

## Nebraska Judicial Branch

## Case Summary

In the District Court of Douglas County  
The Case ID is CI 14 0008337  
AK-SAR-BEN VILLAGE v. Three Clothing Inc  
The Honorable Peter Bataillon, presiding.  
Classification: Contract Disputes  
Filed on 10/16/2014  
This case is Open as of 10/16/2014

## Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE AK-SAR-BEN VILLAGE LLC 2285 S. 67th Street, Suite 250 PO Box 24169 Omaha NE 68124	Luke J Klinker 409 South 17th Street #500 Omaha NE 68102 402-341-6000
Defendant ACTIVE Three Clothing Inc c/o London Woolman, Reg Agent 5046 Miami Street Omaha NE 68104	Kristopher J Covi Ste 3700 First National Tower 1601 Dodge Street Omaha NE 68102 402-341-3070
Defendant ACTIVE London Woolman 5046 Miami Street Omaha NE 68104	Erin M McCartney 2580 South 90th Street Omaha NE 68124 402-933-8600
Defendant ACTIVE Shawn Slatunas 5046 Miami Street Omaha NE 68104	Kristopher J Covi Ste 3700 First National Tower 1601 Dodge Street Omaha NE 68102 402-341-3070

## Court Costs Information

Incurring By	Account	Date	Amount
Plaintiff	Petition	10/16/2014	\$35.00
Plaintiff	Filing Fee - State	10/16/2014	\$5.00
Plaintiff	Automation Fee	10/16/2014	\$8.00
Plaintiff	NSC Education Fee	10/16/2014	\$1.00
Plaintiff	Dispute Resolution Fee	10/16/2014	\$0.75
Plaintiff	Indigent Defense Fee	10/16/2014	\$3.00
Plaintiff	Uniform Data Analysis Fee	10/16/2014	\$1.00
Plaintiff	J.R.F.	10/16/2014	\$6.00
Plaintiff	Filing Fee-JRF	10/16/2014	\$2.00
Plaintiff	Legal Aid/Services Fund	10/16/2014	\$5.25

Plaintiff	Complete Record	10/16/2014	\$15.00
Plaintiff	Service Fees	10/23/2014	\$8.03
Plaintiff	Service Fees	10/23/2014	\$8.03
Plaintiff	Service Fees	10/23/2014	\$8.03

### Financial Activity

No trust money is held by the court  
No fee money is held by the court

### Payments Made to the Court

Receipt	Type	Date	For	Amount
158191	Electronic Trans	10/16/2014	AK-SAR-BEN VILLAGE LLC	\$82.00
			Petition	\$35.00
			Filing Fee - State	\$5.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$2.00
			Legal Aid/Services Fun	\$5.25
			Complete Record	\$15.00

### Register of Actions

04/06/2016 Motion Filed  
This action initiated by party AK-SAR-BEN VILLAGE LLC  
re: auto stay jm 4-22-16 8:45 AM #413  
Image ID N16097DEED01

04/05/2016 Scheduling Conference  
04 22 16 845am / RT

04/05/2016 Signed Scheduling order  
This action initiated by Peter Bataillon  
RT eNotice Certificate Attached  
Image ID 001290695D01

04/04/2016 Proposed Scheduling Order  
This action initiated by party AK-SAR-BEN VILLAGE LLC

Image ID 001292808D01

03/10/2016 Notice Issued  
The document number is 00373853  
Notice of Intent to Dismiss  
Luke J Klinker lklinker@fraserstryker.com  
Image ID D00373853D01

03/10/2016 Notice Issued  
The document number is 00373852  
Notice of Intent to Dismiss  
Kristopher J Covi kcovi@mcgrathnorth.com  
Image ID D00373852D01

03/10/2016 Notice Issued  
The document number is 00373851

Notice of Intent to Dismiss  
Erin M McCartney erin.mccartney@johnturcolaw.com  
Image ID D00373851D01

03/10/2016 Notice Issued  
The document number is 00373850  
Notice of Intent to Dismiss  
Kristopher J Covi kcovi@mcgrathnorth.com  
Image ID D00373850D01

10/30/2015 Suggestion in Bankruptcy  
This action initiated by party London Woolman  
RT  
Image ID N15303X68D01

10/28/2015 Order

This action initiated by Peter Bataillon  
RE: Motion To Enforce Settlement Agreement  
\*\*see order\*\* eNotice Certificate Attached  
Image ID 001206258D01

10/14/2015 Motion Filed  
This action initiated by party AK-SAR-BEN VILLAGE LLC  
re: enforce sett agree 10-26-15 10:00 AM #413  
Image ID N15287676D01

08/18/2015 Motion-Compel  
This action initiated by party AK-SAR-BEN VILLAGE LLC  
re: disc resp 8-27-15 1:00 PM #413  
Image ID N152300V4D01

08/06/2015 Amended Notice of Hearing

This action initiated by party AK-SAR-BEN VILLAGE LLC  
9-3-15 9:30 AM #413  
Image ID N15218NGKD01

07/07/2015 Motion-Summary Judgment  
This action initiated by party AK-SAR-BEN VILLAGE LLC  
8-21-15 1:00 PM #413  
Image ID N15188Q7QD01

11/21/2014 Answer  
This action initiated by group Defs  
Image ID N14325KMID01

10/23/2014 Return Summons/Alias Summons

The document number is 00287673  
Served 10/22/2014, Certified Mail

Image ID 001078400D01

10/23/2014 Return Summons/Alias Summons  
The document number is 00287672  
Served 10/22/2014, Certified Mail  
Image ID 001078403D01

10/23/2014 Return Summons/Alias Summons  
The document number is 00287671  
Served 10/22/2014, Certified Mail  
Image ID 001078406D01

10/16/2014 Summons Issued on Shawn Slatunas  
The document number is 00287673  
Summons e-mailed  
Image ID D00287673D01

10/16/2014 Summons Issued on London Woolman  
The document number is 00287672  
Summons e-mailed  
Image ID D00287672D01

10/16/2014 Summons Issued on Three Clothing Inc  
The document number is 00287671  
Summons e-mailed  
Image ID D00287671D01

10/16/2014 Praecipe  
This action initiated by party AK-SAR-BEN VILLAGE LLC  
Image ID N14289SBUD01

10/16/2014 Complaint-Praecipe

This action initiated by party AK-SAR-BEN VILLAGE LLC  
praecipe filed separate  
Image ID N14289SBID01

## Judges Notes

08/21/2015

08-21-2015 Bataillon

Plaintiff's attorney, Luke Klinker, informed Court that case has settled. Order to be submitted in 60 to 90 days. Hearings set for 08-27-15 and 09-03-15 are cancelled.

