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral. Any receiver shall have and may exercise all powers conferred upon the Landlord under this Lease. Any receiver will be considered to be the agent of the Tenant so far as the responsibility for his acts is concerned and the Landlord will not be responsible for any act or omission on the part of such receiver, whether wilful, negligent, imprudent or otherwise.
2. The Landlord may, at its option, take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and the Tenant agrees that the Landlord may, by its servants, agents or receiver, at any time during the day or night and without prior notice, enter the Leased Premises where the Collateral may be found for the purpose of taking possession of or removing or immobilizing the Collateral or any part of it.
3. In connection with the realization of the Collateral, the Landlord may carry on all or any part of the business and undertaking of the Tenant, either directly or by means of a receiver or a receiver and manager, and may enter upon, occupy and use all or any part of the real or personal property owned or used by the Tenant for such time as the Landlord sees fit, free of charge, and the Landlord shall not be liable to the Tenant for any negligent or imprudent act or omission in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions.
4. The Landlord may seize, collect, realize, borrow money on the security of, sell, obtain payment for, give valid receipts and discharges for, release to third parties or otherwise deal with the Collateral or any part of it in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, without notice to the Tenant. The mode of disposition of the Collateral or any part of it shall be in the sole discretion of the Landlord and it shall be deemed to be commercially reasonable for the Landlord to dispose of the Collateral or any part thereof in the ordinary course of its business. Without limiting any other rights the Landlord may have, the Landlord may purchase all or any part of the Collateral at a private sale, auction, tender, public sale or any other mode of disposition.
5. The Landlord may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (including legal fees on a solicitor and client basis and fees for receivers, managers, accountants and other professionals) in connection with the Landlord's realizing the Collateral or otherwise dealing with the Collateral in accordance with the provisions of this Lease, and all such sums shall be payable to the Landlord on demand.
6. The Landlord may, if it deems it necessary for the proper realization of all or any part of the Collateral, pay any claim, lien, security interest or other encumbrance that may exist or be threatened against the Collateral, in which event the amount so paid, together with all costs and expenses of the Landlord incurred in connection therewith, shall be payable to the Landlord on demand.
7. The Landlord shall have the right to postpone indefinitely the sale of the Collateral or any part thereof and shall further have the right, pending any such sale, to lease the Collateral or any part thereof to any Person for such period as the Landlord in its absolute discretion deems necessary in order to recover or to attempt to recover any indebtedness forming a part of the obligations of the Tenant under this Lease and under Section 11.08(b).
8. The Landlord shall not be liable or accountable for any failure to realize or otherwise deal with the Collateral or any part thereof and shall not be bound to institute proceedings for the purpose of effecting any of the foregoing or for the purpose of preserving any rights of the Landlord, the Tenant or any other Person in respect of the Collateral.
9. All monies received or collected by the Landlord in respect of the Collateral may be applied as the Landlord deems fit.

## TENANT'S ACKNOWLEDGEMENT CERTIFICATE

**TO:** SUN LIFE ASSURANCE COMPANY OF CANADA  
and its successors and assigns (the "Lender"), and its Solicitors

**RE:** A certain lease of space containing a certified area of 1,507 square feet (the "Premises") situate in the complex municipally known as 285 Geneva Street, St. Catharines, Ontario and a certain mortgage from First Capital (St. Catharines) Corporation (the "Landlord") in favour of the Lender.

**Tenant:** SHS Optical Ltd.

The undersigned hereby certifies, confirms and acknowledges that:

1. The lease of the Premises from the Landlord to the undersigned, as tenant, dated June 16, 2005 (the "Lease") has been validly executed and delivered by the undersigned, as tenant, and is unmodified and in full force and effect and not in default by either the Landlord or the undersigned, save and except as otherwise set out herein.
2. The undersigned, as tenant, acknowledges and agrees that the legal description of the shopping centre lands as set out in Schedule "C" of the Lease is incorrect and the correct legal description of the shopping centre lands is as follows:  
  
"PIN 46236-0025  
Part Lot 101 and 103, Plan 330 Grantham  
Part Lot 17-18, Concession 4 Grantham, designated as Parts 2, 3 and 10, Plan 30R8302".
3. The undersigned is the tenant of the Landlord pursuant to the Lease and as such accepted possession of the entire Premises on or about August 20, 2005, and has continuously occupied the entire Premises and carried on its business therefrom to the date hereof.
4. All of the Landlord's work to the Premises, which is the responsibility of the Landlord (if any), has been completed to the satisfaction of the undersigned and in accordance with the Landlord's obligations under the Lease (and any agreement to lease in respect thereto) and the Premises are satisfactory and as permitted and required by the Lease.
5. The term of the Lease commenced on August 20, 2005, and expires on August 31, 2015, unless renewed or extended in accordance with the provisions of the Lease, if any.
6. The undersigned is now paying in full an annual basic rent, completely net of all operating costs and taxes, in the amount of \$48,224.00 and, in addition, percentage rent (if applicable), operating costs and taxes as and to the extent provided in the Lease; basic rent and percentage rent (if applicable) payable under the Lease has been paid to November 30, 2007; our proportionate share of operating costs and realty taxes payable under the Lease has been paid throughout the term of the Lease to November 30, 2007 and there is no prepayment of any rent or security deposit standing to our credit, save and except for the amount of \$5,720.00 on account of Rent for the last month of the Term and the amount of \$4,280.00 on account as a security deposit. The undersigned has no claim for any deduction, abatement or set-off of any rent due or payable under the Lease nor any counterclaim or defense against the enforcement of its obligations to be performed by it under the Lease.
7. There is no litigation or governmental or municipal proceedings commenced or pending or threatened against or by the undersigned with respect to the Premises or the Lease.
8. There are no allowances, incentives, inducements, benefit packages or any other monies owing or which may become due and owing to the undersigned at any time (however characterized) under the Lease.
9. There is no agreement to lease or other lease or any other agreements, rights or obligations between the undersigned and the Landlord or any previous landlord, other than that contained in the Lease, pertaining to the Premises or the Lease.

10. The undersigned has received no notice of any assignment by the Landlord of the Lease or the rents thereunder. The undersigned has not assigned its interest in the Lease or sublet all or any part of the Premises.
11. The undersigned is at arm's length to the Landlord.
12. The undersigned acknowledges the assignment of either or both of the Lease and the rents which are or may become due and owing under the Lease, to the Lender, and hereby waives further notice of such assignment and acknowledges that, until further notice from the Lender, the undersigned shall continue to pay rent when due and payable, to the party stipulated in the Lease.
13. The undersigned covenants and agrees with the Lender, in consideration of TWO DOLLARS (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, that the undersigned:
  - (a) will not prepay any rent whatsoever, other than as specifically permitted in the Lease;
  - (b) will not amend the Lease or surrender same or the Premises or any portion thereof without the Lender's prior written approval; and
  - (c) will, forthwith upon request by the Lender or any purchaser from it, attorn to and become the tenant of the Lender or such purchaser for the then unexpired residue of the term of the Lease at the rent and on the terms, covenants and provisions contained in the Lease, regardless of the respective priorities of the captioned mortgage and the Lease.

DATED the \_\_\_\_\_ day of November, 2007.

Name of Tenant: **SHS OPTICAL LTD.**

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

I have authority to bind the Corporation.

**vii**

**YORK MILLS GARDENS  
TORONTO, ONTARIO**

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**LEASE**

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**FIRST CAPITAL (YORK MILLS) CORPORATION**

(Landlord)

- and -

**SHS OPTICAL LTD.  
t/a "Great Glasses"**

(Tenant)

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# YORK MILLS GARDENS

## RETAIL LEASE

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THIS LEASE is dated the 21st day of July, 2005, and is made

BETWEEN

FIRST CAPITAL (YORK MILLS) CORPORATION

(the "Landlord")

OF THE FIRST PART

- and -

SHS OPTICAL LTD.

(the "Tenant")

OF THE SECOND PART

## ARTICLE I DEFINITIONS

### Section 1.01 Definitions

The following definitions apply in this Lease.

"Additional Rent": money payable by the Tenant under this Lease (except Minimum Rent and Percentage Rent) whether or not it is designated "Additional Rent".

"Affiliate": an affiliate within the meaning of the Canada Business Corporations Act, R.S.C. 1985, c.C-44 as it exists on the date of this Lease.

"Applicable Laws": a statute, regulation, order, code, rule and any other requirement of a governmental or quasi-governmental authority with jurisdiction over any matter.

"Architect": an accredited architect, or land surveyor, chosen by the Landlord from time to time.

"Commencement Date": the date specified in Section 3.03.

"Common Elements": (a) the areas, facilities, utilities, improvements, equipment and installations (collectively, "elements") in the Shopping Centre that, from time to time, are not intended to be leased to tenants of the Shopping Centre, or are designated from time to time as Common Elements by the Landlord, (b) the elements outside the Shopping Centre that serve the Shopping Centre (or any part of it) and are designated by the Landlord from time to time as part of the Common Elements, and (c) the elements in or on Rentable Premises that are provided for the benefit of one (1) or more of the tenants of the Shopping Centre and their employees, customers and other invitees in common with others entitled to use them. The Common Elements include, but are not limited to, the roof, exterior wall assemblies including weather walls, exterior and interior structural components and bearing walls in the buildings and improvements in the Shopping Centre; equipment, furniture, furnishings and fixtures; music, fire prevention, security and communication systems; columns; pipes; electrical, plumbing, drainage, mechanical and other installations, equipment or services in the Shopping Centre or related to it, as well as the structures housing them; the HVAC System of the Shopping Centre; access roads; driveways; delivery passages; pedestrian sidewalks; landscaped and planted areas; and parking facilities.

"C.P.I.": (a) the Consumer Price Index (All Items for Regional Cities, base year 1997=100) for the city in which the Shopping Centre is located, or if there is no Consumer Price Index for that city, for the city in Canada nearest the Shopping Centre for which there is a Consumer Price Index published by Statistics Canada (or by a successor or other governmental agency), or (b) if the Consumer Price Index is no longer published, an index published in substitution for the Consumer Price Index or any replacement index designated by the Landlord.

"Fixturing Period": the period determined under Section 3.05.

"GLA": the area measured from, (a) the exterior face of exterior walls, doors and windows; (b) the exterior face of interior walls, doors and windows separating Rentable Premises from Common Elements; (c) the exterior face of interior walls that are not party walls, separating Rentable Premises from adjoining Rentable Premises; and (d) the centre line of interior party walls separating Rentable Premises from adjoining Rentable Premises. GLA includes interior space even if it is occupied by projections, structures

or columns, structural or non-structural, and if a store front is recessed from the lease line the area of the recess is included within the GLA of the Premises. The dimensions of Rentable Premises that are a kiosk will be determined by the Landlord.

"GLA of a Rentable Premises": the total GLA of all levels of a Rentable Premises.

"GLA of the Shopping Centre": the total of the GLA of all Rentable Premises excluding, at the option of the Landlord, the following categories of space: (a) kiosks; (b) Storage Areas; (c) free-standing buildings or structures; (d) Rentable Premises with a GLA of more than 10,000 square feet; (e) theatres or cinemas; (f) any second storey premises or any premises above ground level; (g) space used by governmental or public offices, agencies or services or charitable organizations; and (h) mezzanine areas inside Rentable Premises. However, the area of the Premises and the area of other Rentable Premises that are of the same category of space as the Premises shall be included in the GLA of all Rentable Premises.

"Gross Revenue": the total of the selling or rental prices of goods sold or leased and services performed in or from the Premises whether the sales or rentals are made or services performed on the Premises or elsewhere.

Gross Revenue includes but is not limited to:

- (a) orders taken or received at the Premises, whether the orders are filled from the Premises or elsewhere;
- (b) deposits not refunded to purchasers;
- (c) all other receipts and receivables (including interest, instalment and finance charges) from business conducted in or from the Premises; and
- (d) orders filled from the Premises, whether the orders are taken or received at the Premises (such as by way of example, but without limitation, computer or internet generated sales),

whether the sales, rentals or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales or rentals are made by means of mechanical or other vending devices in the Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge, sale or rental made on instalment or credit will be treated as a sale or rental for the full selling or rental price in the month for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

Gross Revenue does not include, or there will be deducted from Gross Revenue:

- (i) sales or rentals of merchandise for which cash has been refunded or credit made to a charge card account, but only to the extent of the refund or credit;
- (ii) the selling or rental price of merchandise returned by customers for exchange, but the selling or rental price of merchandise delivered to the customer in exchange will be included in Gross Revenue;
- (iii) retail tax imposed by federal, provincial, municipal or any other governmental authorities directly on sales and rentals and collected from customers at the point of sale or rental by the Tenant acting as agent for the authority, but only if the amount is added separately to the selling or rental price and does not form part of the quoted price for the article or the service and is actually paid by the Tenant to the authority; and
- (iv) transfers of merchandise between the Tenant's stores and merchandise returned to the Tenant's suppliers, but only if the transfers or returns are for convenience and not for reducing Gross Revenue.

"Hazardous Substances": any substance or thing or mixture of them which alone or in combination with others, or in certain concentrations, exhibits characteristics of flammability, corrosivity, reactivity or toxicity or which could cause an adverse effect or which is or may be dangerous or detrimental to living things or to the environment, including, but not limited to, any pollutant, contaminant, toxic or hazardous chemicals or waste, dangerous noxious or toxic substances, flammable, explosive or radioactive materials, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyl, pesticides, or any other substance, the removal, manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is subject to Applicable Laws.

"HVAC System": the "HVAC System" of the Shopping Centre is made up of the heating, ventilating and air-conditioning equipment and facilities that are operated and maintained by the Landlord. It includes the

buildings or areas which house common heating, ventilating or air-conditioning facilities, the equipment, improvements, installations, and utilities located in them, and rooftop or window heating, ventilating or air-conditioning units operated or maintained by the Landlord; the fuel and power facilities of the systems mentioned above; distribution piping, air handling units, and common fan coil and ventilation units that form part of those systems; monitoring, energy saving, and control systems, including the thermostat in each Rentable Premises supplied by the HVAC System and those ventilation systems which serve more than one tenant. The HVAC System does not include (i) self-contained heating, ventilating and air-conditioning systems serving Rentable Premises that are not operated and maintained by the Landlord, (ii) the distribution system within Rentable Premises; and (iii) any tenant-maintained ventilation ducts, make up air facilities and booster units that are installed for individual tenants, or a group of tenants, to satisfy requirements that are in excess of the standard maximum sensible cooling load established by the Landlord, or which result from the production of air which is not suitable for recirculation.

"Indemnifier": a Person, if any, who has executed or agreed to execute the Indemnity Agreement that is attached to this Lease as Appendix "A", or any other indemnity agreement in favour of the Landlord.

"Landlord": the party of the First Part and Persons for whom the Landlord is responsible in law. In sections that contain a release or other exculpatory provision or indemnity in favour of the Landlord, "Landlord" includes the directors, officers, employees and agents of the Landlord.

"Landlord's Work": the work to be performed by the Landlord pursuant to Schedule "C".

"Lease": this agreement, all Schedules and Appendices (if any) thereto and the Rules and Regulations adopted or revised from time to time under Section 17.01.

"Management Company": a company or other entity, if any, retained by the Landlord from time to time to operate or manage the Shopping Centre.

"Minimum Rent": the annual rent payable pursuant to Section 4.02.

"Mortgagee": a mortgage or hypothecary creditor (including a trustee for bondholders) of the Shopping Centre or part of it and a chargee or other secured creditor that holds the Shopping Centre or a part of it as security from time to time, but a Mortgagee is not a creditor, chargee or security holder of a tenant of Rentable Premises.

"Owners": the owner or owners from time to time (other than the Landlord) of the freehold or leasehold title of the Shopping Centre.

"Percentage Rent": the rent payable pursuant to Section 4.03.

"Person": if the context allows, a person, firm, partnership or corporation, group of persons, firms, partnerships or corporations, or any combination of them.

"Premises": the Rentable Premises described in Section 3.01.

"Prime Rate": the rate of interest, per annum, from time to time publicly quoted by any Canadian chartered bank at Toronto designated by the Landlord as the reference rate of interest (commonly known as its "prime rate") used by it to determine rates of interest chargeable in Canada on Canadian dollar demand loans to its commercial customers.