10/26/2015

10-26-2015 Bataillon

This matter came on for hearing on 10-26-15, on the Plaintiff's Motion to Enforce Settlement. Luke Klinker appeared for the Plaintiff, and Christopher Covi appeared for the Defendants. Arguments received, and the Court found that the parties reached an agreement as to the settlement of this matter. The Court hereby sustains the Plaintiff's Motion to Enforce Settlement. Parties are given 7 days in which to sign the necessary documents as to the settlement. If this is not concluded within 7 days, the Court will entertain a Motion by the Plaintiff to enter an Order as to the settlement terms. Order to be submitted by attorney Klinker.

04/22/2016

04-22-2016 Bataillon

Matter came on for scheduling conference. Luke Klinker appeared for Plaintiff, and Christopher Covi appeared for Defendant. Matter is set for a jury trial commencing 12-05-16 for 2 days. Parties to submit Scheduling Order. Parties reached agreement as to a Motion to Compel. Orders to be prepared by attorney Klinker.



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

AK-SAR-BEN VILLAGE, L.L.C., a Nebraska Limited Liability Company,	)	CASE NO. CI 14-_____
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	COMPLAINT
THREE CLOTHING, INC., a Nebraska Corporation, and LONDON WOOLMAN, an individual, and SHAWN SLATUNAS, an individual,	)	
	)	
Defendants.	)	

COMES NOW the Plaintiff, AK-SAR-BEN VILLAGE, L.L.C., and for its Complaint against the Defendants, THREE CLOTHING, INC., LONDON WOOLMAN, and SHAWN SLATUNAS, states as follows:

**PARTIES**

1. Plaintiff AK-SAR-BEN VILLAGE, L.L.C. ("Plaintiff") is a limited liability company organized and existing under the laws of the State of Nebraska, and owns the Premises described herein, which is located in Omaha, Douglas County, Nebraska.
2. Defendant THREE CLOTHING, INC. ("Defendant Three Clothing") is a corporation existing under the laws of the State of Nebraska, and at all times relevant hereto was doing business in Omaha, Douglas County, Nebraska as "Three Clothing."
3. Defendant London Woolman ("Defendant Woolman") is a resident of Douglas County, Nebraska, and at all times relevant hereto was President of Defendant Three Clothing and a Guarantor of the Lease described herein.
4. Defendant Shawn Slatunas ("Defendant Slatunas") is a resident of Douglas County, Nebraska, and at all times relevant hereto was a Guarantor of the Lease described herein.

**THE LEASE**

5. On or about July 27, 2012, Plaintiff and Defendant Three Clothing entered into a written agreement for lease ("Lease") of a commercial space situated in the Ak-Sar-Ben Village, L.L.C. shopping center development; said commercial space was specifically located at 1110 South 71st Street, Suite J, Omaha, NE 68106 ("Premises").

The term of the Lease was for thirty-nine (39) months. A true and correct copy of the Lease is attached hereto as Exhibit "A" and by this reference is made a part hereof.

6. Defendant Three Clothing has breached the Lease by willfully failing and refusing to pay Plaintiff the agreed upon monthly rent and other charges when due under the Lease, and Defendant Three Clothing may have breached the Lease in further and different manners.

7. As a result of Defendant Three Clothing's breaches of the Lease, Plaintiff has incurred damages in the total sum of \$26,453.81, as of October 15, 2014.

8. Under the Lease, rent and other charges continue to accrue, and Plaintiff may incur additional damages after the filing of this Complaint.

#### **THE GUARANTY**

9. In order to induce Plaintiff to enter into the Lease, Defendant Woolman and Defendant Slatunas entered into and delivered to Plaintiff a Guaranty on the Lease, a true and correct copy of which is contained in pages 19 and 20 of Exhibit "A" ("Guaranty"), already made a part hereof, whereby Defendant Woolman and Defendant Slatunas unconditionally, and jointly and severally, guaranteed to Plaintiff the full and timely payment of all rent, additional rent, and all other charges, expenses and costs of every kind and nature under the Lease and the performance of all of the covenants and obligations under the Lease.

#### **DEMAND**

10. Plaintiff has made demand upon Defendants Three Clothing, Woolman and Slatunas to honor their respective obligations under the Lease and Guaranty, and all Defendants have failed and/or refused to pay the amounts due or comply with the same.

#### **COUNT I – BREACH OF LEASE (AGAINST DEFENDANT THREE CLOTHING)**

11. Plaintiff incorporates the allegations of paragraphs 1 through 10 above as if fully set forth herein.

12. Pursuant to the Lease, Defendant Three Clothing was obligated to pay Plaintiff rent and other charges accruing under the Lease.

13. Plaintiff has performed all conditions precedent under the Lease and any conditions imposed by law.

14. Despite due demand, Defendant Three Clothing has failed and/or refused to pay to Plaintiff the outstanding rent and other charges due under the Lease, and it is therefore in breach of the Lease.

15. Under the Lease, rent and other charges continue to accrue, and Plaintiff may incur additional damages after the filing of this Complaint.

16. Interest on the amount due accrues at the rate specified in the Lease.

WHEREFORE, Plaintiff prays for a judgment on Count I against Defendant Three Clothing, for rent and other charges due under the Lease in the amount of \$26,453.81 as of October 15, 2014, for additional rent and other charges accruing after the filing of this Complaint, its costs herein expended, prejudgment and post-judgment interest, and any other just and equitable relief as this Court deems proper.

**COUNT II – BREACH OF GUARANTY (AGAINST DEFENDANT WOOLMAN and  
DEFENDANT SLATUNAS)**

17. Plaintiff incorporates the allegations contained in paragraphs 1 through 16 above as if fully set forth herein.

18. The Guaranty is a contract, and Defendants Woolman and Slatunas each signed the Guaranty.

19. Plaintiff performed all conditions precedent to the Lease and the Guaranty, and any conditions imposed by law.

20. Despite due demand, Defendant Three Clothing has failed and/or refused to pay to Plaintiff the outstanding rent and other charges due under the Lease, and it is therefore in breach of the Lease.

21. Defendant Woolman and Defendant Slatunas breached the Guaranty by failing and refusing to pay to Plaintiff the outstanding rent and other charges due under the Lease and/or the Guaranty, and they are therefore in breach of the Guaranty.

22. Under the Lease and Guaranty, rent and other charges continue to accrue, and Plaintiff may incur additional damages after the filing of this Complaint.

23. Interest on the amount due accrues at the rate specified in the Lease.

WHEREFORE, Plaintiff prays for judgment on Count II in its favor and against Defendant Woolman and Defendant Slatunas, jointly and severally, for rent and other charges due under the Lease in the amount of \$26,453.81 as of October 15, 2014, for additional rent and other charges accruing after the filing of this Complaint, its costs



herein expended, prejudgment and post-judgment interest, and any other just and equitable relief as this Court deems proper.

**COUNT III – DECLARATORY JUDGMENT (AGAINST ALL DEFENDANTS)**

24. Plaintiff incorporates the allegations contained in paragraphs 1 through 23 above as if fully set forth herein.

25. The Lease and the Guaranty are valid, binding, and legally enforceable agreements.

26. All conditions precedent to Defendants' obligations set forth in the Lease and the Guaranty have been performed or met.

27. Despite due demand, Defendant Three Clothing has failed and/or refused to pay to Plaintiff the outstanding rent and other charges due under the Lease, and it is therefore in breach of the Lease.

28. Defendant Woolman and Defendant Slatunas breached the Guaranty by failing and refusing to pay to Plaintiff the outstanding rent and other charges due under the Lease and/or the Guaranty, and they are therefore in breach of the Guaranty.

29. Under the Lease, rent and other charges continue to accrue, and Plaintiff may incur additional damages after the filing of this Complaint.

30. With respect to Defendant Three Clothing's continuing obligations to pay rent and other charges due under the Lease, and Defendant Woolman's and Defendant Slatunas' continuing obligations to pay rent and other charges under the Lease and/or pursuant to the Guaranty, Plaintiff has no adequate remedy at law.

31. Plaintiff will suffer irreparable injury if the Court does not declare the Lease and the Guaranty valid, binding, and legally enforceable, declare that all conditions precedent have been performed or met under all the agreements, and declare that Defendants have an ongoing obligation to pay rent and other charges due under the Lease and Guaranty.

32. Plaintiff requests that after an initial judgment is entered in this matter, this Court retain jurisdiction of this matter to enter multiple and/or supplemental judgments from time to time, if necessary, against all Defendants for rent and other charges that may continue to accrue under the Lease and Guaranty.

WHEREFORE, on Count III, Plaintiff prays for the entry of an Order from this Court as follows: declaring that the Lease and the Guaranty are valid, binding, and

legally enforceable agreements between Plaintiff and Defendants; that all conditions for Defendants' performances under the Lease and the Guaranty have been met or occurred; that Defendants have breached the Lease and the Guaranty by failing to pay to Plaintiff the outstanding rent and other charges due under the Lease and/or the Guaranty; that rent and other charges due under the Lease continue to accrue, and Plaintiff may incur additional damages after the filing of this Complaint; that Defendants have an ongoing obligation to pay rent and other charges due under the Lease and Guaranty; and that after an initial judgment is entered in this matter, this Court shall retain jurisdiction of this matter to enter multiple and/or supplemental judgments from time to time, if necessary, against all Defendants for rent and other charges that may continue to accrue under the Lease and Guaranty.

AK-SAR-BEN VILLAGE, L.L.C., a Nebraska  
Limited Liability Company, Plaintiff

By: /s/ Luke J. Klinker  
Luke J. Klinker, #23419  
FRASER STRYKER PC LLO  
500 Energy Plaza  
409 South 17th Street  
Omaha, NE 68102  
(402) 341-6000  
(402) 341-8290 (Facsimile)  
[lklinker@fslf.com](mailto:lklinker@fslf.com)  
ATTORNEYS FOR PLAINTIFF

1213231.02

SHOPPES AT AKSARBEN  
(Name of Shopping Center)

SHOPPING CENTER LEASE

AK-SAR-BEN VILLAGE, L.L.C., A Nebraska Limited Liability Company  
Landlord

and

THREE CLOTHING, INC., A Nebraska Corporation  
Tenant

Dated: 7/27, 2012

EXHIBIT "A"

SHOPPING CENTER LEASE

THIS LEASE is made and entered into this 27<sup>th</sup> day of July, 2012, by and between AK-SAR-BEN VILLAGE, L.L.C., a Nebraska Limited Liability Company ("Landlord") and THREE CLOTHING, INC., A Nebraska Corporation ("Tenant").

WITNESSETH:

1. FUNDAMENTAL LEASE PROVISIONS. Each of the following subparagraphs is individually referred to in this lease as a "Fundamental Lease Provision" and is contained in this paragraph for convenience. Each reference in this lease to a Fundamental Lease Provision shall be construed to incorporate all of the terms of such Fundamental Lease Provision. In the event of any conflict between a Fundamental Lease Provision and any other provision of this lease, such other provision shall govern.

(a) Landlord:  
AK-SAR-BEN VILLAGE, L.L.C., a Nebraska Limited Liability Company

(b) Landlord's Address for Notices and Rent Payments:  
c/o Noddle Companies  
2285 S. 67<sup>th</sup> Street, Suite #250  
Omaha, NE 68106  
P.O. Box 24169  
Omaha, NE 68124

(c) Tenant:  
THREE CLOTHING, INC., a Nebraska Corporation

(d) Tenant's Address for Notices:  
1110 South 71<sup>st</sup> Street, Suite J, Omaha, NE 68106

(e) Tenant's Trade Name:  
Three Clothing

(f) Address of Premises:  
1110 South 71<sup>st</sup> Street, Suite J, Omaha, NE 68106

(g) Name of Shopping Center Development:  
SHOPPES AT AKSARBEN

(h) Approximate Number of Square Feet in Premises:  
1,277

(i) Length of Lease Term:  
Thirty-nine (39) months

(j) Minimum Rent:  
\$84,814.03 total minimum rent  
for the Lease Term payable as follows:

<u>Month one (1) through Month three (3)</u>	<u>\$ 0.00 per month</u>
<u>Month four (4) through Month fourteen (14)</u>	<u>\$2,234.75 per month</u>
<u>Month fifteen (15) through Month twenty-six (26)</u>	<u>\$2,367.77 per month</u>
<u>Month twenty-seven (27) through Month thirty-nine (39)</u>	<u>\$2,447.58 per month</u>

(k) Percentage of Gross Sales for Percentage Rent: N/A percent  
(N/A%).

(l) Initial Monthly Common Areas Charge:  
\$474.62

(m) Initial Monthly Insurance Contribution:

\$18.09

- (n) Initial Monthly Tax Contribution:  
\$405.45
- (o) Initial Monthly Promotion Charge:  
N/A
- (p) Permitted Use of Premises:  
The retail sale of women's clothing, shoes and accessories.
- (q) Security Deposit:  
\$2,234.75
- (r) Commencement Date of Minimum Rent and Lease Term:  
Ninety (90) days after Landlord has delivered the Premises with Landlord's Work (as defined in Exhibit B) substantially completed. "Substantially" shall mean completed less minor punch list items.

2. **LEASED PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises whose address is set forth as a Fundamental Lease Provision in paragraph 1(f) and which premises are situated in the location outlined in red on the shopping center site plan attached to this lease as Exhibit A. Such premises, which are referred to in this lease as the "Premises", are a portion of the shopping center development whose name is set forth as a Fundamental Lease Provision in paragraph 1(g); such shopping center development is referred to in this lease as the "Shopping Center". The Premises contain the approximate number of square feet of floor space which is set forth as a Fundamental Lease Provision in paragraph 1(h).