"Proportionate Share": a fraction which has as its numerator the GLA of the Premises, and as its denominator the GLA of the Shopping Centre, or such portion of the GLA of the Shopping Centre to which the Landlord, acting reasonably, but in its sole discretion, may allocate such cost items of which the Tenant is required to pay its Proportionate Share. By way of example only, and without limitation, for the purpose of the Operating Expense allocated or attributed by the Landlord to (i) the building of which the Premises form a part, the Tenant's Proportionate Share shall be a fraction which has as its numerator the GLA of the Premises and as its denominator the GLA of the Rentable Premises (including the Premises) in that building; and (ii) the Common Elements that are designated for the benefit of all tenants in the Shopping Centre, the Tenant's Proportionate Share shall be a fraction which has as its numerator the GLA of the Premises, and as its denominator the GLA of the Shopping Centre. The Landlord may recalculate or adjust the denominator of the Proportionate Share fraction from time to time due to changes, additions or improvements to the building of which the Premises form a part or to the Shopping Centre.

"Province": the province in which the Shopping Centre is located.

"Released Persons": collectively and individually includes the Landlord, the Management Company, the Owners and the Mortgagee. In any Section of this Lease which contains a release or other exculpatory provision, or an indemnity in favour of any or all of the Released Persons, such Released Persons shall

include the officers, directors, employees and agents of each such Released Person, and the Landlord acts as agent for, or as trustee for, the benefit of such Released Person so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Released Persons.

"Rent": Minimum Rent (described in Section 4.02), Percentage Rent (described in Section 4.03) and Additional Rent.

"Rentable Premises": those premises (including the Premises), in or on the Shopping Centre that are, or are intended from time to time to be occupied by businesses that sell or lease goods or services to the public.

"Rental Year": the period of time that, in the case of the first Rental Year of the Term, starts on the Commencement Date and:

- (a) for Article IV ends on the last day of that month which is the same month as the month immediately preceding the date on which Minimum Rent will escalate in accordance with Section 4.02(a) of this Lease, or if there is no Minimum Rent escalation under Section 4.02(a), ends on the last day of that month which is the same month as the month in which the Term of this Lease will expire;
- (b) for Articles V, VI, VII, VIII and ends on the last day of the month of the following December; and

in the case of Rental Years after the first Rental Year, is a period of twelve (12) consecutive calendar months starting the first day after the Rental Year that immediately precedes it, but the last Rental Year whether it is twelve (12) calendar months or not, terminates on the expiration or earlier termination of this Lease, and the Landlord may, from time to time, by written notice to the Tenant, specify a date (which may precede the notice) on which the then current Rental Year will terminate and the anniversary of the specified date will be the expiry date of the subsequent Rental Years. The Landlord will not change the Rental Year, however, for the purposes of Minimum Rent or Percentage Rent, except as set out in Section 13.02(g).

"Rules and Regulations": the rules and regulations set out in Schedule "D" adopted, promulgated, revised or amended by the Landlord from time to time under Section 17.01.

"Sales Taxes": goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes and any other taxes imposed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space under this Lease.

"Shopping Centre": the lands described in Schedule "A" as they are altered, reduced or expanded from time to time and the buildings, improvements, equipment and facilities, including, without limitation, the Common Elements, serving them or located on or in them from time to time.

"Stipulated Rate": the rate of interest per annum that is the lesser of (a) five percentage points more than the Prime Rate, and (b) the maximum rate permitted by law.

"Storage Areas": those areas designated by the Landlord from time to time as Storage Areas.

"Tenant": the Party of the Second Part and Persons for whom the Tenant is responsible in law.

"Tenant's Work": any work, renovation, repair, alteration, replacement, decoration or improvement conducted by or on behalf of the Tenant under this Lease, including the work specified under Schedule "C".

"Term": the period described in Section 3.03.

## ARTICLE II INTENT AND INTERPRETATION

### Section 2.01 Net Lease

- (a) This Lease is a completely net and carefree lease to the Landlord. Except as stated in this Lease, the Landlord is not responsible for costs, charges, or expenses relating to the Premises, their use and occupancy, their contents, or the business carried on in them, and the Tenant will pay the charges, impositions, costs and expenses relating to the Premises except as stated in this Lease. This Section will not be interpreted to make the Tenant responsible for ground rentals that may be payable by the Landlord or the Owners, payments to Mortgagees or, subject to Article V, the Landlord's income taxes. Capital Tax as defined in Section 6.03(c) is not considered as income tax.
- (b) The Tenant will pay to the Landlord or directly to the taxing authority (if required by the applicable legislation) the full amount of all Sales Taxes imposed on the Tenant in respect of the Rent payable

by the Tenant under this Lease. Sales Taxes so payable by the Tenant (i) will be calculated and paid in accordance with the applicable legislation; (ii) will be paid to the Landlord at the same time as the amounts to which the Sales Taxes are payable to the Landlord under this Lease (or at such other times as the Landlord from time to time determines) and (iii) despite anything to the contrary, will be considered not to be Rent but the Landlord will have all of the same remedies for such amounts as it has for non-payment of Rent under this Lease or by law. To avoid duplication, the Tenant will not reimburse the Landlord, in whole or in part, for any Sales Taxes paid or payable by the Landlord in respect of goods and services supplied to the Landlord or the Management Company in connection with the maintenance, operation, repair, insurance or administration of the Shopping Centre to the extent the Landlord receives an input tax credit in respect thereof.

#### **Section 2.02 Landlord and Representatives to Act Reasonably and in Good Faith**

The Landlord, and each Person acting for the Landlord, in making a determination, designation, calculation, estimate, conversion, or allocation under this Lease, will act reasonably and in good faith and each accountant, architect, engineer or surveyor, or other professional Person employed or retained by the Landlord will act in accordance with the applicable principles and standards of the Person's profession.

#### **Section 2.03 Rent Disputes**

The Tenant may dispute an invoice, billing or statement in respect of Rent only by giving written notice to the Landlord specifying the basis of the dispute within six (6) months after delivery of the invoice, billing or statement, as the case may be. The Tenant will, in any event, continue to pay Rent in accordance with the Landlord's invoice, billing or statement until the dispute is resolved.

#### **Section 2.04 Compliance with Applicable Laws**

The Tenant will comply with all Applicable Laws relating to its ability to enter into and comply with this Lease and relating to the operation, condition, maintenance and use or occupation of the Premises, the conduct of business in the Premises, and the making of any repairs or alterations on or in the Premises. The Tenant will provide the Landlord with prompt written notice of any work order, deficiency notice, compliance order or of any spill or illegal discharge of a contaminant relating to the Premises or the Tenant's use thereof.

#### **Section 2.05 Entire Agreement**

Whether or not the Tenant is permitted to take possession of the Premises, and whether or not it pays a deposit or any instalment of Minimum Rent or other Rent which is accepted by the Landlord, no change which the Tenant makes to the form of this Lease will be binding on the Landlord even if it is brought to the Landlord's attention, until the Landlord executes this Lease and initials the change or a page of this Lease containing the change and the Lease is delivered to the Tenant. The Lease includes the Schedules attached to it and the Rules and Regulations adopted under Section 17.01. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties concerning this Lease, the Premises, the Shopping Centre or any matter related to all or any of them, except those that are set out in this Lease. No alteration, amendment, change or addition to this Lease is binding upon the Landlord unless it is in writing and signed by the Tenant and the Landlord. No electronic communications between the parties will have the effect of creating or altering any legal rights or obligations of the parties.

#### **Section 2.06 General Matters of Intent and Interpretation**

- (a) Each obligation under this Lease is a covenant.
- (b) The captions, section numbers, article numbers and Table of Contents do not define, limit, construe or describe the scope or intent of the sections or articles.
- (c) The use of the neuter singular pronoun to refer to the Landlord or the Tenant is a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this Lease apply in the plural sense when there is more than one Landlord or Tenant and to corporations, associations, partnerships or individuals, males or females, are implied.
- (d) If a part of this Lease or the application of it to a Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:
  - (i) is independent of the remainder of the Lease and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Lease; and



- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance except those as to which it has been held or rendered invalid, unenforceable or illegal.

No part of this Lease will be enforced against a Person, if, or to the extent that by doing so, the Person is made to breach a law, rule, regulation or enactment.

- (e) This Lease will be construed in accordance with the laws of Canada and the Province.
- (f) Time is of the essence of this Lease.
- (g) To the extent necessary to ensure that all releases, exculpatory provisions and indemnities included in their favour in this Lease are enforceable against the Tenant by them, the Landlord acts as agent for, or as trustee for, the Released Persons.

### **ARTICLE III GRANT AND TERM**

#### **Section 3.01 The Premises**

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Premises in the Shopping Centre and has a GLA of **One Thousand, Three Hundred and Nineteen (1,319)** square feet. The approximate location of the Premises is outlined in red on Schedule "B".

If the Premises are entirely self-enclosed, their boundaries extend (a) to the limits from which the GLA of the Premises is measured, and (b) from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Premises have no structural ceiling abutting the demising walls and are open to the ceiling or the bottom surface of the structural ceiling of the Shopping Centre, the boundaries of the Premises extend from the top surface of the structural subfloor to the height of the demising walls. Common Elements (including, but not limited to, columns and walls that form part of the Common Elements) that are within the space enclosed by the boundaries of the Premises, do not form part of the Premises, although any floor space occupied by them is included in the GLA of the Premises.

#### **Section 3.02 Use of Common Elements**

The Tenant has the non-exclusive and non-transferable right (except in accordance with Article XIII) to use the Common Elements in common with others entitled to do so, for the purposes for which they are intended and during those hours that the Shopping Centre is open for business, subject however, to this Lease. Despite the foregoing, the Landlord, acting reasonably, may permit portions of the Common Elements to be used exclusively by specified tenants, licensees or other Persons.

#### **Section 3.03 The Term**

The Tenant will have and hold the Premises for the term (the "Term") which, unless sooner terminated, is the period (i) commencing on the date (the "Commencement Date") which is the earliest of (1) the date the Tenant opens its business to the public in any part of the Premises, or (2) the day following the expiry of the "Fixturing Period" (being the period described in Section 3.05), or (3) December 1, 2005 and (ii) ending ten (10) calendar years after the Commencement Date (unless the Commencement Date is not the first day of a month, in which case the Term shall end ten (10) calendar years after the last day in the month in which the Commencement Date occurs). Within a reasonable time after the Commencement Date occurs, the Landlord will confirm the Commencement Date by notice to the Tenant and such confirmed Commencement Date will apply for this Lease.

#### **Section 3.04 Certified GLA**

If the GLA of the Premises is certified by the Architect or by an accredited land surveyor designated by the Landlord, then such GLA will apply instead of the area indicated in Section 3.01 and Rent will be adjusted as calculated by the Landlord, which adjustment will be retroactive if the certification does not occur until after the Commencement Date.

#### **Section 3.05 Fixturing Period**

The Tenant shall have a maximum period of sixty (60) days to complete the Tenant's Work (the "Fixturing Period") which shall commence on the date that the Landlord delivers possession of the Premises to the Tenant and shall expire on the earliest of: (i) the date immediately prior to the date upon which any part of the Premises are opened to the public for business, or (ii) sixty (60) days after the Fixturing Period commenced. During the Fixturing Period, the Tenant shall not be obligated to pay Minimum Rent, Percentage Rent or Additional Rent, but the Tenant shall be subject to all of the other terms and conditions of this Lease insofar as they are applicable including, without limitation, the

obligations to pay Business Taxes if applicable, Charges for Utilities, any garbage removal costs, the obligation to maintain insurance pursuant to the Lease, and the provisions relating to the liability of the Tenant for its acts and omissions, and the acts and omissions of its servants, employees, agents, contractors, invitees, concessionaires and licensees and the indemnification of the Released Persons.

#### **Section 3.06 Construction and Acceptance of the Premises**

The Tenant acknowledges that it accepts the Premises in an "as is" condition and that all alterations, renovations, decorations and other work required in connection with the Premises will be performed by the Tenant at its sole cost and expense in accordance with Schedule "C".

### **ARTICLE IV RENT**

#### **Section 4.01 Covenant to Pay**

The Tenant covenants to pay Minimum Rent, Percentage Rent, and Additional Rent.

#### **Section 4.02 Minimum Rent**

- (a) The Tenant will, throughout the Term, pay to the Landlord or to the Management Company as the Landlord directs, at its head office, or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand and without deduction, abatement, set-off or compensation, as Minimum Rent as follows:
  - (i) during the first and second consecutive twelve (12) month periods of the Term, plus the part of the month, if any, in which the Commencement Date occurs, the annual sum of sixty-five thousand, nine hundred and fifty dollars (\$65,950.00) payable in equal consecutive monthly instalments of five thousand, four hundred and ninety-five dollars and eighty-three cents (\$5,495.83) each in advance on the first day of each calendar month for the aforesaid period, based on an annual rate of fifty dollars (\$50.00) per square foot of the GLA of the Premises;
  - (ii) during the third through fifth consecutive twelve (12) month periods, inclusive, of the Term, the annual sum of sixty-eight thousand, five hundred and eighty-eight dollars (\$68,588.00) payable in equal consecutive monthly instalments of five thousand, seven hundred and fifteen dollars and sixty-seven cents (\$5,715.67) each in advance on the first day of each calendar month for the aforesaid period, based on an annual rate of fifty-two dollars (\$52.00) per square foot of the GLA of the Premises;
  - (iii) during the sixth and seventh consecutive twelve (12) month periods of the Term, the annual sum of sixty-nine thousand, nine hundred and seven dollars (\$69,907.00) payable in equal consecutive monthly instalments of five thousand, eight hundred and twenty-five dollars and fifty-eight cents (\$5,825.58) each in advance on the first day of each calendar month for the aforesaid period, based on an annual rate of fifty-three dollars (\$53.00) per square foot of the GLA of the Premises; and
  - (iv) for the balance of the Term, the annual sum of seventy-two thousand, five hundred and forty-five dollars (\$72,545.00) payable in equal consecutive monthly instalments of six thousand, and forty-five dollars and forty-two cents (\$6,045.42) each in advance on the first day of each calendar month for the aforesaid period, based on an annual rate of fifty-five dollars (\$55.00) per square foot of the GLA of the Premises.
- (b) If the Commencement Date is not the first day of a calendar month, the Tenant will pay, on the Commencement Date, Minimum Rent calculated on a per diem basis (based on three hundred and sixty-five (365) days) from the Commencement Date to the end of the month in which it occurs.
- (c) The Tenant will deliver to the Landlord at the beginning of each Rental Year, a series of monthly post-dated cheques for the Rental Year for the total of the monthly payments of Minimum Rent and any Additional Rent that is estimated by the Landlord in advance.

#### **Section 4.03 Percentage Rent**

- (a) In addition to the Minimum Rent, the Tenant will pay to the Landlord, or to the Management Company as the Landlord directs, as Percentage Rent, the amount, if any, by which five percent (5%) of Gross Revenue for each Rental Year exceeds the Minimum Rent payable for the Rental Year.

- (b) Percentage Rent is payable **quarterly** to the Landlord or to the Management Company as the Landlord directs, at its head office or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand, and without deduction, abatement, set-off or compensation. The first payment of Percentage Rent is due on the tenth (10<sup>th</sup>) day after the last day of the first **quarter** of the Term, and on the tenth (10<sup>th</sup>) day after the end of each successive **quarter** of the Term. The amount of each payment of Percentage Rent will be equal to the excess, if any, obtained by applying the percentage referred to in Section 4.03(a) to the total of the stated Gross Revenue for the immediately preceding **quarter** and the stated Gross Revenue for all preceding months of the Rental Year, and deducting from that total, the total monthly payments of Minimum Rent and any payments on account of Percentage Rent made previous to that time by the Tenant for the Rental Year. If the Annual Statement furnished by the Tenant under Section 4.04, at the end of a Rental Year, discloses that the total Minimum Rent and Percentage Rent paid by the Tenant for the Rental Year exceeds or is exceeded by the total Minimum Rent and Percentage Rent payable by the Tenant for the Rental Year, the Tenant will pay any deficiency at the same time as it furnishes the Annual Statement, or the Landlord will pay any excess to the Tenant as soon as reasonably possible after the Landlord's receipt of the Annual Statement referred to in Section 4.04(b), (unless an audit under Section 4.08 is in progress or the Tenant is then in default under any term or condition of this Lease).
- (c) If a Rental Year does not correspond to a twelve (12) calendar month period, Percentage Rent will be calculated for the Rental Year on a per diem basis based on the number of days in the Rental Year.
- (d) Notwithstanding anything to the contrary, for the purposes of this Article IV "quarter" means a period of three (3) consecutive calendar months; the first quarter shall commence on the Commencement Date if that date occurs on the first day of a calendar month; but if it does not so occur, the first quarter shall commence on the first day of the calendar month next following the Commencement Date and each successive quarter shall commence on the first day of the calendar month following the previous quarter, and "quarterly" shall have a corresponding meaning.