3. **LANDLORD'S WORK AND OTHER CONSTRUCTION.** Tenant acknowledges that, except as expressly provided in Exhibit B to this lease, Landlord has made and by this lease makes no representations or agreements as to either (a) the remodeling, equipping, alteration, or improvement of the Premises as they now exist, (b) the construction of any improvements in the Shopping Center other than such improvements as presently are in existence therein, or (c) the specific or number of tenants of any buildings now existing or hereafter constructed in the Shopping Center. Landlord reserves the right from time to time in its sole and absolute discretion to effect such other tenancies in the Shopping Center as Landlord may determine to be in the best interests of the Shopping Center. Landlord also reserves the right from time to time in its sole and absolute discretion to construct other buildings and improvements in the Shopping Center which may but need not adjoin the building in which the Premises are located, together with such additional parking areas (if needed in Landlord's reasonable judgment) as will be sufficient to serve the Shopping Center as then constituted, and to modify the Common Areas as they may exist from time to time.

4. **TERM.** This lease shall be for the term set forth as a Fundamental Lease Provision in paragraph 1(i), unless sooner terminated pursuant to the provisions of this lease. The commencement date of the term of this lease (the "Commencement Date") shall be that date set forth as a Fundamental Lease Provision in paragraph 1(r); provided, that if Tenant opens for business in the Premises prior to the Commencement Date, then the period from the date of Tenant's opening for business in the Premises to the Commencement Date shall be added to and become a part of the term of this lease. If Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, then notwithstanding any other provision of this lease all of Tenant's obligations under this lease other than the payment of rent shall commence on the date on which Landlord delivers possession of the Premises to Tenant. For all purposes of this lease, the phrase "lease year" shall mean the twelve (12) months commencing on the first day of the first full calendar month of the term of this lease and on each succeeding anniversary of such day.

5. **MINIMUM RENT.** For each lease year during the term of this lease, and on a pro rata basis for any partial lease year, Tenant shall pay to Landlord a guaranteed minimum rent in the amount set forth as a Fundamental Lease Provision in paragraph 1(j) (the "Minimum Rent"). The Minimum Rent shall be payable in advance in equal monthly installments on the

first day of each calendar month during the term of this lease. The monthly installment of Minimum Rent for any period during the term of this lease prior to the commencement of the first lease year and for any other period of less than a calendar month shall be prorated on a daily basis and shall be paid by Tenant to Landlord within five (5) days after the commencement of the period for which it is due.

6. PERCENTAGE RENT. Intentionally deleted.
7. DEFINITION OF "GROSS SALES". Intentionally deleted.
8. TENANTS RECORDS. Intentionally deleted.
9. TENANT'S REPORTS. Intentionally deleted.
10. AUDIT. Intentionally deleted.

11. COMMON AREAS. In addition to the occupancy of the Premises, Tenant and Tenant's employees, agents, customers, and invitees also shall have the right to the non-exclusive use of automobile parking areas, access roads, driveways, and sidewalks which may be located from time to time in the Shopping Center. Such parking areas, access roads, driveways, and sidewalks collectively are referred to in this lease as the "Common Areas". Such use of the Common Areas at all times shall be subject to such reasonable rules and regulations as Landlord from time to time may establish, and Tenant shall abide by all such rules and regulations established by Landlord. Landlord shall have the right in its sole and absolute discretion, without the consent or approval of Tenant, at any time and from time to time (i) to enter into, modify, and terminate easements and other agreements pertaining to the use and maintenance of the Common Areas; (ii) to close temporarily or permanently any or all portions of the Common Areas; (iii) to change the dimensions, configurations, and locations of the Common Areas as shown on the Shopping Center site plan attached hereto as Exhibit "A", as well as the location, dimensions, configurations, identity, and type of any buildings shown thereon, to construct additional buildings or additional stories on existing buildings or other improvements in the Shopping Center, and to eliminate buildings from the Shopping Center; (iv) to operate for its own account various income-producing facilities in the Common Areas; (v) to erect such promotional and other displays within the Common Areas as Landlord may deem desirable; (vi) to do and perform such other acts in and to the Common Areas as Landlord shall determine to be necessary or appropriate. No exercise by Landlord of any rights herein reserved shall be deemed to be a constructive or actual eviction of Tenant or entitle Tenant to any compensation or damages from Landlord for any injury, inconvenience, or loss of business or to the abatement of any Minimum Rent. Nothing contained in this Paragraph shall be deemed to create any liability upon Landlord for any damage to motor vehicles of customers or employees, or for loss of property from within such motor vehicles while located on the Common Areas. Tenant shall not use any portion of the Common Areas for the conduct of its business or for the solicitation of business without the prior written consent of Landlord. Tenant shall require its employees to park their motor vehicles only in such areas as Landlord may designate from time to time for such purpose.

12. COMMON AREAS OPERATION. Except as otherwise provided in this lease, Landlord shall operate and maintain the Common Areas during the term of this lease in good order and repair in accordance with reasonable standards of shopping center cleanliness and maintenance; provided, that Tenant at its expense shall keep the Common Areas free of litter, trash, and debris generated by or resulting from the operation of Tenant's business in and about the Premises; and provided further, that Tenant at its expense shall keep the sidewalks adjacent to the Premises free of ice, snow, debris, and temporary or moveable obstructions. Tenant shall pay to Landlord for each calendar year during the term of this lease and any other period of occupancy of the Premises by Tenant, as additional rent, Tenant's Common Areas Charge (as defined in the following sentence). For purposes of this lease, Tenant's Common Areas Charge for a calendar year shall be the Tenant Fraction of the costs paid, incurred, or accrued by Landlord for operating and maintaining the Common Areas during such calendar year. For purposes of this lease, the phrase "Tenant Fraction" shall mean the fraction whose numerator is the total number of square feet of floor space contained in the Premises and whose denominator is the total number of square feet of leasable floor space contained in all of the buildings in the Shopping Center. Tenant shall pay to Landlord, concurrently with Tenant's payments of monthly

Installments of Minimum Rent, an amount equal to one-twelfth (1/12th) of Tenant's estimated Common Areas Charge for the current calendar year, as determined annually and communicated to Tenant in writing by Landlord. Tenant's estimated monthly Common Areas Charge for the first calendar year is set forth as a Fundamental Lease Provision in Paragraph 1 (1). After the end of each calendar year, Landlord shall deliver a statement setting forth Tenant's actual Common Areas Charge for such calendar year. Within thirty (30) days after receipt of such statement, Tenant shall pay to Landlord any unpaid portion of its actual Common Areas Charge for such calendar year or shall be entitled to a credit from Landlord for any excess Common Areas Charge actually paid by Tenant for such calendar year. Unless Tenant shall take written exception to any item in any such statement within such thirty (30) day period, such statement shall be considered as final and accepted by Tenant. No such exception shall extend the time within which Tenant is obligated to pay the amounts shown in Landlord's statement and any amount not paid within such thirty (30) day period shall be subject to interest and expenses pursuant to paragraph 39. If Tenant shall occupy the Premises only during part of a calendar year, then Tenant's Common Areas Charge for such partial calendar year shall be prorated for such partial calendar year, unless Tenant is otherwise obligated under this lease in respect of all of such calendar year. For purposes of this lease, the costs of operating and maintaining Common Areas shall include, but not be limited to, any Shopping Center management fees, the costs of lighting, electricity, heating and air conditioning for any enclosed portions of the Common Areas, water, cleaning, painting, sealing, staining and exterior maintenance of all buildings and fascias, and awnings, trash removal, snow removal, pollution control, line repainting, landscape maintenance, sewer charges, wages, payroll taxes, worker's compensation insurance, parking lot liability insurance, licenses and permit fees, policing and security services, fire protection, traffic direction, repairs, replacements, depreciation and maintenance on equipment, maintenance supplies, personal property taxes, other everyday maintenance expenses, reserves for future maintenance and repair work and replacement of capital improvements (which Tenant hereby authorizes Landlord to make as necessary), the costs of alterations and improvements made by Landlord to comply with applicable laws and regulations of governmental authorities, now existing or hereafter enacted, any costs incurred by Landlord in connection with seeking any reduction in the costs of operating and maintaining the Common Areas, any costs incurred by Landlord in connection with seeking any reduction in the costs of taxes, utilities or other charges levied, assessed, or imposed in connection with the Shopping Center, including, the cost of any third party tax or utility service, and an administrative charge equal to fifteen percent (15%) of such costs.

13. **PERMITTED USE.** Tenant may use the Premises only for the permitted use set forth as a Fundamental Lease Provision in paragraph 1(p) and for no other purpose. Tenant agrees at all times to conduct its business in the Premises in a dignified, ethical, responsible, and reputable manner consistent with the highest standards of service and merchandising and at all times to comply with all laws, ordinances, and governmental regulations (whether now existing or hereafter enacted or adopted) affecting the Premises and its cleanliness, safety, occupancy, and use. Tenant at its own expense shall comply with and shall make all modifications or accommodations to the interior of the Premises required by the Americans with Disability Act or any similar state or local handicap discrimination law. Landlord at its own expense shall comply with and shall make all modifications or accommodations to the Shopping Center other than the interior of the Premises required by the Americans with Disability Act or any similar state or local handicap discrimination law. Tenant shall indemnify, defend and hold harmless Landlord from and against any claims, losses, damages, and expenses (including attorneys' fees) arising out of or resulting from Tenant's failure to make any such modifications or accommodations and Tenant's failure to comply with all applicable laws, ordinances, rules, and regulations, including but not limited to the Americans with Disabilities Act or any similar state or local handicap discrimination law. Without limiting the foregoing, Tenant shall not use or occupy the Premises unless and until a Certificate of Occupancy permitting Tenant's use and occupancy has been issued by the appropriate governmental authority and remains in effect, any and all conditions and requirements of the Certificate of Occupancy have been complied with, and Landlord has received a copy of the Certificate of Occupancy and evidence of such compliance. Tenant shall prohibit its customers from loitering or congregating in the Premises or the Common Areas and from becoming a nuisance or otherwise disturbing the other tenants of the Shopping Center and their respective customers, employees, and invitees. Tenant agrees to not knowingly do or omit to do anything which will cause an increase in the premiums for the casualty insurance which Landlord maintains on the Shopping Center over and above the premiums which otherwise would be in effect for such insurance or which would cause the cancellation of any such

insurance. Tenant shall pay Landlord on demand any increase in the insurance premiums on the Shopping Center on account of any extra risk caused by Tenant's use of the Premises.

14. **OPERATION OF BUSINESS.** Tenant shall (a) conduct its business in the entire Premises; (b) remain open for business during customary business days and hours for similar businesses in the city or trade area where the Shopping Center is located and also shall remain open on such days and for such hours as Landlord generally may require of businesses in the Shopping Center; (c) adequately staff its store with sufficient employees to handle the maximum amount of business and carry a stock of merchandise of such size, character, and quality as may be necessary to accomplish such maximum amount of business; (d) keep its display windows and signs, if any, well lighted during all business hours; (e) keep the Premises and both the exterior and interior portions of windows, doors, and other glass or plate glass fixtures therein in neat, clean, sanitary, and safe conditions; (f) warehouse, store, or stock only such goods, wares, and merchandise in the Premises as Tenant intends to offer for sale at retail in the Premises; (g) neither solicit business nor distribute advertising matter in the Common Areas; (h) not place any excessive weight upon the floor of the Premises; (i) use the insignia or other identifying mark of the Shopping Center (if any) designated by Landlord in Tenant's advertising, whether printed or visual, and make reference to the name of the Shopping Center in each instance of audio advertising; (j) not place or permit any radio or television antenna, loud speaker, or sound amplifier, or any phonograph or other devices similar to any of the foregoing, on the roof or outside of the Premises or at any other place where it may be seen or heard outside of the Premises; (k) not permit noise, sounds, activities, odors, or disturbances within the Premises which interfere or are likely to interfere with the businesses of other tenants in the Shopping Center and shall install a ventilation system in the Premises which is sufficient to ensure that odors do not permeate through the walls or ceiling of the Premises into adjacent bays of the Shopping Center and (l) not operate or permit gambling or wagering of any kind within the premises or the shopping center. Tenant agrees not to do or permit anything to be done which will interfere with the quiet enjoyment of other tenants or occupants of the Shopping Center. If Tenant's trade name is set forth as a Fundamental Lease Provision in paragraph 1(e), then Tenant shall not conduct its business in the Premises under any other trade name without first obtaining Landlord's written consent to such change of trade name.

15. **LANDLORD'S COVENANTS.** Landlord covenants that it is the owner or ground lessee of the Shopping Center and that Landlord has full power and authority to make this lease with Tenant. Landlord further covenants that Tenant, upon the complete and timely payment of all rent and performance of all of Tenant's other obligations under this lease, shall peacefully and quietly have, hold, and enjoy the occupancy of the Premises throughout the term of this lease or until this lease is sooner terminated in accordance with its provisions without any disturbance from Landlord or anyone claiming by, through, or under Landlord.

16. **LIENS.** Tenant shall have no authority to cause or permit a mechanic's, construction, or other lien to arise or be perfected with respect to the Premises or any part thereof, and Tenant shall so advise any contractor performing any work or providing any materials for Tenant in or with respect to the Premises. If any mechanic's, construction, or other lien is filed against the Premises or any part thereof for any reason whatsoever by reason of Tenant's acts or omissions or because of a claim against Tenant, then Tenant shall cause such lien to be canceled and discharged of record by bond or otherwise within ten (10) days after written request by Landlord.