#### **Section 4.04 Gross Revenue Reports**

- (a) Before the eleventh (11<sup>th</sup>) day of each calendar month, except for the first month of the Term, the Tenant will deliver to the Landlord, at the place then fixed for the payment of Rent, together with its payment of quarterly Percentage Rent, a statement (the "Monthly Statement") signed by the Tenant which, (i) states that Gross Revenue as reported in the Monthly Statement is in accordance with the definition of Gross Revenue in Section 1.01; (ii) contains a certification by the Tenant that the Monthly Statement is correct; (iii) is in the detail and form that the Landlord reasonably requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Gross Revenue for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Gross Revenue for all preceding months of the Rental Year, (and fractional months, if any, at the commencement or end of the Term); and (3) the quarterly payments made on account of Minimum Rent and Percentage Rent for the Rental Year.
- (b) Before the sixty-first (61<sup>st</sup>) day after the end of each Rental Year (including the last Rental Year of the Term), the Tenant will deliver to the Landlord at the place then fixed for the payment of Rent, a statement (the "Annual Statement") signed by the Tenant which Annual Statement will (i) state that Gross Revenue as shown in the Annual Statement is in accordance with the definition of Gross Revenue in Section 1.01; (ii) contain a certification that the Annual Statement is true and correct; and (iii) without limiting the requirements stated above, show month by month, the amount of Gross Revenue during the preceding Rental Year.
- (c) Before the one hundred and eighty-first (181<sup>st</sup>) day after each fiscal year end of the Tenant, the Tenant will deliver to the Landlord an opinion by an independent public accountant of recognized standing (an "Accountant") signed by the Accountant and stating that, (i) he has examined, in accordance with generally accepted auditing standards, the Gross Revenue (as defined in Section 1.01) of the Tenant for the fiscal year then ended; and (ii) Gross Revenue is fairly presented for the fiscal year then ended in accordance with Section 1.01 and on a basis consistent with that of the preceding fiscal year.

#### **Section 4.05 Occasional Statements**

The Landlord may, on infrequent occasions, require the Tenant to deliver, within one (1) week of the request, a statement of the approximate amount of Gross Revenue on a daily basis for the week preceding the date on which the statement is to be delivered. These statements will be used to analyze special promotions or sales trends and not to calculate Percentage Rent.

#### **Section 4.06 Tenant's Records**

The Tenant will keep in the Premises or at its principal office in Canada, for at least three (3) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Premises and daily receipts from all sales, rentals, charges, services and other transactions, in or from the Premises made by the Tenant and any other Persons conducting business in or from the Premises as well as sales and rental tax returns, pertinent original sales and rental records, and any other sales and rental records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Gross Revenue. Tenant, and all other Persons conducting business in or from the Premises, will record at the time of the sale or rental, in the presence of the customer, all receipts from sales, rentals, charges, services or other transactions whether for cash or credit, in a cash register or registers having a sealed cumulative total and any other control features that are reasonably required by the Landlord.

#### **Section 4.07 Right to Examine**

The Landlord may examine the Tenant's books and records relating to Gross Revenue and the inventories of merchandise at the Premises and at the Tenant's principal office in Canada, for the period covered by any statement issued by the Tenant. The Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Premises to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue.

#### **Section 4.08 Audit**

The Landlord may, at reasonable times, cause a complete audit to be made of the Tenant's business and records relating to the calculation of Gross Revenue. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of Gross Revenue for all or a part of a Rental Year, or that the Tenant is not complying with this Article IV, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant) of Gross Revenue for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If the Landlord's auditor reports that the Tenant is in default under this Article IV (which default may include, without limitation, a failure to deliver a statement required under this Article IV), or if the audit discloses that Gross Revenue for the relevant period is understated by three percent (3%) or more, the Tenant will pay to the Landlord, on demand, the cost of the audit in addition to the deficiency, together with interest on the latter calculated from the first day of such period at the Stipulated Rate.

#### **Section 4.09 Landlord's Right to Terminate**

If the Tenant shall be found to have intentionally understated Gross Revenue by three percent (3%) or more in any reports or statements to the Landlord, or if the Tenant at any time, after having received notice from the Landlord of the Tenant's having understated Gross Revenue by three percent (3%) or more in any statement or reports to the Landlord, within twelve (12) months thereafter understates Gross Revenue by three percent (3%) or more in any reports or statements to the Landlord, or if the Tenant on more than one occasion in any twelve month period fails to deliver when due any reports or statements related to Gross Revenue as and when required by this Lease, then, in any such event, the Landlord shall have the right, without further notice, to terminate this Lease upon not less than five (5) days and not more than sixty (60) day's written notice to the Tenant.

#### **Section 4.10 Additional Rent**

Additional Rent, (a) is payable in Canadian funds without deduction, abatement, set-off or compensation; (b) is payable (except when this Lease states that it is payable on demand) with the first monthly instalment of Minimum Rent after the Additional Rent begins to accrue; and (c) accrues daily.

#### **Section 4.11 Overdue Rent**

If the Tenant defaults in the payment of Rent, the unpaid Rent bears interest from the due date to the date of payment in full at the Stipulated Rate. Notwithstanding anything else in this Lease, such interest will not be considered to be Rent but the Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent.

Notwithstanding anything to the contrary contained in this Lease, in order to cover the extra expense involved in handling delinquent payments, the Tenant, at the Landlord's sole option, shall pay a late charge fee of \$150.00 when any instalment of Rent is received more than five (5) days after the due date

thereof. This late charge fee is charged as Additional Rent, and not as penalty or interest, for the purpose of defraying the Landlord's expenses incident to the processing of such overdue payments.

#### **Section 4.12 Pre-authorized Payment Plan**

At the Landlord's request, the Tenant will participate in a pre-authorized payment plan whereby the Landlord will be authorized to debit the Tenant's bank account each month or from time to time during each Rental Year in an amount equal to the Minimum Rent and Additional Rent payable on a monthly basis, and if applicable, generally any amount payable provisionally pursuant to the provisions of this Lease on an estimated basis. The Tenant hereby undertakes to sign a form of application which is the same as or similar to Schedule "E" to give full force and effect to the foregoing within five (5) days of presentation.

### **ARTICLE V TAXES**

#### **Section 5.01 Taxes – Definition**

"Taxes" means (a) real property taxes, rates, duties and assessments (including local improvement taxes), impost charges or levies (referred to collectively as "real property taxes"), that are levied, rated, charged or assessed against the Shopping Centre or any part of it from time to time (including, but not limited to, the Common Elements) by a taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts that are imposed instead of, or in addition to, real property taxes whether similar or not, and whether in existence at the Commencement Date or not, and any real property taxes levied, or assessed against the Landlord or the Owners on account of its or their ownership of or interest in the Shopping Centre, (b) the costs and expenses incurred for consultation, appraisal, legal and other fees and expenses to the extent they are incurred in an attempt to minimize or reduce amounts mentioned in Section 5.01(a), and (c) amounts imposed against or allocated by the Landlord to the Shopping Centre in respect of office expenses, salaries, benefits, and other personnel costs related to the administration and management of amounts such as those included in Sections 5.01(a) and (b). Taxes shall in every instance be calculated on the basis of the Shopping Centre being fully assessed and taxed at prevailing commercial/shopping centre rates for occupied space for the period for which Taxes are being calculated.

#### **Section 5.02 Taxes Payable by the Landlord**

The Landlord will, subject to Sections 5.03, 5.04 and 6.03, pay the Taxes that are imposed against the Shopping Centre or any part of it. However, the Landlord may defer payment of Taxes, or defer compliance with statutes, laws or by-laws, regulations or ordinances in connection with the levying of Taxes, to the extent permitted by law, if it diligently pursues or causes to be pursued the contest or appeal of the Taxes.

#### **Section 5.03 Taxes Payable by the Tenant**

- (a) Whether or not there are separate real property tax bills or separate real property assessment notices issued by a taxing authority, the Tenant will pay to the Landlord, in each Rental Year, those Taxes that are imposed against the Shopping Centre including the Common Elements (except for the Taxes that are allocated by the Landlord to the Rentable Premises not included in the GLA of the Shopping Centre), which shall be paid on the basis of the Tenant's Proportionate Share of such Taxes or on such other reasonable and equitable basis as the Landlord determines. The Tenant's Proportionate Share or share (determined as aforesaid) of Taxes shall remain payable regardless of any deferral of payment or contestation or appeal of Taxes by the Landlord or the Owners. The Landlord and the Owners will, notwithstanding the preceding sentence, have no obligation to contest, object to or litigate the levying or imposition of Taxes.
- (b) The Tenant will pay the amounts payable under Section 5.03(a) according to estimates or revised estimates made by the Landlord from time to time in respect of each Rental Year, in monthly instalments, in advance, as determined by the Landlord. Within a reasonable time after the date (the "Final Payment Date") in each calendar year when the final instalment of Taxes is due, the Landlord will deliver a statement (a "Tax Statement") to the Tenant that (i) specifies the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes for the Rental Year, and (ii) sets out the total (the "Prepayment Total"), of amounts payable under this Section 5.03(b) that have been paid by the Tenant between the Final Payment Date in the previous calendar year and the Final Payment Date of the current calendar year. If the Prepayment Total, less any amounts that were previously credited to the Tenant, and any amounts paid for arrears in respect of previous Rental Years, (the "Net Prepayment Total") is less than the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes specified in the Tax Statement, the Tenant will pay the deficiency with the next monthly payment of Minimum Rent. If the Net Prepayment Total exceeds the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes specified in the Tax

Statement, the Landlord will refund the excess within a reasonable time after delivery of the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease). The Landlord may estimate Taxes for the Rental Year following the then current Rental Year, and the Tenant will continue after the Final Payment Date, to make monthly payments in advance, in amounts determined by the Landlord, for periods determined by the Landlord. The monthly payments paid by the Tenant after the Final Payment Date will be credited against the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes for the subsequent Rental Year.

- (c) If the Term commences after the Final Payment Date in a calendar year, the Landlord will deliver to the Tenant a Tax Statement for the first Rental Year and the Tenant will pay to the Landlord the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) as specified in the Tax Statement. In addition, the Tenant will make payments, in monthly amounts determined by the Landlord, in advance, to be credited against the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes for the subsequent Rental Year.
- (d) If the last Rental Year expires or is terminated before the Final Payment Date in a calendar year, the Landlord will deliver to the Tenant a Tax Statement within a reasonable time after the expiry or termination of the last Rental Year. If the Final Payment Date has not occurred, the Tenant's Proportionate Share or share (allocated or determined in accordance with Section 5.03(a)) of Taxes will be based on the Landlord's estimate of Taxes, which will be considered as the final actual amount of Taxes for the last Rental Year. The Tenant will pay to the Landlord any deficiency within ten (10) days after the Landlord delivers the Tax Statement, or the Landlord will pay to the Tenant any excess the Tenant is entitled to within a reasonable time after the Landlord delivers the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease or it owes money to the Landlord in respect of its obligations under this Lease).
- (e) If a Rental Year is not twelve (12) calendar months, the Taxes payable by the Tenant under Section 5.03 will be prorated on a per diem basis, based on three hundred and sixty-five (365) days.

#### **Section 5.04 Business Taxes and Other Taxes of the Tenant**

The Tenant will pay to the taxing authorities, or to the Landlord, as it directs, before delinquency, all "Business Taxes" if applicable. "Business Taxes" means, (a) the taxes, rates, duties, assessments and other charges that are imposed against or in respect of the improvements, equipment and facilities of the Tenant on or in the Premises or the Shopping Centre or any part of either of them or the Landlord on account of its ownership of or interest in either of them; and (b) every tax and license fee that is imposed against or in respect of business carried on in the Premises or in respect of the use or occupancy of the Premises or any part of the Shopping Centre by the Tenant or its sub-tenants or licensees, or against the Landlord or the Owners on account of its or their ownership of the Premises or the Shopping Centre or any part of it. If there is not a separate bill issued by the relevant authority for Business Taxes, the Tenant will pay its Proportionate Share of the Business Taxes with respect to the entire Shopping Centre. The Landlord will remit amounts that it collects for Business Taxes to the relevant authority.

#### **Section 5.05 Tenant's Responsibility**

The Tenant will, (a) on the Landlord's request, promptly deliver to the Landlord, (i) receipts for payment of all Business Taxes payable by the Tenant; (ii) notices of any assessments for Taxes or Business Taxes or other assessments received by the Tenant that relate to the Premises or the Shopping Centre; and (iii) whatever other information relating to Taxes and Business Taxes the Landlord reasonably requests from time to time; and (b) deliver to the Landlord, at least ten (10) days before the last date for filing appeals, notice of any appeal or contest that the Tenant intends to institute with respect to Taxes or Business Taxes payable by the Tenant in respect of the Premises and obtain the prior written consent of the Landlord for the appeal or contest which consent will not be unreasonably withheld. If the Tenant obtains the Landlord's consent and does not pay the Taxes or Business Taxes before the appeal or contest, the Tenant will deliver to the Landlord whatever security for the payment of the Taxes or Business Taxes the Landlord reasonably requires and will promptly and diligently pursue the appeal or contest and keep the Landlord informed on all aspects of it.

The Tenant will indemnify and save the Landlord harmless from all losses, costs, charges and expenses arising from Taxes or Business Taxes as well as any taxes that are imposed in place of Business Taxes or Taxes or which are assessed against rentals payable under this Lease in place of Taxes or Business Taxes, whether against the Landlord or the Tenant including, but not limited to, increases in Taxes or Business Taxes arising directly or indirectly out of an appeal or contest by the Tenant. The Tenant will deliver to the Landlord any security for such an increase in Taxes or Business Taxes that the Landlord reasonably requires.

## ARTICLE VI SHOPPING CENTRE AND COMMON ELEMENTS – CONTROL AND PAYMENT

### Section 6.01 Control of the Shopping Centre by the Landlord

The Landlord will operate the Shopping Centre in a reputable manner having regard to size, age and location. The Common Elements and those portions of the Shopping Centre which are not leased to tenants are under the exclusive control of the Landlord.