17. **MAINTENANCE AND REPAIRS.** Except as otherwise provided in this lease, Landlord at its expense shall keep and maintain the foundation, roof, and structural portions of the walls of the Premises, and the main utility connections serving the Premises, in good condition and repair at all times during the term of this lease, except for damage thereto caused by the acts or omissions of Tenant or any of Tenant's contractors, employees, agents, customers, or invitees. Tenant shall be responsible for and shall at its expense repair any damage to the roof of the Premises resulting from any penetration of the roof of the Premises made by Tenant or its agents or contractors for the purpose of installing vents, exhaust fans, or similar devices serving the Premises or for any other purpose. Tenant at its expense shall repair any damage to any portion of the Premises caused by the acts or omissions of Tenant or any of Tenant's contractors, employees, agents, customers, or invitees. Except for those items for which Landlord is responsible pursuant to the first sentence of this paragraph, Tenant at its expense shall keep and maintain the Premises in good condition and repair at all times during the term of this lease in



such manner as Landlord and any insurer of the Premises reasonably may require and also as may be required to comply with all applicable laws, ordinances, rules, and regulations, now existing or hereafter enacted, of any federal, state, or local governmental agency or subdivision having jurisdiction over the Premises. Tenant's responsibilities under this paragraph shall include but are not limited to all plate glass windows and doors in the Premises, the store front or fronts of the Premises, and the fixtures and equipment serving or constituting a part of the Premises (including but not limited to the lighting, heating, air conditioning, ventilating, plumbing, electrical, sewer, and other mechanical systems and equipment serving the Premises). Tenant at its expense promptly shall make any and all repairs and replacements to the Premises and to the fixtures and equipment serving or constituting a part thereof which may be required to comply with the obligations of Tenant under this paragraph, in each case in a good and workmanlike manner using materials, fixtures, and equipment whose quality is at least equal to that of the materials, fixtures, and equipment being repaired or replaced. Upon the expiration or termination of this lease, Tenant shall deliver the Premises and the fixtures and equipment constituting a part thereof (excluding Tenant's trade fixtures) to Landlord in good condition and repair, reasonable wear and tear excepted. Notwithstanding the foregoing provisions of this paragraph, Landlord and Tenant agree that this paragraph shall not be applicable to any damage to or destruction of the Premises falling within the scope of paragraphs 22 and 23 (dealing with insured and uninsured casualties) or paragraph 43 (dealing with eminent domain), which damage or destruction shall be governed by the provisions of such other paragraphs.

18. **SIGNS AND TRADE FIXTURES.** Tenant must install prior to Commencement Date of Lease Term, upon the exterior of the Premises and remove therefrom, at Tenant's expense, signs relating solely to Tenant's business in the Premises which comply with the sign criteria attached hereto as Exhibit "C" and with all applicable laws, ordinances, and governmental regulations and which will cause no damage to the Premises; provided, that if any of such signs are other than the uniform signs prescribed by Landlord, Tenant first shall submit to Landlord plans for such signs showing all details (to scale) and colors thereof and shall obtain Landlord's prior written approval of such signs. Tenant shall not place or erect any signs or other devices upon any of the Common Areas. Tenant may install in the Premises and remove therefrom such trade fixtures as Tenant may deem necessary or appropriate to its business operations. Any damage to the Premises which may be caused by the removal of any of Tenant's signs or trade fixtures shall be repaired by Tenant at its expense forthwith upon the removal of any of such signs or trade fixtures. Tenant shall be responsible for the cleaning of, repair or replacement of, and maintenance of all signs erected or installed on or in the Premises.

19. **ALTERATIONS BY TENANT.** Tenant, at its expense, during the term of this lease may make such non-structural alterations to the interior of the Premises as it deems appropriate; provided, that (i) the structural integrity of the Premises is not thereby adversely affected or diminished, (ii) the roof of the Premises is not affected, (iii) the value of the building in which the Premises are located is not thereby diminished, and (iv) the exterior appearance (including the store front) of the Premises is not thereby altered or changed. In all other instances Tenant shall secure the prior written approval of Landlord before making any alterations, which consent may be conditioned on the furnishing by Tenant of a bond of a surety company reasonably acceptable to Landlord. In all cases Tenant must obtain Landlord's written consent before making any installations on the roof of the Premises or any roof penetrations for the purpose of installing vents, exhaust fans, or similar devices to serve the Premises or for any other purpose. All such alterations shall be completed in a good and workmanlike manner with first-class materials and workmanship. Tenant shall make no additions or alterations whatsoever to the exterior of the Premises without the prior written consent of Landlord. At Landlord's option, any additions or alterations made to the interior of the Premises by Tenant (including but not limited to any carpeting, linoleum, or other floor covering which is cemented, glued, or otherwise affixed to the floor of the Premises) shall remain a part of the Premises and be surrendered therewith upon the expiration or termination of this lease, or upon the expiration or termination of this lease Tenant at its expense shall remove such additions or alterations and restore the Premises to their condition at the time of Landlord's delivery of possession thereof to Tenant. Furthermore, advance written approval of Landlord is required before Tenant removes or replaces any existing glass frontage including doors and windows.

20. **INDEMNIFICATION.** Tenant agrees to indemnify Landlord against and to hold Landlord harmless from any and all claims or demands of any third party arising from or based upon any alleged act, omission, or

negligence of Tenant or Tenant's contractors, agents, invitees, customers, employees, or anyone else for whom Tenant may be or alleged to be responsible. In the event that Landlord shall, without fault on its part, be made a party to any litigation commenced by any third party against Tenant, then Tenant shall hold Landlord harmless from such litigation and shall pay all costs, expenses, and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation, together with any judgments rendered against Landlord. Landlord agrees to indemnify Tenant against and to hold Tenant harmless from any and all claims or demands of any third party arising from or based upon any alleged act, omission, or negligence of Landlord or Landlord's contractors, agents, invitees, customers, employees, or anyone else for whom Landlord may be or alleged to be responsible. In the event that Tenant shall, without fault on its part, be made a party to any litigation commenced by any third party against Landlord, then Landlord shall hold Tenant harmless from such litigation and shall pay all costs, expenses, and reasonable attorneys' fees incurred or paid by Tenant in connection with such litigation, together with any judgments rendered against Tenant.

21. **INSURANCE.** Landlord at all times during the term of this lease and any other period of occupancy of the Premises by Tenant shall obtain and keep in force with respect to the Common Areas commercial general public liability insurance in form customarily written for the protection of owners, landlords, and tenants of real estate, which insurance shall provide coverage for both Landlord and Tenant of not less than \$2,000,000 for each occurrence of bodily injury or property damage. Landlord further agrees at all times during the term of this lease and any other period of occupancy of the Premises by Tenant to maintain and keep in force with respect to the Shopping Center (i) an all-risk form of replacement value insurance against physical loss or damage on at least an eighty percent (80%) co-insurance basis, (ii) insurance against loss of rents, and (iii) commercial general liability insurance. Tenant shall pay to Landlord for each calendar year during the term of this lease and any other period of occupancy of the Premises by Tenant, as additional rent, Tenant's Insurance Contribution (as defined in the following sentence). For purposes of this lease, Tenant's "Insurance Contribution" for a calendar year shall be the Tenant Fraction of the premiums actually paid by Landlord during such calendar year for the insurance coverages referred to in the first two sentences of this Paragraph. 21. If any building in the Shopping Center is separately insured against physical loss or damage and the premiums for such separate insurance are payable by a tenant or owner other than Landlord, then such insurance premiums shall not be included in the premiums upon which Tenant's Insurance Contribution is based; and in such event the denominator of the Tenant Fraction for purposes of allocation of casualty insurance shall be reduced by the number of square feet of leasable floor space contained in the building or buildings which are covered by such separate insurance. Tenant shall pay to Landlord, concurrently with Tenant's payments of monthly installments of Minimum Rent, an amount equal to one-twelfth (1/12) of Tenant's estimated Insurance Contribution for the current calendar year as determined annually and communicated to Tenant in writing by Landlord, within thirty (30) days after the end of each calendar year. Tenant shall pay to Landlord any unpaid portion of its actual Insurance Contribution for such calendar Year or shall be entitled to a credit from Landlord for any excess Insurance Contribution actually paid by Tenant for such calendar year. Tenant's estimated monthly Insurance Contribution for the first calendar year is set forth as a Fundamental Lease Provision in paragraph 1(m). Tenant's Insurance Contribution shall be prorated for any period of Tenant's occupancy of the Premises which is less than a full calendar year, unless Tenant is otherwise obligated under this lease in respect of all of such calendar year.

Tenant at its expense at all times during the term of this lease and any other period of occupancy of the Premises by Tenant shall obtain and keep in force with respect to the Premises commercial general public liability insurance in form customarily written for the protection of owners, landlords, tenants, tenants' agents, patrons, employees, invitees and contractors or anyone else for whom Tenant is responsible of real estate, with Landlord and Tenant as named insureds, which insurance shall provide coverage of not less than \$2,000,000 for each occurrence of bodily injury or property damage. Tenant also shall carry such personal injury and special liability insurance coverages, including but not limited to premises operations, products and professional liability coverages as may be customary or appropriate with respect to Tenant's business or as Landlord reasonably may require and shall include Landlord as a named insured thereunder. Tenant understands and acknowledges that the insurance which the second sentence of this paragraph 21 requires Landlord to obtain and keep in force will not cover any of Tenant's property, including but not limited to leasehold improvements. Tenant agrees, at its expense, during the term of this lease and other period of occupancy of the Premises by Tenant to obtain

and keep in force with respect to Tenant's leasehold improvements, inventory, fixtures and equipment, signs, and other personal property in the Premises replacement value fire and broad form extended coverage insurance on at least an eighty percent (80%) co-insurance basis; Landlord shall be included as a named insured under the policies providing such insurance with respect to Tenant's leasehold improvements, and Tenant shall furnish Landlord with an appropriate certificate evidencing that all such insurance is in force and that Landlord is a named insured thereunder as to such leasehold improvements. All policies of insurance required to be carried by Tenant hereunder shall provide that they may not be canceled without at least thirty (30) days prior written notice to Landlord. Prior to Tenant's taking possession of the Premises, Tenant shall furnish to Landlord appropriate certificates evidencing that such insurance is in force and that Landlord is named as an insured thereunder; and Tenant shall pay to Landlord, on demand, a late charge of fifty dollars (\$50.00) if such certificates are not delivered to Landlord within thirty (30) days after Landlord has made a written request to Tenant for such certificates.

**22. DAMAGE BY INSURED CASUALTY.** If the Premises shall be partially or wholly damaged or destroyed by fire or any other casualty covered by the insurance required to be maintained by Landlord pursuant to the second sentence of paragraph 21, then Landlord forthwith shall proceed to repair and restore the Premises to at least the condition the Premises were in immediately prior to such damage or destruction; provided, that Landlord's work shall not include the repair or restoration of any improvements or other work done by Tenant in or about the Premises less any allowance previously provided by Landlord. If the Shopping Center is more than 25% damaged or destroyed by fire or any other casualty covered by such insurance, then Landlord shall have the option either to cancel this lease by notice to Tenant in writing within sixty (60) days after the occurrence of such damage or destruction or to repair and restore the Shopping Center to at least the condition it was in immediately prior to such damage or destruction, in which latter event this lease shall continue in full force and effect; provided, that Landlord's work shall not include the repair or restoration of any improvements installed or other work done by Tenant in or about the Premises. If Landlord repairs or restores the Premises or the Shopping Center, as the case may be, pursuant to this paragraph, then Tenant at its expense promptly shall repair, restore, or replace all of its leasehold improvements, trade fixtures, and personal property damaged or destroyed by such fire or other casualty.

**23. DAMAGE BY UNINSURED CASUALTY.** If the Shopping Center shall suffer damage in an amount less than \$50,000 by virtue of any casualty not covered by the insurance required to be maintained by Landlord pursuant to paragraph 21, then Landlord forthwith shall repair and restore the Shopping Center to at least the condition that it was in immediately prior to such damage. If the Shopping Center shall suffer damage in excess of \$50,000 by virtue of any casualty not covered by the insurance required to be maintained by Landlord pursuant to paragraph 21, then Landlord at its option either (a) may repair and restore the Shopping Center to good condition so as to be fit for occupancy within a reasonable time after the occurrence of such damage or (b) within sixty (60) days after the occurrence of such damage may terminate this lease by giving Tenant notice in writing of such termination. If Landlord exercises its option to repair and restore the Shopping Center pursuant to this paragraph, then it shall give Tenant written notice of the exercise of such option within sixty (60) days after the occurrence of such damage and then shall proceed with reasonable diligence to make such repairs and restoration; provided, that Landlord's work shall not include the repair or restoration of any improvements installed or other work done by Tenant in or about the Premises. In such latter event, Tenant at its expense promptly shall repair, restore, or replace all of its leasehold improvements, trade fixtures, and personal property damaged by such casualty. If the uninsured damage referred to in this paragraph is caused by the act or omission of Tenant or any of Tenant's contractors, employees, agents, customers, or invitees, then notwithstanding any other provision of this paragraph Tenant at its expense forthwith shall repair such damage.

**24. ABATEMENT OF RENT.** In the event of any damage to or destruction of the Premises which makes the Premises in whole or in part unfit for use by Tenant in the normal course of its business in the Premises, then the Minimum Rent, or a proportionate part thereof based upon that portion of the Premises which is unfit for use by Tenant in the normal course of its business, shall abate until the Premises have been repaired or restored by Landlord in accordance with paragraph 22 or paragraph 23, as the case may be. Nothing in this paragraph shall be construed to abate any additional rent payable by Tenant under this lease.

25. **HANDLING CHARGE.** Tenant shall pay to Landlord on demand a handling charge of Fifty Dollars (\$50.00) for any check given to Landlord by Tenant for payment of any sums due hereunder which is dishonored by Tenant's bank for any reason.