Without limitation, the Landlord may, in its operation of the Shopping Centre:

- (a) (i) close parts of the Common Elements to prevent their dedication or the accrual of rights in them in favour of Persons or the public; grant, modify and terminate easements and other agreements pertaining to the use and operation of the Shopping Centre or any part of it, and temporarily obstruct or close off or shut down parts of the Shopping Centre for inspection, maintenance, repair, construction or safety reasons;
- (ii) employ personnel, including supervising personnel and managers, for the operation, maintenance and control of the Shopping Centre. The Shopping Centre or parts of it, may be managed by another Person or Persons that the Landlord designates in writing from time to time;
- (iii) use parts of the Common Elements for merchandising, display, decorations, entertainment and structures, permanent or otherwise, designed for retail selling or special features or promotional activities;
- (iv) regulate, acting reasonably, all aspects of loading and unloading, delivery and shipping of fixtures, equipment and merchandise, and all aspects of garbage collection and disposal. The Tenant is responsible for pick-up and disposal of its garbage at its cost. If the Landlord provides facilities or designates a commercial service for the pick-up and disposal of garbage instead of, or in addition to the service provided by the local municipality, the Tenant will use such facilities and commercial service at its cost;
- (v) prohibit the Tenant and its employees from parking in the Shopping Centre or Landlord may, at its discretion, provide for an employee parking area in the parking lot and the Tenant's and its employees and agents are to use only these designated areas; and
- (vi) impose or permit to be imposed reasonable charges upon any Person (including the general public) for the use of parking facilities that may at any time be part of the Common Elements;
- (b) (i) change the area, level, location, arrangement or use of the Shopping Centre or any part of it;
- (ii) construct other buildings, structures, or improvements in the Shopping Centre and make alterations of, additions to, subtractions from, or rearrangements of the Shopping Centre, build additional stores in any part of the Shopping Centre, and construct additional storeys, buildings or facilities in, adjoining or near the Shopping Centre;
- (iii) install kiosks and other installations, permanent or otherwise, in or on the Common Elements;
- (iv) diminish, expand, alter, relocate or rearrange the buildings, parking facilities and other parts of the Shopping Centre;
- (v) construct multiple deck, elevated or underground parking facilities, and expand, reduce or alter them; and
- (vi) do and perform such other acts in and to the Shopping Centre as, in the use of good business judgment, the Landlord determines to be advisable for the proper operation of the Shopping Centre.

Despite anything else in this Lease, the Landlord has no liability for diminution or alteration of the Common Elements that occurs as the result of the Landlord's exercise of its rights under this Section 6.01 or elsewhere under this Lease and the Tenant will not be entitled to compensation or a reduction or abatement of Rent, and no such diminution or alteration of the Common Elements shall be deemed to be a constructive or actual eviction of the Tenant or a default by the Landlord of any obligation for quiet enjoyment contained in this Lease or provided at law.

## **Section 6.02 Landlord's Relocation Right**

The purpose of the site plan attached hereto as Schedule "B" is to show the approximate location of the Premises only. The Landlord reserves the right upon ninety (90) days' prior written notice to (a) rearrange the boundaries and dimensions of the Premises and (b) relocate the Premises within the Shopping Centre to premises of substantially the same GLA as the Premises if in the Landlord's opinion such a rearrangement or relocation would be for the betterment of the Shopping Centre having regard to the establishment of new tenancies in the Shopping Centre or having regard to the expansion or renovation of the Shopping Centre. In the event that the Landlord elects to relocate the Premises for any reason, then the Landlord shall pay the Tenant's reasonable moving costs and shall reimburse the Tenant for its leasehold improvements (excluding the Tenant's trade fixtures) in the Premises on the basis of their undepreciated capital cost (calculated on a straight-line basis over the Term and any renewals or extensions thereof) at the time of relocation provided that there shall not be any payment required on account of goodwill, loss of profits or loss of business. Minimum Rent and Additional Rent with respect to the rearranged or relocated Premises shall be increased or reduced proportionately to any increase or reduction in the area of the Premises as rearranged or relocated. The Tenant shall be responsible for the cost of its new leasehold improvements in the relocated Premises.

The exercise by the Landlord of any of its rights under this Section 6.02 shall not constitute a breach by the Landlord of any of its obligations under this Lease nor shall the exercise of any such rights be deemed to be constructive or actual eviction, or a breach of the covenant for quiet enjoyment. The Tenant shall not have the right to object to any decisions made or actions taken by the Landlord pursuant to Section 6.02, and the Tenant shall not have any claim or rights against the Landlord, nor shall it be entitled to any payment (except as stated above in this Section 6.02) compensation or damages from the Landlord as a result of any decisions or actions.

## **Section 6.03 Operating Expenses**

- (a) The costs and expenses of maintaining, operating, repairing, replacing and administering the Shopping Centre (the "Operating Expenses") include, but are not limited to those listed below, none of which is to be a duplication of another cost or expense:
- (i) the cost and expense of obtaining and maintaining insurance in respect of the Shopping Centre (after deducting recoveries from tenants under clauses similar to Section 10.02) including all insurance premiums, all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it, and costs and expenses for defending and payment of claims below deductibles;
  - (ii) cleaning, snow removal, garbage, recycling and waste collection and disposal, and landscaping;
  - (iii) all utilities supplied to the Shopping Centre (excluding the cost of utilities charged directly to tenants in the Shopping Centre) including without limitation lighting, electricity, fuel, steam, water and public utilities; life safety, public address and musical broadcasting systems, energy conservation equipment and systems, and telecommunication and information systems used in or serving the Common Elements, and electricity for signs that are part of the Common Elements;
  - (iv) policing, security, supervision and traffic control;
  - (v) management office expenses of operation and occupancy costs of any offices occupied by the Shopping Centre manager and manager's staff, and salaries of personnel, including management and other supervisory personnel, employed to carry out the operation and the cleaning, maintenance, and repair of the Shopping Centre, including fringe benefits and contributions and premiums for unemployment insurance and workers compensation insurance, pension plan contributions and similar premiums and contributions, and severance pay or indemnity, or, where the management office and personnel serve more than one shopping centre, an allocated share of those expenses, salaries and contributions;
  - (vi) rental of equipment and signs, and the cost of building supplies used by the Landlord in the maintenance, cleaning, repair and operation of the Shopping Centre;
  - (vii) auditing (including audit fees for the statements referred to in Section 6.04), accounting, legal and other professional and consulting fees and disbursements;
  - (viii) repairs (including major repairs) and replacements to and maintenance and operation of the Shopping Centre and the systems, facilities and equipment serving the Shopping Centre, (except for repairs or replacements due to inherent structural defects or weaknesses);



- (ix) depreciation or amortization of the costs of repairs and replacements mentioned in Section 6.03(a)(viii), and of the costs, including repair and replacement, of the maintenance, cleaning and operating equipment, master utility meters and all other fixtures, equipment and facilities that are part of the Common Elements unless they are charged fully in the Rental Year in which they are incurred, all in accordance with rates and for periods determined by the Landlord from time to time in accordance with reputable shopping centre management and operating practices, but the Landlord shall be entitled to charge the remaining undepreciated or unamortized balance of any of the foregoing costs of repairs and replacements over one or more Rental Years as determined by the Landlord;
- (x) any costs attributable to heating, ventilating or air-conditioning and humidity control and fire sprinkler maintenance and monitoring if any, and all costs relating to providing or operating, maintaining or replacing the HVAC System or any equipment providing humidity control, excluding the cost of such services charged directly to tenants in the Shopping Centre;
- (xi) interest calculated upon the undepreciated or unamortized part of the costs referred to in Section 6.03(a)(viii) and (ix), at a rate per annum that is two percentage points above the average daily Prime Rate of interest for the period during which the present interest is calculated;
- (xii) the Business Taxes and Taxes, if any, payable by the Landlord or the Owners with respect to the Common Elements, and Capital Tax as defined in Section 6.03(c);
- (xiii) a rental charge for any mechanical, electrical, meter, garbage, utility, storage, janitorial or other service rooms in the Shopping Centre, based upon the average rental on a per square foot basis paid in the Shopping Centre by ground floor tenants occupying less than 2,500 square feet of GLA;
- (xiv) an administration fee of five percent (5%) of gross amounts received or receivable by the Landlord in respect of the Shopping Centre for all items, including all such items as are included in this Lease as Rent, assuming full occupancy and disregarding any reduction, limitation, deferral or abatement of any amounts in the nature of Rent. This administration fee is in addition to and is not a duplication of the expenses, salaries and benefits referred to in Section 6.03(a)(v) above.

**The Landlord has the right, acting on a reasonable and equitable basis to gross-up certain Operating Costs which vary with actual occupancy such as by way of example, garbage removal, to more accurately reflect the costs (and the Tenant's Proportionate Share thereof) which would be uncured were the Shopping Centre ninety-five percent (95%) occupied.**

- (b) From the total of the Operating Expenses set out in Subsection (a) there is deducted:
  - (i) net recoveries that reduce the expenses incurred by the Landlord in operating and maintaining the Shopping Centre and the Common Elements, which are received by the Landlord from tenants as a result of any act, omission, default or negligence of tenants or as the result of breaches by tenants of the provisions in their leases (but not recoveries from tenants under clauses similar to this Section 6.03);
  - (ii) net proceeds from insurance policies taken out by the Landlord, to the extent that the proceeds relate to the costs and expenses incurred in the maintenance and operation of the Shopping Centre and the Common Elements; (if the Landlord defaults under Section 10.05, it will deduct an amount equal to the net proceeds that the Landlord would have been entitled to had it not defaulted under that Section);
  - (iii) net recoveries from charges, if any, for the use of the parking facilities of the Shopping Centre, but only to the extent of the total costs of maintaining and operating the parking facilities; and
  - (iv) contributions, if any, to the total cost of maintaining and operating the Shopping Centre and the Common Elements made by tenants or occupants of space that are excluded from the GLA of the Shopping Centre.
- (c) Capital Tax is an amount determined by multiplying each of the "Applicable Rates" by the "Shopping Centre Capital" and totalling the products. "Shopping Centre Capital" is the amount of capital which the Landlord determines, without duplication, is invested from time to time by the Landlord, the Owners, or all of them, in doing all or any of the following: acquiring, developing, expanding, redeveloping and improving the Shopping Centre. Shopping Centre Capital will not be increased by any financing or refinancing except to the extent that the proceeds are invested directly

as Shopping Centre Capital. An "Applicable Rate" is the capital tax rate specified from time to time under any Applicable Laws which imposes a tax in respect of the capital of corporations. Any tax exempt portion of capital will be reasonably allocated amongst the relevant properties by the Landlord when calculating Capital Tax. Each Applicable Rate will be considered to be the rate that would apply if none of the Landlord or the Owners employed capital outside of the Province.

- (d) Notwithstanding anything in this Lease to the contrary, Operating Expenses may, at the Landlord's option, be allocated or attributed by the Landlord to the various buildings that comprise the Shopping Centre (including the Common Elements that are a part of each building) and to the Common Elements of the Shopping Centre that are designated for the benefit of all tenants in the Shopping Centre (such by way of example but without limitation, the parking areas, walk-ways, drive-ways and bus areas) on a reasonable basis in the Landlord's opinion and in accordance with the benefits derived by the tenants of each component of the Shopping Centre and having regard to the nature of the particular cost and expense being allocated.

#### **Section 6.04 Tenant's Proportionate Share of Operating Expenses**

- (a) In each Rental Year, the Tenant will pay to the Landlord its Proportionate Share of the Operating Expenses in monthly instalments, in advance.
- (b) The Tenant will pay the amounts payable under Section 6.03 according to estimates or revised estimates made by the Landlord from time to time in respect of periods determined by the Landlord. The Tenant's payments will be made in monthly instalments in advance for the periods in respect of which the estimates are made. Within a reasonable time after the end of each Rental Year the Landlord will deliver to the Tenant a report certified by the Landlord of the amounts referred to in Section 6.03 together with a statement (a "Statement") of the Tenant's Proportionate Share of those amounts. If the Tenant has paid more than a Statement specifies, the excess will be refunded within a reasonable time after delivery of the Statement (unless the Tenant is then in default under any term or condition of this Lease or it owes money to the Landlord in respect of its obligations under this Lease). If the Tenant has paid less than a Statement specifies, the Tenant will pay the deficiency with the next monthly payment of Minimum Rent.
- (c) For the last Rental Year the Landlord shall deliver to the Tenant, within a reasonable time after the last Rental Year, or within a reasonable time after the date when the last Rental Year would have ended if the Term had not expired or this Lease had not terminated a report of the amounts referred to in Section 6.03 (which report, although it may involve estimates and may be unaudited, will be considered final), together with a Statement. The Tenant will pay any deficiency to the Landlord within ten (10) days after the Landlord delivers the Statement, or the Landlord will pay to the Tenant any excess that the Tenant is entitled to, which payment will be made within a reasonable time after the Landlord delivers the Statement, (unless the Tenant is then in default under any term or condition of this Lease, or the Tenant owes money to the Landlord in respect of its obligations under this Lease).
- (d) If a Rental Year is less than twelve (12) months, the Tenant's Proportionate Share under Section 6.04 will be prorated on a per diem basis based on three hundred and sixty-five (365) days.

### **ARTICLE VII UTILITIES AND HEATING, VENTILATING AND AIR-CONDITIONING**

#### **Section 7.01 Charges for Utilities**

- (a) The Tenant will pay to the Landlord an amount (the "Charge") which is the total, without duplication, of: (i) the costs incurred by the Landlord for water, electricity, fuel, power, telephone and other utilities (the "Utilities") used in or for the Premises or allocated to them by the Landlord including any Utilities consumed as a result of the installation of any re-heat coil or additional heating system in the Premises; (ii) charges imposed in place of or in addition to Utilities as determined by the Landlord; (iii) the Landlord's costs of determining the Charge as well as the Landlord's costs of procuring the utility supply contract including, but not limited to, professional, engineering and consulting fees and the cost of providing any security for payment to the supplier as set out in the utility supply contract including, but not limited to, the amount of any security deposits, interest thereon at the Stipulated Rate, costs of providing letters of credit and any other similar costs; and (iv) an administration fee of fifteen percent (15%) of the total referred to above. No administration fee is payable for amounts billed directly to the Tenant by a supplier of a Utility and paid by the Tenant directly to the supplier.
- (b) If the Landlord supplies Utilities, (i) the Tenant will pay the Landlord for such Utilities on demand, at reasonable rates; (ii) the Tenant will pay the Charge to the Landlord based on estimates of the Landlord but subject to adjustment within a reasonable time after the period for which the estimate has been made; (iii) the Tenant will, if requested by the Landlord, install at its own expense, at a

location designated by the Landlord, a separate check meter indicating demand and consumption for Utilities in the Premises; and (iv) the Landlord is not liable for interruption or cessation of, or failure in the supply of Utilities, services or systems in, to or serving the Shopping Centre or the Premises, whether they are supplied by the Landlord or others, and whether or not the interruption or cessation is caused by the Landlord's negligence.

- (c) The Landlord will determine the Charge by allocating the Utilities for the Shopping Centre among the Shopping Centre's components including the Common Elements, Rentable Premises and Storage Areas, acting on the advice of a qualified engineer using as a basis, but not limited to (i) check meters, (ii) the relevant rates of demand and consumption of Utilities in the Common Elements, Rentable Premises and Storage Areas, and (iii) the connected loads of the areas that make up the Common Elements, Rentable Premises and Storage Areas for which there are no check meters.
- (d) The Tenant will keep current on all of its obligations to any independent utility supplier with which it contracts directly for its own supply of any Utilities. The Landlord will have the right to approve such arrangements, acting reasonably, and the Tenant will provide to the Landlord a copy of all utility supply contracts entered into by the Tenant. The Landlord has no liability or responsibility for providing a means of access to any utility supplier but shall be free to exercise its own discretion in that regard in the best interests of the Shopping Centre.

#### **Section 7.02 Heating, Ventilating and Air-Conditioning**

- (a) The parties acknowledge that notwithstanding that the Landlord owns the heating, ventilating and air-conditioning system presently serving the Premises and unless otherwise required or permitted by the Landlord as set out in this Section 7.02, the Tenant shall be solely responsible for all costs and expenses of operating, maintaining and repairing the heating, ventilating and air-conditioning system serving the Premises including entering into such maintenance and service contracts as are necessary for such operation, maintenance and repair. The Tenant shall provide the Manager of the Shopping Centre with a copy of such maintenance and service contract. If the heating, ventilating and air-conditioning system serving the Premises ceases to function properly, then the Tenant, using good business judgment, shall repair or replace such heating, ventilating and air-conditioning system serving the Premises at its sole cost and expense with a new system of a type as determined by the Landlord, acting reasonably, which shall become the Landlord's property immediately upon affixation but which the Tenant agrees to operate, maintain and repair as set out above at its sole cost and expense.
- (b) The Tenant shall regulate those parts of the heating, ventilating and air-conditioning facilities within the Premises (including the distribution system for the Premises) that are not part of the Common Elements so as to maintain reasonable conditions of temperature and humidity within the Premises and to avoid direct or indirect appropriation of heating, ventilating or air-conditioning from the balance of the Shopping Centre. If as a result of the operation of the system, a direct or indirect appropriation of heating, ventilating and air-conditioning from the Common Elements occurs (as determined by the Landlord), the Tenant agrees, forthwith upon notification thereof by the Landlord, to take such steps as are reasonably necessary to prevent such direct or indirect appropriation.
- (c) The Landlord may, at its option assume the responsibility of operating, maintaining and repairing the heating, ventilating and air-conditioning system serving the Premises including entering into such maintenance service contract or contracts as are necessary for operation, maintenance and repair of the heating, ventilating and air-conditioning systems of the Premises and the Tenant shall pay the costs and expenses of such service contract or contracts.
- (d) If the heating, ventilating and air-conditioning equipment, facilities and system serving the Premises is shared with other Rentable Premises in the Shopping Centre (the "Shared HVAC System"), the Landlord may, at its option, assume the responsibility of operating, maintaining and repairing the Shared HVAC System, including entering into such maintenance and service contracts as are necessary for operation, maintenance and repair, and the cost and expenses thereof will be equitably allocated by the Landlord amongst the tenants being served by the Shared HVAC System and the Tenant shall pay its share of the Landlord's costs and expenses of all repairs and replacements to, and maintenance and operating of, the Shared HVAC System. Such costs and expenses shall, without limitation, include depreciation or amortization on repair or replacement of such Shared HVAC System, the cost of which is not charged in full in the year in which the cost is incurred, interest at two (2) percentage points above the average daily Prime Rate of interest for the period during which the present interest is calculated on the undepreciated or unamortized portion of the costs of such equipment, repairs and replacement and an administration fee of fifteen percent (15%) of all of the foregoing costs (excluding interest charges). The Tenant's share of such costs and expenses shall be equitably determined by the Landlord and such costs and expenses shall be

allocated amongst the tenants served by the Shared HVAC System for which the Landlord assumes responsibility. The foregoing costs and expenses shall exclude the cost of fuel and electricity consumed by the use of such Shared HVAC System, to the extent that such costs and expenses are charged separately under the provisions of Section 7.01 hereof.

## **ARTICLE VIII MARKETING FUND, MERCHANTS' ASSOCIATION AND ADVERTISING**

### **Section 8.01 Marketing Fund and Merchants' Association**

- (a) The Tenant will pay to the Landlord, for the creation and maintenance of a fund (the "Marketing Fund") for the promotion of the Shopping Centre, an annual payment for each Rental Year equal to the greater of (i) one dollar and twenty-five Cents (\$1.25) per square foot of the GLA of the Premises; or (ii) one thousand dollars (\$1,000.00). The Marketing Fund payment will be increased at the start of each Rental Year after the first Rental Year to equal the amount obtained by multiplying the Marketing Fund payments specified above, by a fraction, which has at its numerator the C.P.I. for the month of July immediately preceding the first month of the current Rental Year, and as its denominator the C.P.I. for the month of July 2000. In no event will the Marketing Fund charge for any Rental Year be less than the amount payable by the Tenant in the immediately preceding Rental Year. The Marketing Fund payment will be made in monthly instalments in advance, on the first day of each calendar month.
- (b) The Marketing Fund will be used by the Landlord for the promotion of the Shopping Centre, but the Landlord may pay all or any part of the Marketing Fund to an Association (defined in Section 8.01(c)) and that payment will be a complete discharge of the Landlord's obligation in respect of the amount paid.
- (c) If an association or a corporation of merchants or tenants of the Shopping Centre (an "Association") has been formed or is formed, the Tenant will (i) be a member throughout the Term; (ii) abide by those rules, regulations, by-laws, decisions, and directions of the Association that do not conflict with this Lease; and (iii) if the Landlord requires it, join with other tenants in an application for Letters Patent or Articles of Incorporation incorporating an Association. The Tenant will not be required to pay dues or assessments levied by the Association.
- (d) In addition to the foregoing, the Tenant will participate in the promotion and advertising during the grand re-opening of the Shopping Centre and during the opening period of any phase of an expansion of the Shopping Centre that the Premises are located in, and will pay to the Landlord, on demand, a single payment equal to the greater of: (i) \$1.00 per square foot of the GLA of the Premises; or (ii) \$1,000.00.

### **Section 8.02 Seasonal Decorations**

The Tenant will pay to the Landlord, for the creation and maintenance of a fund for seasonal decorations, an annual payment for each Rental Year equal to Twenty-Five Cents (\$0.25) per square foot of the GLA of the Premises. The payment for seasonal decorations will be made in monthly instalments, in advance, on the first day of each calendar month.

### **Section 8.03 Advertising**

The Tenant will pay to the Landlord an annual payment (the "Advertising Payment") for each Rental Year, as a contribution to print campaign or other types of media campaigns designated by the Landlord for the purpose of promoting the Shopping Centre, equal to the greater of: (i) one thousand dollars (\$1,000.00) or (ii) one dollar and twenty-five cents (\$1.25) per square foot of the GLA of the Premises subject to increases at the same time as the Promotion Fund by the greater of (i) annual C.P.I. increases calculated in accordance with Section 8.01(a); and (ii) the annual percentage increase in the electronic, television, radio, print and other advertising media costs within the City of Toronto as determined by the Landlord's promotion director. This determination will be made in a manner that is consistent with previous years' determinations so as to ensure a fair and equitable calculation in each case. The Advertising Payment will be made in equal monthly instalments in advance on the first day of each calendar month.

## **ARTICLE IX USE OF THE PREMISES**

### **Section 9.01 Use of the Premises and Trade Name**

- (a) The Tenant will not use or permit any part of the Premises to be used for any purpose other than the following: the sale of prescription and non-prescription eye wear and the operation of a refractionist office for the purpose of providing eye examinations by a duly qualified

optometrist in compliance with all laws so long as such refractionist office does not exceed five hundred (500) square feet of the GLA of the Premises.

- (b) The Tenant will use only the advertised name "Great Glasses" for its business in the Premises and will not change or permit the change of that advertised name without the prior written consent of the Landlord, which consent will not be unreasonably withheld.
- (c) The Tenant acknowledges that the Landlord has granted exclusive covenants and may grant other exclusive covenants to other tenants of the Shopping Centre and, accordingly, the Tenant shall not introduce new product lines or offer new services to its customers without first obtaining the written consent of the Landlord. The Tenant acknowledges that it would be reasonable for the Landlord to withhold its consent if the introduction by the Tenant of such product line or service would compete with the business of other tenants in the Shopping Centre or infringe on the exclusive covenants granted by the Landlord.

#### **Section 9.02 Prohibited Activities**

The Tenant will not use or permit to be used any part of the Premises for, nor shall it engage in any media advertising with respect to the Premises of, the sale of goods not in keeping with a reputable and first class shopping centre, second hand goods or armed services surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock; the sale of firecrackers or fireworks; an auction, bulk sale (other than a bulk sale made to an assignee or sub-tenant under a permitted assignment or subletting), liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale; a sale of fixtures; a sale or business conduct which, because of the merchandising methods or quality of operation likely to be used, would tend to lower the character of the Shopping Centre; any practice of unethical or deceptive advertising or selling procedures; or catalogue sales, except of merchandise that the Tenant is permitted to sell under Section 9.01.

#### **Section 9.03 Conduct of Business**

The Tenant will open the whole of the Premises for business on the Commencement Date, fully fixtured, stocked and staffed and will, throughout the Term, conduct continuously, diligently and actively, in a reputable and first-class manner, the business set out in Section 9.01 in the whole of the Premises in accordance with this Lease. In the conduct of the Tenant's business, the Tenant will:

- (a) conduct its business in the Premises during the hours and on the days that the Landlord requires or permits from time to time and at no other time but the Tenant is not required to carry on business when prohibited by a governmental law or by-law regulating the hours of business;
- (b) ensure that all furniture, fixtures and equipment on or installed in the Premises are of first-class quality and kept in good condition; maintain an adequate staff and stocks of sufficient size, character and quality to produce the maximum volume of sales from the Premises consistent with good business practices; stock in the Premises only the merchandise that the Tenant intends to offer for retail sale from the Premises; not use any part of the Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Tenant's business in the Premises, and, at all times, keep displays of merchandise in the display windows and keep the display windows and signs in the Premises well lighted during the hours that the Landlord designates from time to time;
- (c) participate in a ticket validation system, if one is established by the Landlord for the parking facilities of the Shopping Centre, and pay on demand, the parking charges attributable to it under that system;
- (d) use the name and insignia that the Landlord requires in connection with the Shopping Centre in the advertising of the Tenant's business in the Premises; claim no rights in those names, marks or insignia; promptly abandon or assign to the Landlord any such rights that it acquires by operation of law, and promptly execute the documents that the Landlord requests to give effect to this provision.
- (e) indemnify the Landlord in respect of any loss, cost or expense which the Landlord or any Released Person incurs in respect of any claim, action, or liability enforced or sought to be enforced against the Landlord or any Released Person arising in connection with any strike, lock-out, or labour disruption or in connection with any union organizational or certification related proceedings involving the employees of the Tenant, any sub-tenant, or any licensee or occupant of the Premises. The Tenant will, in addition, within ten (10) days of its receipt of an invoice particularizing the Landlord's costs and expenses for extra cleaning, security, maintenance, or legal costs associated with activities of the type described above, pay to the Landlord the full amount of that invoice together with an administration fee of fifteen percent (15%) of the amount invoiced.

- (f) comply with reasonable requests of the Landlord for conservation of energy.

#### **Section 9.04 Waste Management**

The Tenant will comply with all Applicable Laws pertaining to waste management and reduction in connection with the Premises and the Tenant's conduct of business. The Tenant will also co-operate with the Landlord by providing any documents and other information and doing whatever else is reasonably requested by the Landlord in order to reduce and manage waste. If responsibility for any waste related matters is imposed by Applicable Laws, on both parties to the Lease and/or third parties, the Landlord may give notice to the Tenant particularizing the responsibilities which the Tenant will assume.

#### **Section 9.05 Radius Clause**

The Tenant will not engage in nor will it permit any Person under its control or affiliated with it, whether as partner, shareholder, lender, employee or otherwise, to engage, directly or indirectly, in a business operating under the same name as the Tenant's business in the Premises, or under a similar name, within any building or building complex, any part of which is within a radius of five (5) kilometres from any point on the perimeter of the Shopping Centre. This restriction does not apply, however, to any business or store of the Tenant that is in operation under the same name as the Tenant's business in the Premises, or under a similar name, within that radius at the Commencement Date so long as the size of that business or store is not increased. If the Tenant breaches this covenant, the Landlord may require that gross revenue (calculated in the same manner as Gross Revenue under this Lease) from the business, the conduct of which breached this covenant, be included in Gross Revenue under this Lease, and the Landlord will have the same rights of inspection and audit with respect to the gross revenue of that other business as it has with respect to Gross Revenue under Article IV.

#### **Section 9.06 Pest Control**

In order to maintain satisfactory and uniform pest control throughout the Shopping Centre, the Tenant shall engage for the Premises at its sole cost and expense such pest extermination contractor as may be acceptable to the Landlord, acting reasonably, and at such intervals as the Landlord requires. The Tenant shall ensure that its pest extermination contractor applies with all Applicable Laws governing the use of pesticides or other substances. If the Landlord, acting reasonably, determines that the Tenant's pest extermination contractor is not performing its duties effectively and in compliance with all Applicable Laws, then the Landlord may, without notice, engage its own pest extermination contractor on the Tenant's behalf without incurring any liability in respect thereof and the Tenant will pay to the Landlord the cost of the Landlord's pest extermination contractor together with an administration fee of fifteen percent (15%) of the total cost.

#### **Section 9.07 Environmental**

- (a) If the Landlord provides garbage disposal facilities or collection services then the Tenant will use them only for the disposal of solid waste that is not a Hazardous Substance and can lawfully be transported to, and dumped at, the closest landfill site without surcharges or penalties. The Tenant will use the sewers only to dispose of liquid waste that is not a Hazardous Substance and may be lawfully discharged into the municipal sewer.
- (b) Unless any Applicable Law provides to the contrary, all wastes (including waste which is a Hazardous Substance) will be disposed of by the Tenant at its expense at least once every three (3) months (or more often if the Landlord requires it) using the Landlord's designated hauler or remover, or if there is none, using a properly licensed service. If Applicable Laws require the Tenant to keep waste at the Shopping Centre for more than three (3) months or the period required by the Landlord, then the Tenant shall store it at its sole expense in a manner and in a location specified by the Landlord and which complies with all Applicable Laws.
- (c) The Tenant will comply with all Applicable Laws pertaining to waste reduction in connection with the Premises and the Tenant's conduct of business. Without limiting this requirement, the Tenant will:
  - (i) perform all waste audits and waste reduction work plans;
  - (ii) implement all waste reduction work plans; and
  - (iii) provide to the Landlord, within ten (10) days of the Landlord's request in each case, copies of all evidence that the Landlord requires concerning compliance. The Tenant will also do whatever else is reasonably requested by the Landlord in connection with any waste audits, waste reports, and waste reduction work plans that the Landlord prepares. To the extent responsibility in connection with any waste related matters is imposed by Applicable Laws so

as to appear to overlap or duplicate responsibilities among the Landlord, the Management Company, the Tenant, or any other party, the Landlord may allocate responsibility to the Tenant in whole or in part by notice to the Tenant particularizing the responsibilities which the Tenant will assume.

- (d) The Tenant will not, authorize, cause or permit to be brought on or into the Premises, or the Shopping Centre, any Hazardous Substance.
- (e) The Tenant will not authorize, cause, or permit to be discharged any Hazardous Substance. The Landlord may perform an audit of all discharges (whether they are permitted or not). Where a prohibited discharge occurs, the Tenant will immediately notify the Landlord and all authorities having jurisdiction (the "Authorities") and the Tenant will immediately clean up the discharge and restore the environment affected by the discharge to the satisfaction of the Authorities and the Landlord. The Tenant will further provide the Landlord with a certificate from the Tenant's duly qualified consulting engineer and the Authorities indicated that the clean-up and restoration has occurred in accordance with all Applicable Laws. For the purpose of liability the Tenant and not the Landlord is the owner of all Hazardous Substances that the Tenant authorizes, causes, or permits to be discharged.
- (f) If the Tenant fails to promptly clean up the discharge and to restore the environment or if, in the Landlord's reasonable opinion, the Tenant is not competent to do so, the Landlord may, upon notice to the Tenant, carry out the whole or any part of the clean-up and restoration and the Tenant will pay to the Landlord all costs incurred by the Landlord in so doing together with an administration fee of fifteen percent (15%) of such costs.
- (g) The Tenant will fully comply with the orders of all Authorities concerning pollution control and environmental clean-ups of the Premises or the Shopping Centre and if the Landlord is required by the Authorities to do anything in relation to an environmental problem caused by the Tenant, the Tenant will, upon receipt of notice from the Landlord, carry out the order at the Tenant's expense. If the Tenant fails or refuses to promptly and fully carry out an order or if, in the Landlord's reasonable opinion, the Tenant is not competent to carry out the order, the Landlord may, upon notice to the Tenant, carry out the whole or any part of the order and the Tenant will pay to the Landlord all costs incurred by the Landlord in so doing, together with an administration fee of fifteen percent (15%) of such costs.
- (h) The Tenant will perform or cause to be performed at its cost, in accordance with the Landlord's directions, any tests, and inspections that any environmental audit recommends or that any Authority requests or requires in connection with the Premises or the Tenant's conduct of business in the Shopping Centre and will provide whatever reports the Landlord reasonably requires. The Landlord may, however, on written notice to the Tenant require that the tests, inspections and reports be performed by the Landlord's consultant at the Tenant's expense.
- (i) The Tenant will take all proactive and preventative steps that may be imposed or recommended under any of the Applicable Laws or that a tenant would take in order to minimize risk pertaining to Hazardous Substances or any of the other matters referred to in Sections 9.06 and 9.07.

#### **Section 9.08 Special Indemnity**

Without limiting the Landlord's other rights and remedies under this Lease or at law, including but not limited to all or any of Section 10.06, 14.01, Article XVI (including but not limited to Sections 16.06 and 16.09), if the Tenant fails promptly and expeditiously to complete all or any of the obligations provided for in any of Sections 9.06 or 9.07, the Landlord will be entitled, upon five (5) days' written notice (or, in the case of emergencies, on such a shorter notice as is reasonable) to enter upon the Premises and do whatever was required to be done by the Tenant and its costs of doing so will be paid by the Tenant, together with an administration fee of fifteen percent (15%) of those costs. The Tenant will also indemnify the Released Persons and save them harmless from every loss, cost, claim, expense, penalty, fine and liability whether imposed by an Applicable Law, or otherwise arising from or in any way related to Hazardous Substances, Applicable Laws (including but not limited to environmental legislation, and waste reduction legislation and workplace health and safety legislation, whether Provincial or otherwise) that relate to or affect the Premises, the Tenant's use of the Premises or the Tenant's conduct of business in the Shopping Centre. In particular, without limiting what is set out above, the Tenant will indemnify the Released Persons and save them harmless in respect of any breach, of any Applicable Law or of any of the obligations set out in the Sections mentioned above.

## ARTICLE X INSURANCE AND INDEMNITY

### Section 10.01 Tenant's Insurance

- (a) The Tenant will maintain the insurance described below throughout the Term and any period when it is in possession of the Premises, and each policy of that insurance will name, as insureds, the Tenant, the Landlord, the Owners and the Mortgagee as their respective interests may appear. The insurance which the Tenant is required to maintain is as follows:
- (i) all risks (including flood and earthquake) property insurance in an amount equal to the full replacement cost, insuring (1) all property owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and located within the Shopping Centre including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements, and (2) the Tenant's inventory, furniture and movable equipment;
  - (ii) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (except for the Landlord) on behalf of the Tenant in the Premises, or relating to, or serving the Premises;
  - (iii) business interruption insurance in an amount that will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against under Sections 10.01(a)(i) and 10.01(a)(ii), and other perils commonly insured against by prudent tenants, or attributable to prevention of access to the Premises or the Shopping Centre as a result of those perils;
  - (iv) public liability and property damage insurance including personal injury liability, contractual liability, non-owned automobile liability, employers liability, and owners' and contractors' protective insurance coverage, with respect to the Premises and the Tenant's use of the Common Elements, with coverage including the activities and operations conducted by the Tenant and any other Person on the Premises and by the Tenant and any other Person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible, in any other part of the Shopping Centre. These policies will (1) be written on a comprehensive basis with inclusive limits of at least two million dollars (\$2,000,000.00) per occurrence for bodily injury for any one or more Persons, or property damage, (but the Landlord, acting reasonably, or the Mortgagee, may require higher limits from time to time), and (2) contain a severability of interests clause and cross liability clauses;
  - (v) tenant's legal liability insurance for the full replacement cost of the Premises;
  - (vi) standard owners' form automobile insurance providing third party liability insurance with one million dollars (\$1,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Tenant; and
  - (vii) any other form of insurance and with whatever higher limits the Tenant, the Landlord, acting reasonably, or the Mortgagee requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure.
- (b) The policies specified under Sections 10.01(a)(i), 10.01(a)(ii) and 10.01(a)(iii) will contain the Mortgagee's standard mortgage clause and a waiver of subrogation rights which the Tenant's insurers may have against the Landlord, the Owners, the Mortgagee, the Management Company and those for whom all of them are in law responsible, or a permitted prior release clause achieving the same effect, in either case whether or not the damage is caused by their act, omission or negligence.
- (c) All policies will (i) be taken out with insurers acceptable to the Landlord; (ii) be in a form satisfactory to the Landlord; (iii) contain reasonable deductibles; (iv) be non-contributing with, and will apply only as primary and not excess to any other insurance available to all and any of the Landlord, the Owners, and the Mortgagee; (v) not be invalidated with respect to the interests of all and any of the Landlord, the Owners, and the Mortgagee by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies; and (vi) contain an undertaking by the insurers to notify the Landlord, the Owners and the Mortgagee in writing not less than thirty (30) days before any material change, cancellation, or termination.
- (d) The Tenant will deliver certificates of insurance (or other proof as reasonably required by the Landlord) prior to entering the Premises for any purpose and thereafter each year on the anniversary of the Commencement Date, on the Landlord's standard form, or other reasonably comparable form



acceptable to the Landlord, duly executed by the Tenant's insurers evidencing that the required insurance is in force. No acceptance or approval of any insurance certificate by the Landlord derogates from or diminishes the Landlord's rights under this Lease.

#### **Section 10.02 Increase in Insurance Premiums**

The Tenant will comply promptly with the loss prevention recommendations of the Landlord's insurer pertaining to the Premises or the Shopping Centre. If the occupancy of the Premises, the conduct of business in the Premises, or anything done or omitted by the Tenant results in an increase in premiums for the insurance carried by the Landlord with respect to the Shopping Centre, the Tenant will pay the increase to the Landlord immediately on demand. In determining whether the Tenant is responsible for increased premiums and the amount for which the Tenant is responsible, a schedule issued by the organization that computes the insurance rate on the Shopping Centre showing the components of the rate will be conclusive evidence of the items that make up the rate.

#### **Section 10.03 Cancellation of Insurance**

The Tenant will not do or permit anything to be done that results in the cancellation or threatened cancellation or the reduction or threatened reduction of coverage under any insurance policy on the Shopping Centre or any part of it.

#### **Section 10.04 Loss or Damage**

None of the Released Persons is liable for death or injury arising from any occurrence in, upon, at, or relating to the Shopping Centre or damage to property of the Tenant or of others located on the Premises or elsewhere, nor will they be responsible for loss of or damage to, or loss of use of property of the Tenant or others from any cause, whether or not it results from the negligence or misconduct of a Released Person. Without limiting the general intent of the previous sentence, no Released Person is liable for injury or damage to Persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from or onto any part of the Premises or the Shopping Centre or from pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling, or from the street or any other place, or by dampness, the existence of any Hazardous Substances in any part of the Shopping Centre or resulting by any other cause and no Released Person is liable for damage caused by other tenants or Persons in the Shopping Centre or by occupants of property adjacent to the Shopping Centre, or the public, or caused by construction or by any private, public, or quasi-public work.

#### **Section 10.05 Landlord's Insurance**

The Landlord will maintain, throughout the Term, in those reasonable amounts, and with those reasonable deductibles that a prudent owner of a shopping centre similar to the Shopping Centre would maintain, having regard to size, age and location, (a) all risks insurance on the Shopping Centre (excluding the foundations and excavations) and the machinery, boilers and equipment contained in it and owned by the Landlord or the Owners (except property that the Tenant and other tenants are required to insure); (b) public liability and property damage insurance with respect to the Landlord's operations in the Shopping Centre; and (c) whatever other forms of insurance the Landlord, the Owners, or the Mortgagee reasonably consider advisable. This Section does not relieve the Tenant from liability arising from or contributed to by its negligence or its misconduct; no insurable interest is conferred on the Tenant under any policies of insurance carried by the Landlord; and the Tenant has no right to receive proceeds of any of those policies.

#### **Section 10.06 Indemnification of the Landlord**

Despite anything else in this Lease, the Tenant will indemnify the Released Persons and save them harmless from all loss (including loss of Rent payable by the Tenant under this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury arising from this Lease, or any occurrence in, on, or at the Premises, or from the occupancy or use by the Tenant of the Premises, or any part of them, or occasioned wholly or in part by an act or omission of the Tenant or by anyone permitted to be on the Premises by the Tenant. However, the Tenant is not required to indemnify the Released Persons or save them harmless from loss, claims, actions, damages, liability or expenses when they arise directly from the negligence of the Released Person.

#### **Section 10.07 Release by the Landlord**

Despite any other section or clause of this Lease, (except the last sentence of this Section), the Tenant is not responsible for any part, in excess of two million dollars (\$2,000,000.00), or the amount of liability insurance coverage available to the Tenant, whichever is the greater, of any loss or damage to property of the Landlord that is located in, or is part of the Shopping Centre, caused by any of the perils against which

the Landlord is required to insure under Section 10.05. This release applies whether or not the loss or damage arises from the negligence of the Tenant. This release does not apply, however, to damage arising from the wilful or grossly negligent acts of the Tenant.

## **ARTICLE XI MAINTENANCE, REPAIRS AND ALTERATIONS**

### **Section 11.01 Maintenance and Repairs by the Tenant**

Subject to Article XII, the Tenant will keep the Premises and all improvements in or on them in first class condition. This obligation includes, but is not limited to, repainting and redecorating at reasonable intervals, making repairs and replacements to plate glass, store fronts, signs (interior and exterior), mouldings, doors, hardware, partitions, walls, fixtures, lighting and plumbing fixtures, wiring, piping, ceilings and floors in the Premises and maintaining, repairing and replacing all operating equipment in the Premises unless it forms part of the Common Elements. The Tenant will, at its expense, as and when required by the Landlord, or the Landlord will, at the Landlord's option and at the expense of the Tenant, remove from the Premises any Hazardous Substances which may be in, or incorporated by the Tenant into any part of the Premises all without limitation to the Tenant's obligations set out in Section 9.07. At the expiry or termination of this Lease, the Tenant will, (a) leave the Premises in the same condition as it was required to keep them in during the Term, (b) deliver all keys for the Premises to the Landlord at the place then fixed for the payment of Rent, (c) give to the Landlord the combinations of any locks, safes, and vaults in the Premises, and (d) comply with Sections 11.06(b) and 11.08. The Tenant's covenants set out in this Section 11.01 shall not be in lieu of, but shall be in addition to, and shall not release or act as a waiver of the obligations and covenants of the Tenant contained elsewhere in this Lease.

### **Section 11.02 Approval of the Tenant's Alterations**

- (a) The Tenant will not undertake or permit any Tenant's Work without the Landlord's prior written approval, which approval will not be unreasonably withheld, if the Tenant's Work will equal or exceed the then current standard for the Shopping Centre, the Tenant obtains the consents, permits and other governmental approvals that are required, and the Tenant provides to the Landlord reasonable assurances that it will comply with Section 11.02(b).
- (b) All Tenant's Work will be performed, by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors, in a good and workmanlike manner, in accordance with the plans and specifications approved by the Landlord, and in accordance with the Landlord's reasonable requirements.
- (c) The Landlord may require that any Tenant's Work be performed by the Landlord at the Tenant's cost if it affects the structure of the Premises, the Common Elements, or any part of the Shopping Centre outside the Premises. On completion of the Tenant's Work, the Tenant will pay to the Landlord, on demand, the Landlord's costs including, without limitation, architectural and engineering consultants' fees plus an administration fee of fifteen percent (15%) of the total costs.

### **Section 11.03 Maintenance and Repairs by the Landlord**

Subject to Article XII, the Landlord will maintain and repair or cause to be maintained and repaired the Common Elements as would a prudent owner of a similar shopping centre, having regard to size, age and location but the cost (except for the cost of repairing or replacing inherent structural defects or weaknesses) will be included in Operating Expenses under Section 6.03. The obligations of the Landlord under this Section 11.03 do not include (a) any occurrence which is not covered by insurance which the Landlord is required to maintain under this Lease or the cost of repair or restoration which exceeds the proceeds of such insurance actually received by the Landlord; (b) damage or destruction or expropriation as set out in Article XII, in circumstances where the Lease will terminate; and (c) damage or injury caused by or resulting from any negligence, fault, omission, want of skill, act or misconduct of the Tenant, its officers, agents, servants, employees, contractors, invitees or licensees or Persons for whom the Tenant is responsible in law or over whom the Tenant may reasonably be expected to exercise control.

### **Section 11.04 Repair Where the Tenant is at Fault**

If the Shopping Centre or any part of it requires repair, replacement or alteration, (a) because of the negligence, fault, omission, act or misconduct of the Tenant or its directors, officers, agents, employees, contractors, licensees or invitees, (b) due to the requirements of any Applicable Laws relating to the Tenant's conduct of business, or (c) as a result of the Tenant damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Shopping Centre, the cost of the repairs, replacements or alterations plus a sum equal to fifteen percent (15%) of the cost for the Landlord's overhead will be paid by the Tenant to the Landlord on demand.

#### **Section 11.05 Tenant Not to Overload**

The Tenant will not install equipment that overloads the capacity of a utility, electrical, or mechanical facility in the Premises and will not, (a) bring into the Premises any utility, electrical, or mechanical facility or service of which the Landlord does not approve, or (b) bring upon the Premises anything that might damage them or overload the floors.

#### **Section 11.06 Removal and Restoration by the Tenant**

All leasehold improvements or fixtures of any kind (other than trade fixtures) installed by or on behalf of the Tenant are the property of the Landlord on affixation or installation, without compensation to the Tenant. The Tenant will not remove any leasehold improvements or fixtures of any kind (including trade fixtures) from the Premises at any time except that:

- (a) the Tenant may during the Term in the normal course of its business and on obtaining the prior written consent of the Landlord, remove its trade fixtures if they have become excess for the Tenant's purposes, or if the Tenant substitutes new and similar trade fixtures; and
- (b) the Tenant will, at the expiry or earlier termination of this Lease, remove at its own expense its trade fixtures and those of its leasehold improvements that the Landlord requires be removed. The Tenant will at its own expense repair any damage caused to the Premises or the Shopping Centre by such removal. If the Tenant does not remove its trade fixtures on the expiry or earlier termination of this Lease, they will, at the Landlord's option, become the property of the Landlord. The Tenant's trade fixtures do not include, (i) heating, ventilating and air-conditioning systems, facilities, and equipment in or serving the Premises; (ii) floor covering that is affixed; (iii) light fixtures; (iv) the storefront or doors; (v) internal stairways, escalators or elevators; or (vi) anything that would not normally be considered a trade fixture, all of which are considered as leasehold improvements.

#### **Section 11.07 Tenant to Discharge all Liens**

The Tenant will ensure that no construction or other lien, and no charge, mortgage, security interest, floating charge, debenture, or other encumbrance (each, an "Encumbrance") is registered or filed against (a) the Shopping Centre or any part of it, or (b) the Landlord's interest in the Shopping Centre or any part of it, or (c) the Tenant's interest in the Premises, by any Person claiming by, through, under, or against the Tenant or its contractors or subcontractors. If the Tenant defaults under this Section the Landlord may, in addition to its remedies contained in Article XVI of this Lease, discharge the Encumbrance by paying the amount claimed to be due into court, and the amount paid, as well as the costs and expenses (including solicitor's fees on a solicitor and client basis) incurred as the result of the registration or filing of the Encumbrance, including the discharge of the Encumbrance, will be paid by the Tenant to the Landlord on demand.

#### **Section 11.08 Signs and Advertising**

The Tenant will not display any sign, picture, notice, lettering, decoration, awning or canopy (the "Sign") on the exterior of the Premises without the prior written approval of the Landlord. If the Landlord, acting reasonably, objects to a Sign in the interior of the Premises that is visible from the exterior, the Tenant will immediately remove it, failing which the Landlord may enter upon the Premises, without notice, and remove it on the Tenant's behalf, at the Tenant's expense, without incurring any liability in respect thereof. The Tenant will erect and maintain one or more identification Signs (which the Tenant will own) of a type or types in a location or locations specified in writing by the Landlord and in accordance with the Landlord's requirements for the Shopping Centre. The Landlord may require that any such Sign be illuminated. Any such Sign will remain the property of the Tenant, will be maintained by the Tenant at the Tenant's expense and the Tenant will pay for the electricity consumed by such Sign. At the expiration of the Term or earlier termination of this Lease, the Tenant will remove any such Sign at the Tenant's expense and will immediately repair all damage caused by any such removal.

### **ARTICLE XII DAMAGE AND DESTRUCTION AND EXPROPRIATION**

#### **Section 12.01 Interpretation of Article XII**

In this Article:

- (a) "Damage" means damage (including but not limited to, smoke and water damage and damage that amounts to destruction) that (i) for the purpose of Section 12.02 results from a peril against which the Landlord is required to insure under Section 10.05 or against which the Landlord otherwise insures, and (ii) for the purpose of Section 12.03 results from any cause, and "Damaged" has a corresponding meaning;

- (b) "Expropriated" means expropriated by a governmental authority, or transferred, conveyed, or dedicated in contemplation of a threatened expropriation, and "Expropriation" has a corresponding meaning; and
- (c) "Usable" means usable by the Tenant for the purpose contemplated by this Lease.

#### **Section 12.02 Damage to the Premises**

Subject to Section 12.03, if the Premises are Damaged, the Landlord will promptly repair or reconstruct the Premises to the extent of the Landlord's Work. If part or all of the Premises is not Usable because of the Damage, Minimum Rent (but not Additional Rent or Percentage Rent) will abate in the proportion that the GLA of that part of the Premises which is not Usable as certified by the Architect is to the GLA of the whole of the Premises, from the date of the Damage until the earlier of, (a) the date when the whole of the Premises is Usable again or, (b) thirty (30) days after substantial completion of the Landlord's Work. When the Landlord notifies the Tenant that it has completed enough of the Landlord's Work to enable the Tenant to start the Tenant's Work, the Tenant will complete the Tenant's Work and reopen the whole of the Premises for business as soon as possible but in any case within thirty (30) days after the Landlord's notice. No capital allowance, inducement to lease, or other payment that was made to the Tenant at the time of, or in connection with the original construction of the Premises or the Tenant's improvements thereto will be payable by the Landlord to the Tenant. The computation of Percentage Rent will be based on the abated or reduced Minimum Rent for the period of the abatement set out above. Notwithstanding the foregoing, the Tenant will not be entitled to any abatement of Minimum Rent if the Damage resulted from or was occasioned by any act, fault, misconduct, negligence, omission or want of skill of the Tenant, its officers, servants, employees, contractors, invitees or licensees, or by Person for whom the Tenant is responsible at law or over whom the Tenant may be reasonably considered to exercise control.

#### **Section 12.03 Damage to or Expropriation of the Shopping Centre**

- (a) Despite anything else in this Lease, if:
  - (i) more than thirty-five percent (35%) of the GLA of the Shopping Centre is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated;
  - (ii) more than thirty-five percent (35%) of the floor area of the Common Elements (excluding the area of parking facilities) or more than fifteen percent (15%) of the area of the parking facilities is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated, or
  - (iii) a Rentable Premises with a GLA of more than thirty thousand (30,000) square feet is Damaged or Expropriated and is not Usable for more than one hundred and eighty (180) days for the purpose contemplated by its lease,

the Landlord may, by written notice to the Tenant within ninety (90) days after the Damage or Expropriation, terminate this Lease, effective thirty (30) days after the notice, and all Rent will abate as of the effective date of the termination. The Tenant will have no claim, action, right of action or any other demand against the Landlord as a result of or arising from any such early termination of this Lease. In exercising its termination right as set out above, the Landlord agrees to act in a bona fide manner and not in a manner discriminating solely as against the Tenant.

- (b) If there is Damage or Expropriation to the extent described in Section 12.03(a) and the Landlord does not terminate this Lease, the Landlord will promptly rebuild or repair or cause to be rebuilt or repaired the Shopping Centre to the extent of the Landlord's obligations under the leases for Rentable Premises that are in force at the time but the Landlord may use plans and specifications and working drawings that are different in content from those used in the original construction of the Shopping Centre or any part of it and the rebuilt or repaired Shopping Centre may be different in configuration, size or design from the Shopping Centre before the Damage or Expropriation.
- (c) The Landlord and the Tenant will co-operate with each other if there is an Expropriation of all or part of the Premises or the Shopping Centre so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the Shopping Centre, other than the Premises, is Expropriated, the full proceeds that are paid or awarded as a result will belong solely to the Landlord, and the Tenant will assign to the Landlord any rights that it may have or acquire in respect of the proceeds or awards and will execute the documents that the Landlord reasonably requires in order to give effect to this intention. Whether or not the Lease is terminated, the Tenant will have no claim, action, right of action or any other demand against the Landlord as a result or arising from the Expropriation of all or any part of the Shopping Centre.

- (d) A certificate issued by the Architect will bind the parties concerning any of the matters that need to be determined under this Article.

#### **Section 12.04 Uninsured Damage or Damage in the Last Two Years**

If: there is damage to or destruction of the Premises and (i) such damage or destruction is uninsured damage, or (ii) such damage or destruction occurs within the last two years of the Term and either the Tenant has no remaining rights to renew this Lease or, having the right to renew this Lease fails to do so within fifteen (15) days after receipt of the said notice, then the Landlord, at its option to be exercised by written notice given to the Tenant within thirty (30) days after the later of the date of such damage or destruction and the date upon which the Landlord is notified by the Tenant of such damage or destruction, may terminate this Lease whereupon the Tenant shall immediately surrender possession of the Premises and Minimum Rent and all other payments for which the Tenant is liable under this Lease shall be apportioned to the effective date of such termination. If this Lease is not terminated as aforesaid, the parties shall repair as provided in Section 12.02 and there shall be no abatement of any Rent unless the damage or destruction is Damage and then only to the extent expressly provided in Section 12.02 above.

### **ARTICLE XIII ASSIGNMENT**

#### **Section 13.01 Consent Required**

- (a) In this Article "Transfer" means, (i) an assignment, sale, conveyance, sublease, disposition, or licensing of this Lease or the Premises, or any part of them, or any interest in this Lease (whether or not by operation of law) or in a partnership that is a Tenant under this Lease, (ii) a mortgage, charge, lien or debenture (floating or otherwise) or other encumbrance of this Lease or the Premises or any part of them or of any interest in this Lease or of a partnership or partnership interest where the partnership is a Tenant under this Lease, (iii) a parting with or sharing of possession of all or part of the Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Tenant or an "Affiliate" of the Tenant which results in a change in the effective voting control of the Tenant. "Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer" set out above, (it being understood that for a Transfer described in Section 13.01(a)(iv) the Transferor is the Person that has effective voting control before the Transfer and the Transferee is the Person that has effective voting control after the Transfer).
- (b) The Tenant will not effect or permit a Transfer without the consent of the Landlord which consent will not be unreasonably withheld, except that despite anything in the *Commercial Tenancies Act* and despite any other statute or law:
- (i) the Landlord may unreasonably withhold its consent to a Transfer within thirty-six (36) months of the Commencement Date, and
  - (ii) without limiting the grounds upon which a Transfer may be refused, in deciding whether to give its consent to a Transfer after that thirty-six (36) month period the Landlord may refuse to give its consent if:
    - (1) the Tenant is in default under this Lease;
    - (2) covenants, restrictions, or commitments given by the Landlord to other tenants in the Shopping Centre or to Mortgagees, the Owners or other parties, prevent or inhibit the Landlord from giving its consent to the Transfer;
    - (3) the Transferee, (A) does not have a good credit rating and a net worth sufficient, in the Landlord's reasonable opinion, to finance the business to be operated in the Premises, or (B) has a history of defaults under commercial leases either by the Transferee or by companies or partnerships in which the Transferee was a principal shareholder or partner at the time of the defaults or (C) is not suitable to the Landlord on the basis of the proposed Tenant's business and characteristics in accordance with its financial capability, its business history, experience and ability to operate the business required to be operated under this Lease;
    - (4) the Transferee is in default under any lease with the Landlord or with the landlord of any other property managed by the Management Company;
    - (5) the length of time remaining in the Term of this Lease is less than eighteen (18) months;

- (6) the Transferee pays or gives to the Transferor money or other value that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part;
  - (7) the Transfer is a mortgage, charge, debenture (floating or otherwise) of, or in respect of, this Lease or the Premises or any part of them;
  - (8) the Landlord does not receive sufficient information from the Tenant or the Transferee to enable it to make a determination concerning the matters set out above or does not receive its fees under Section 13.02(h); and
- (iii) the Landlord shall not be liable for any claims or actions by or any damages, liabilities, losses or expenses of the Tenant or any proposed Transferee arising out of the Landlord unreasonably withholding its consent to any Transfer and the Tenant's only recourse shall be to bring an application for a declaration that the Landlord shall grant its consent to such Transfer.
- (c) Section 13.01(b) does not apply to (i) a Transfer that occurs on the death of the Transferor, (ii) a Transfer described in Section 13.01(a)(iv) which occurs when the sole Tenant in occupation of the Premises is a corporation (a "Public Corporation") whose shares are traded and listed on a stock exchange in Canada or the United States, or (iii) a Transfer that occurs when (1) the sole Tenant in occupation of the Premises is a "subsidiary body corporate" (as that term is defined on the date of this Lease under the Canada Business Corporations Act, R.S.C. 1985, c.C-44) of a Public Corporation and (2) it is the shares of the Public Corporation and not of the Tenant that are transferred or issued.
- (d) The Landlord will have a period of thirty (30) days following receipt of sufficient information to make a determination concerning the matters set forth in Section 13.01(b) to notify the Tenant in writing that the Landlord either (i) gives or refuses to give its consent to the proposed Transfer, or (ii) elects to terminate this Lease, but the Landlord's failure to respond within that thirty (30) day period will not be construed as a consent by the Landlord nor will it entitle the Tenant to damages. If the Landlord elects to terminate this Lease, it shall stipulate in its notice the termination date of this Lease, which date shall be not less than ninety (90) days following delivery of such notice. If the Landlord elects to terminate this Lease, the Tenant shall notify the Landlord within ten (10) days thereafter of the Tenant's intention either to refrain from such Transfer or to accept the termination of this Lease. If the Tenant fails to deliver such notice within such ten (10) days or notifies the Landlord that it accepts the Landlord's termination, this Lease will be terminated on the date of termination stipulated by the Landlord in its notice of election to terminate. If the Tenant notifies the Landlord within ten (10) days that it intends to refrain from such Transfer, then the Landlord's election to terminate this Lease shall become void.

#### **Section 13.02 Terms and Conditions Relating to Transfers**

The following terms and conditions apply in respect of a Transfer:

- (a) the consent by the Landlord is not a waiver of the requirement for consent to subsequent Transfers;
- (b) no acceptance by the Landlord of Rent or other payments by a Transferee is, (i) a waiver of the requirement for the Landlord to consent to the Transfer, (ii) the acceptance of the Transferee as Tenant, or (iii) a release of the Tenant from its obligations under this Lease;
- (c) the Landlord may apply amounts collected from the Transferee to any unpaid Rent;
- (d) the Transferor, unless the Transferee is a sub-tenant of the Tenant, will retain no rights under this Lease in respect of obligations to be performed by the Landlord or in respect of the use or occupation of the Premises after the Transfer;
- (e) the Transferee will execute an agreement directly with the Landlord agreeing to be bound by this Lease as if the Transferee had originally executed this Lease as Tenant, but the Transferor will remain jointly and severally responsible with the Transferee for the fulfilment of all obligations to be performed after the Transfer by the Transferee including the punctual payment of Rent under this Lease (as may be modified by the application of Section 13.02(f)) during the remainder of the Term and any renewal or extension thereof and, if required by the Landlord, the Transferor will execute an Indemnity Agreement on the Landlord's standard form, to give full force and effect to the foregoing. This obligation of the Transferor will survive any termination, repudiation, disaffirmation, disclaimer or surrender (except with the consent of the Landlord) of this Lease by any trustee in bankruptcy or by a court representative;

- (f) at the Landlord's option, the Minimum Rent will be increased as of the date of the Transfer by an amount (the "Excess Amount") equal to the greater of:
  - (i) the amount by which the annual Minimum Rent that pertains on the day before the Transfer (the "Current Minimum Rent") is exceeded by the average annual total of Minimum Rent and Percentage Rent paid or payable by the Tenant for the last three twelve (12) month Rental Years that precede the Transfer or (if less than three such Rental Years precede the Transfer), the highest annual total of Minimum Rent and Percentage Rent since the Commencement Date; or
  - (ii) the Current Minimum Rent multiplied by the percentage increase in the C.P.I. from the month in which the Commencement Date occurs to the month in which the Transfer occurs.

If it is stated in Section 4.02 or an addendum to that Section that the annual Minimum Rent is to increase at specified times, the Excess Amount will be added to the increased Minimum Rent;

- (g) for the purpose of calculating Percentage Rent, at the Landlord's option the Rental Year current on the day before the Transfer will end on that day, and a new Rental Year will start on the day of the Transfer, and end on the day on which that current Rental Year would have ended if it had not been shortened;
- (h) any documents relating to a Transfer or the Landlord's consent will be prepared by the Landlord or its solicitors and all of the legal costs and processing fees of the Landlord will be paid to the Landlord by the Tenant on demand;
- (i) in the event of any Transfer which is a subletting of the Premises by the Tenant by virtue of which the Tenant receives a rent in the form of cash, goods or services from the Transferee which is greater than the Rent payable hereunder to the Landlord, the Tenant will pay any such excess to the Landlord in addition to all Rent payable under this Lease, and such excess rent shall be deemed to be further Additional Rent;
- (j) if the Transferee pays or gives to the Transferor money or other value that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part, then at the Landlord's option, the Transferor will pay to the Landlord such money or other value in addition to all Rent payable under this Lease and such amounts shall be deemed to be further Additional Rent; and
- (k) in the case of a sublease, the Transferee shall waive any rights it may have under any legal or equitable rule of law or under the Commercial Tenancies Act (Ontario), as amended from time to time, or any other applicable legislation, to apply to a court or to otherwise elect to (i) retain the unexpired Term of this Lease or the unexpired sublease term; (ii) obtain any right to enter into any lease or other agreement directly with the Landlord for the Premises or the subleased premises, or (iii) otherwise remain in possession of any portion of the subleased premises or the Premises; in any case where this Lease is terminated, surrendered or otherwise cancelled, including a disclaimer of this Lease by a trustee in bankruptcy of the Tenant. The Tenant and the Transferee shall promptly execute any agreement required by the Landlord to give effect to the foregoing terms.

#### **Section 13.03 No Advertising of the Premises**

The Tenant will not offer or advertise the whole or any part of the Premises or this Lease for the purpose of a Transfer and will not permit a broker or other Persons to do so unless the complete text and format of any such advertisement or offer is first approved in writing by the Landlord. Without in any way limiting the Landlord's right to refuse any text or format on other grounds, any text or format proposed by the Tenant shall not contain any reference to the rental rate payable under this Lease.

#### **Section 13.04 Sales and Other Dispositions by the Landlord**

If the Landlord sells, or otherwise transfers or disposes of the Shopping Centre or any part of it, or if the Landlord assigns this Lease or any interest of the Landlord under it, then to the extent that the purchaser, transferee agrees with the Landlord to assume the Landlord's obligations under this Lease, the Landlord will be released from those obligations.

### **ARTICLE XIV ACCESS AND ALTERATIONS**

#### **Section 14.01 Right of Entry**

- (a) The Landlord and its representatives shall have the right to enter the Premises at reasonable times after twenty-four (24) hours notice (but if the Landlord determines there is an emergency, no notice

is required) (i) to examine them, (ii) to make repairs, alterations, improvements or additions to the Premises or the Shopping Centre or adjacent property, (iii) to conduct an environmental audit of the Premises or any part of the Shopping Centre, or (iv) carry out any of its rights or obligations under this Lease. This right extends to (and is not limited to) the pipes, conduits, wiring, ducts, columns and other installations in the Premises. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made and the Landlord is not liable for any damage, injury or death caused to any Person or to the property of the Tenant or others located on the Premises as a result of the entry, regardless of how the damage, injury or death is caused. The Landlord will take reasonable steps to minimize any interruption of the Tenant's business in exercising its right under this Section.

- (b) The Landlord may enter the Premises at reasonable times to show them to prospective purchasers, tenants or Mortgagees. During the twelve (12) months before the expiry of the Term, the Landlord may display on the Premises "For Rent" or "For Sale" notices of reasonable size and number and in reasonable locations.
- (c) The exercise of the Landlord's rights under this Section 14.01 shall not constitute a breach of the covenant for quiet enjoyment.

#### ARTICLE XV STATUS STATEMENT, SUBORDINATION AND ATTORNMENT

##### Section 15.01 Status Statement

Within ten (10) days after each request by the Landlord, the Tenant will deliver to the Landlord, on a form supplied by the Landlord, a status statement or certificate to any proposed Mortgagee, purchaser or transferee of the Shopping Centre and to the Landlord, stating:

- (a) that this Lease is in full force and effect, except only for any modifications that are set out in the statement or certificate;
- (b) the commencement and expiry dates of the Lease;
- (c) the date to which Rent has been paid under this Lease and the amount of any prepaid Rent or any deposits held by the Landlord;
- (d) that the Minimum Rent, the Percentage Rent and the Additional Rent are then accruing under this Lease or the dates on which each of these will start accruing;
- (e) that the Premises are free from any construction deficiencies, or if there are such deficiencies, the certificate will state the particulars;
- (f) that there is not any uncured default on the part of the Landlord or if there is a default, the certificate will state the particulars;
- (g) whether there are any set-offs, defences or counter-claims against enforcement of the obligations to be performed by the Tenant under this Lease;
- (h) with reasonable particularity, details concerning the Tenant's and any Indemnifier's financial standing and corporate organization and the Landlord may obtain credit information regarding the Tenant from any bank credit bureau or other person and may disclose such credit information as may be required by the Landlord or Mortgagee; and
- (i) any other information or statement that a proposed Mortgagee, purchaser, or disposee may reasonably require.

##### Section 15.02 Subordination and Attornment

- (a) This Lease is and will remain subordinate to every mortgage, charge, trust deed, financing, refinancing or collateral financing, present or future and any renewals or extensions of them from time to time (each, a "Charge") against the Premises or the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm the subordination of this Lease to any Charge and to all advances made or to be made on the security of the Charge. The Tenant will also, if the Landlord requests it to do so, attorn to the holder of any Charge, to the Owners or to any purchaser or transferee of the Shopping Centre or of an ownership or equity interest in the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm such attornment.



- (b) If possession is taken under, or any proceedings are brought for the foreclosure of, or if a power of sale is exercised resulting from a Charge, the Tenant will attorn to the Person that so takes possession if that Person requests it and will recognize that Person as the Landlord under this Lease.
- (c) The form and content of any document confirming or effecting the subordination and attornments provided for in this Section 15.02 will be that required by the Landlord or the holder of the Charge in each case, and each such document will be delivered by the Tenant to the Landlord within ten (10) days after the Landlord requests it, failing which the Landlord shall be entitled to deem an Event of Default to have occurred and the Landlord shall be entitled to avail itself of all remedies under Article XVI hereof.

## ARTICLE XVI DEFAULT

### Section 16.01 Right to Re-enter

- (a) An "Event of Default" occurs when:
  - (i) the Tenant defaults in the payment of Rent or Sales Taxes and fails to remedy the default within five (5) days after written notice;
  - (ii) the Tenant commits a breach that is capable of remedy other than a default in the payment of Rent or Sales Taxes, and fails to remedy the breach within ten (10) days after written notice to the Tenant specifying particulars of the breach, and requiring the Tenant to remedy the breach (or if the breach would reasonably take more than ten (10) days to remedy, the Tenant fails to start remedying the breach within the ten (10) day period, or fails to continue diligently and expeditiously to complete the remedy);
  - (iii) the Tenant commits a breach of this Lease that is not capable of remedy and receives written notice specifying particulars of the breach;
  - (iv) a report or statement required from the Tenant under this Lease is false or misleading except for a misstatement that is the result of an inadvertent clerical error;
  - (v) the Tenant, or a Person carrying on business in a part of the Premises, or an Indemnifier becomes bankrupt or insolvent or makes application for relief from creditors under the provisions of any statute for bankrupt or insolvent debtors, or makes any proposal, assignment or arrangement with its creditors;
  - (vi) a receiver or a receiver and manager is appointed for all or a part of the property of the Tenant, or of another Person carrying on business in the Premises, or of an Indemnifier;
  - (vii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the Tenant's or the Indemnifier's existence or for the liquidation of their respective assets;
  - (viii) the Tenant makes or attempts to make a bulk sale of any of its assets regardless of where they are situated (except for a bulk sale made to a Transferee when the Transfer has been consented to by the Landlord);
  - (ix) the Premises are vacant or unoccupied for five (5) consecutive days or the Tenant abandons or attempts to abandon the Premises, or sells or disposes of property of the Tenant or removes it from the Premises so that there does not remain sufficient property of the Tenant on the Premises free and clear of any lien, charge or other encumbrance to satisfy the Rent due or accruing for at least twelve (12) months;
  - (x) the Tenant effects or attempts to effect a Transfer that is not permitted by this Lease;
  - (xi) a writ of execution is issued against the Tenant and remains outstanding for more than ten (10) days, or this Lease or any of the Tenant's assets on the Premises are taken or seized under a writ of execution, assignment, pledge, charge, debenture, or other security instrument; or
  - (xii) the Indemnity Agreement is terminated for any reason whatsoever, whether by the Indemnifier or by any other Person or by effect of law, or, alternatively, if the obligations of the Indemnifier under the Indemnity Agreement are reduced, modified or otherwise limited except by way of an agreement made in writing by the Landlord.

- (b) Notwithstanding any Applicable Laws, upon the occurrence of any Event of Default the full amount of the current month's and the next three (3) months' instalments of Minimum Rent, Percentage Rent (calculated on the basis of the average monthly Percentage Rent payable during the previous Rental Year), Sales Taxes and Additional Rent will become due and payable and, at the option of the Landlord, this Lease shall be terminated and the full amount of the Rent for that part of the Term that would have remained but for the termination of this Lease will become due and payable. If this Lease is so terminated, the Landlord, to the extent permitted by law, may immediately repossess the Premises and expel all Persons from the Premises and may remove all property from the Premises, sell or dispose of it as the Landlord considers appropriate, or store it at the cost of the Tenant, all without notice, without legal proceedings, and without liability for loss or damage and wholly without prejudice to the rights of the Landlord to recover (i) arrears of Rent or damages for any antecedent default by the Tenant of its obligations under this Lease, and (ii) damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

#### **Section 16.02 Right to Terminate or Relet**

If the Landlord does not exercise its right under Section 16.01 to terminate this Lease, it may nevertheless relet the Premises or a part of them for whatever term or terms (which may extend beyond the Term) and at whatever rent and upon whatever other terms, covenants and conditions the Landlord considers advisable. On each such reletting, the rent received by the Landlord from the reletting will be applied as follows: first to the payment of amounts owed to the Landlord that are not Rent or Sales Taxes; second to the payment of any costs and expenses of the reletting including brokerage fees and solicitors fees on a solicitor and client basis, and the costs of any alterations or repairs needed to facilitate the reletting; third to the payment of Rent; and the residue, if any, will be held by the Landlord and applied in payment of Rent and Sales Taxes as it becomes due and payable. If the Rent and Sales Taxes received from reletting during a month is less than that to be paid during that month by the Tenant, the Tenant will pay the deficiency, which will be calculated and paid monthly in advance on or before the first day of every month. No repossession of the Premises by the Landlord will be construed as an election on its part to terminate this Lease unless a written notice of termination is given to the Tenant. If the Landlord relets without terminating, it may afterwards elect to terminate this Lease for the previous default. If the Landlord terminates this Lease for a default, it may recover from the Tenant damages it incurs by reason of the default, including, without limitation, the cost of recovering the Premises, legal fees on a solicitor and client basis, and the worth at the time of the termination, of the excess, if any, of the amount of Rent and Sales Taxes required to be paid under this Lease for the remainder of the Term over the rental value, at the time, of the Premises for the remainder of the Term, all of which amounts will be due immediately and payable by the Tenant to the Landlord.

#### **Section 16.03 Expenses**

The Tenant shall be responsible for all of the legal costs of the Landlord associated with the Landlord preparing and issuing its notice to the Tenant under Section 16.01(a) above. If legal proceedings are brought for recovery of possession of the Premises, for the recovery of Rent or Sales Taxes, or because of a default by the Tenant, the Tenant will pay to the Landlord its expenses, including its legal fees on a solicitor and client basis.

#### **Section 16.04 Waiver of Exemption from Distress**

Despite the *Commercial Tenancies Act*, or any other Applicable Laws or any rule of law or equity, none of the inventory, furniture, equipment or other property that is, or was at any time, owned by the Tenant is exempt from levy by distress for Rent.

#### **Section 16.05 Fraudulent Removal of Goods**

Removal by the Tenant of its goods outside the ordinary course of its business shall be deemed to be a fraudulent act thereby enabling the Landlord to avail itself of all remedies at law including, but not limited to, the Landlord's rights to follow the Tenant's goods and to recover more than the value of the goods so removed.

#### **Section 16.06 Landlord May Cure the Tenant's Default**

If the Tenant defaults in the payment of money that it is required under this Lease to pay to a third party, the Landlord, after giving five (5) days notice in writing to the Tenant, may pay all or part of the amount payable. If the Tenant defaults under this Lease (except for a default in the payment of Rent or Sales Taxes), the Landlord may, after giving reasonable notice (it being agreed that forty-eight (48) hours is reasonable notice of a default of Section 10.01) or, without notice in the case of an emergency, perform or cause to be performed all or part of what the Tenant failed to perform and may enter upon the Premises and do those things that it considers necessary for that purpose. The Tenant will pay to the Landlord on demand, the Landlord's expenses incurred under this Article XVI plus an amount equal to fifteen percent

(15%) of those expenses for the Landlord's overhead. The Landlord will have no liability to the Tenant for loss or damages resulting from its action or entry upon the Premises.

#### **Section 16.07 Application of Money**

The Landlord may impute any payment made by or on behalf of the Tenant towards the payment of any amount due and owing by the Tenant at the date of such payment regardless of any designation or imputation by the Tenant.

#### **Section 16.08 Failure of the Tenant to Carry on Business**

If the Tenant fails to open or reopen the Premises for business or to carry on business at all times in accordance with this Lease, the Landlord may (a) use its remedies for the Tenant's default, including obtaining an injunction or an order for specific performance in a court of competent jurisdiction to restrain the Tenant from defaulting under Section 9.03 and this Section 16.08 and a mandatory injunction to compel the Tenant to open or reopen the Premises for business to the public in accordance with this Lease, and (b) collect (in addition to Minimum Rent, Percentage Rent and Additional Rent) from the Tenant an additional amount calculated at a daily rate of the greater of twenty-five cents (\$0.25) per square foot of the GLA of the Premises and two hundred and fifty dollars (\$250.00) for each day that the Tenant is not open as required under this Lease, which such sum is a liquidated amount representing the minimum damages that the Landlord is considered to have suffered as a result of the Landlord's failure to receive Percentage Rent and the lack of participation by the Tenant in the general synergy and interdependence of the Rentable Premises of the Shopping Centre and is without prejudice to the Landlord's right to recover other damages.

#### **Section 16.09 Non-Acceptance of Surrender**

No acceptance of keys for the Premises by the Landlord and no other act of the Landlord will be considered as an acceptance by the Landlord of a surrender of this Lease by the Tenant. Only a written acknowledgement or surrender agreement executed by an authorized representative of the Landlord will be effective as an acceptance by the Landlord of a surrender of this Lease.

#### **Section 16.10 Remedies Generally**

The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Any one or more remedies may be exercised generally or in combination. The specifying or use of a remedy under this Lease does not limit the right to use other remedies available at law generally. Except as otherwise expressly contained herein, any breach by the Landlord under this Lease can be adequately compensated in damages and the Tenant agrees that its only remedy to enforce its rights under this Lease is an action for damages.

### **ARTICLE XVII MISCELLANEOUS**

#### **Section 17.01 Rules and Regulations**

The Landlord, acting reasonably, may adopt rules and regulations which may differentiate between different types of businesses. Each rule and regulation, as revised from time to time, forms part of this Lease as soon as the rule, regulation or revision is made known to the Tenant. The Tenant will comply with each rule and regulation and each revision thereof. No rule or regulation, however, will contradict the terms, covenants and conditions of this Lease. The Landlord is not responsible to the Tenant for the non-observance of a rule or regulation by any other tenant of Rentable Premises or occupant of the Shopping Centre or of the terms, covenants or conditions of any other lease of Rentable Premises.

#### **Section 17.02 Overholding - No Tacit Renewal**

If the Tenant remains in possession of the Premises after the end of the Term with or without the consent of the Landlord but without executing a new lease, there is no tacit renewal of this Lease or the Term despite any statutory provision or legal presumption to the contrary. The Tenant will occupy the Premises as a Tenant from month-to-month at a monthly Minimum Rent equal to the total of: (a) the monthly amount of Minimum Rent for the last month of the Term; (b) one twelfth (1/12th) of the Additional Rent that was payable for the last Rental Year of the Term; and (c) one twelfth of the highest amount of Percentage Rent that was payable for the last Rental Year; and the Tenant will comply with the same terms, covenants and conditions as are in this Lease as far as they apply to a monthly tenancy including the payment of Rent.

### **Section 17.03 Successors**

The rights and obligations under this Lease extend to and bind the successors and assigns of the Landlord and, if Section 13.01 is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Tenant. If there is more than one tenant, or more than one Person comprising the Tenant, each is bound jointly and severally by this Lease.

### **Section 17.04 Tenant Partnership**

If the Tenant is a partnership each Person who is a member of the partnership, and each Person who becomes a member of a successor of the partnership, is liable jointly and severally as Tenant under this Lease and will continue to be liable after that Person ceases to be a member of the partnership or a successor of the partnership and after the partnership ceases to exist.

### **Section 17.05 Waiver**

The waiver by the Landlord or the Tenant of a default under this Lease is not a waiver of any subsequent default. The Landlord's acceptance of Rent after a default is not a waiver of any preceding default under this Lease even if the Landlord knows of the preceding default at the time of acceptance of the Rent. No term, covenant or condition of this Lease will be considered to have been waived by the Landlord or the Tenant unless the waiver is in writing. The Tenant waives any statutory or other rights in respect of abatement, set-off or compensation in its favour that may exist or come to exist in connection with Rent.

### **Section 17.06 Accord and Satisfaction**

Payment by the Tenant or receipt by the Landlord of less than the required monthly payment of Minimum Rent is on account of the earliest stipulated Minimum Rent. An endorsement or statement on a cheque or letter accompanying a cheque or payment as Rent is not an acknowledgment of full payment or an accord and satisfaction, and the Landlord may accept and cash the cheque or payment without prejudice to its right to recover the balance of the Rent or pursue its other remedies.

### **Section 17.07 Brokerage Commission**

Since the Landlord has not employed or retained a broker for this Lease or anything related to it, the Tenant will indemnify and hold the Landlord harmless from claims for commission with respect to this Lease or any matter related to it.

### **Section 17.08 Force Majeure**

Despite anything contained in this Lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this Lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of Rent or the Landlord from payment of amounts that it is required to pay, in the amounts and at the times specified in this Lease.

### **Section 17.09 Notices**

Notices, demands, requests or other instruments under this Lease will be delivered or sent by registered mail postage prepaid and addressed (a) if to the Landlord, at BCE Place, TD Canada Trust Tower, 161 Bay Street, 23<sup>rd</sup> Floor, Toronto, Ontario M5J 2S1, Attention: Vice President, Leasing Central and Western Canada, or to such other Person at any other address that the Landlord designates by written notice, and (b) if to the Tenant, at the Premises, or, at the Landlord's option, to the Tenant's head office at 286 York Road, Dundas, Ontario L9H 6L8 Attention: Bruce Bergez. A notice, demand, request or consent will be considered to have been given or made on the day that it is delivered or, received by registered mail. Either party may notify the other in writing of a change of address and the address specified in the notice will be considered the address of the party for the giving of notices under this Lease. If the postal service is interrupted or substantially delayed, any notice, demand, request or other instrument will only be delivered in person. A notice given by or to one Tenant is a notice by or to all of the Persons who are the Tenant under this Lease. Notwithstanding any law to the contrary, no electronic communications of notices, demands, requests or other instruments under this Lease will be considered as legally effective.

### **Section 17.10 Registration**

The Tenant will not register or permit the registration of this Lease or any assignment or sublease or other document evidencing an interest of the Tenant or anyone claiming through or under the Tenant in this Lease or the Premises except that, subject to the Tenant paying the Landlord's costs and expenses, the