26. **ASSIGNMENT AND SUBLETTING.** Tenant shall have no right to assign this lease or to sublet the Premises without the prior written consent of Landlord, which consent may not be unreasonably withheld by Landlord; provided, that if Landlord in its reasonable discretion gives such consent, then Tenant shall remain primarily liable to Landlord for the payment of the rent and the performance of all of Tenant's other obligations under this lease for the remainder of the term of this lease. Tenant shall not allow or permit any transfer of this lease, or of any interest in or rights under this lease, by operation of law and shall not mortgage, pledge, or encumber this lease or any interest herein. For purposes of this paragraph, a change in control of Tenant shall be deemed to be an assignment of this lease requiring Landlord's prior written consent. If Landlord consents to an assignment of this lease by Tenant, then such consent shall apply only to the remainder of the then current term of this lease and not to any subsequent periods as to which Tenant has an unexercised option to extend the term of this lease; and any such option or options shall be of no further force or effect after such assignment has been consented to by Landlord. Landlord shall have the right, exercisable in its reasonable discretion, to withhold any consent which may be required under this paragraph. In the event Tenant requests Landlord's consent to a sublease or assignment hereunder, Tenant shall pay Landlord a non-refundable fee of \$500.00, in advance, to cover Landlord's expenses incurred in connection with reviewing and processing such request.

27. **ENTRY BY LANDLORD.** Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises, for the purpose of making repairs, additions, or alterations thereto, or for any other lawful purpose; provided, that such entry shall not unreasonably interfere with the conduct of Tenant's business. For a period commencing six (6) months prior to the expiration of this lease, Landlord may have reasonable access to the Premises for the purpose of exhibiting the Premises to prospective tenants thereof and may display "For Rent" signs on the Premises.

28. **UTILITIES.** Tenant shall pay for all gas, water, electricity, telephone, and other utility services used or consumed in or about or furnished to the Premises during the term of this lease and shall pay all sewer use fees or similar charges made or imposed with respect to or against the Premises during the term of this lease. Tenant shall hold Landlord and the Premises harmless from all liens, charges, and costs with respect to such items. Tenant agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities serving the Premises and that if any equipment installed by Tenant requires additional utility facilities, such additional utility facilities shall be installed at Tenant's expense in accordance with plans and specifications approved in writing in advance by Landlord. Landlord shall not be liable for any interruption in the supply of any utilities to the Premises or for any damage caused either to the electrical system or to Tenant's equipment in the Premises by any power surge. Landlord does not guarantee the availability of any utilities. If Landlord provides any of such utility services to Tenant because they are not or cannot be separately metered or billed to Tenant, then Tenant shall pay to Landlord, within ten (10) days after receiving a statement therefor from Landlord, Tenant's equitable share of the billing received by Landlord for such utility service, which share shall be determined by Landlord in its sole discretion taking into account such factors, including but not limited to the nature of Tenant's business, as Landlord reasonably may consider to be appropriate.

29. **BANKRUPTCY.** In the event Tenant becomes the subject of voluntary or involuntary proceedings under the federal bankruptcy statutes as in effect from time to time, Landlord shall have all of the rights and remedies which are available to a landlord under such statutes in such an event. Such event also shall constitute a default under this lease, and Landlord thereupon may exercise all of its rights and remedies under paragraph 40 unless prohibited from doing so by such statutes.

30. **HOLDOVER.** In the event that Tenant remains in possession of the Premises after the expiration or termination of this lease, then Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month, subject to all of the conditions, provisions, and obligations of this lease, but without any rights to extend the term of this lease; provided, that the Minimum Rent payable by Tenant during any such period of holdover shall be computed at the

rate of 300% of the Minimum Rent payable by Tenant during the lease year most recently ended. Landlord's acceptance of rent from Tenant in such event shall not alter the status of Tenant as a month-to-month tenant whose occupancy of the Premises may be terminated by Landlord at any time upon one month's notice in advance.

31. **WAIVERS.** One or more waivers by Landlord or Tenant of a breach of any covenant or condition by the other of them shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord or Tenant to or of any act by either requiring the other's consent or approval shall not be deemed to waive or render unnecessary either party's consent to or approval of any subsequent similar act by the other party. No waiver or consent of either party shall be binding unless in writing, and Landlord's acceptance of rent with knowledge of the existence of any breach of this lease by Tenant shall not constitute a waiver of such breach.

32. **WAIVER OF CLAIMS.** Each party hereto hereby waives any and all claims for or rights of recovery which such party or anyone claiming through such party may have against the other party hereto (or such other party's officers, agents, or employees) for or with respect to any loss of or damage to such waiving party's property or for any business interruption which is insured or indemnified under valid insurance policies, whether or not such loss, damage, or business interruption is caused by the negligence of such other party or such other party's officers, agents, employees, or any other person or persons for whose actions such other party may be responsible or liable; provided, that the foregoing waiver shall be effective only to the extent of the insurance proceeds actually collected under such policies in respect of such loss, damage, or business interruption and only when permitted by the applicable insurance policy. Such waiver of claims and rights by Tenant also shall operate as a similar waiver in favor of the other tenants of the Shopping Center and the respective officers, agents, and employees of such other tenants.

33. **NOTICES.** Whenever under this lease a provision is made for notice of any kind, such notice and the service thereof shall be deemed sufficient if such notice to Tenant is in writing addressed to Tenant at the address set forth as a Fundamental Lease Provision in paragraph 1(d) and is delivered personally or sent by overnight express delivery or by United States certified mail, return receipt requested, with postage prepaid and if such notice to Landlord is in writing addressed to Landlord at the address set forth as a Fundamental Lease Provision in paragraph 1 (b) and is delivered personally or sent by overnight express delivery or by United States certified mail, return receipt requested, with postage prepaid. Either party may by notice to the other party change the address at which it wishes to receive any notice given under this lease.

34. **RELATIONSHIP OF PARTIES.** Nothing contained in this lease shall be deemed or construed by Landlord or Tenant, or by any third party, to create the relationship of principal and agent or of partnership or of joint venture between Landlord and Tenant.

35. **NO LIABILITY OF LANDLORD.** Landlord shall not be responsible or liable to Tenant or anyone claiming through Tenant for any loss or damage that may be caused by or through the acts or omissions of persons occupying premises adjacent to the Premises or in any other part of the Shopping Center (or of their customers, employees, agents, or invitees) or for any expense, loss, or damage sustained by Tenant or anyone claiming through Tenant from (a) the bursting, stoppage, or leaking of water, gas, sewer or steam pipes, downspouts, tanks, drains, or fixtures wherever located, (b) broken glass, (c) water, snow, or ice upon the Shopping Center or any portion thereof, (d) theft or other dishonest act by anyone other than Landlord, (e) water, wind, or other weather or natural condition or event, or (f) defects in the Premises or any fixtures or equipment therein which Landlord has not expressly agreed in writing to remedy.

36. **TAXES.** Landlord shall pay, prior to delinquency, the general real estate taxes and the installments of special taxes, assessments, or levies of any kind (however denominated) payable during the term of this lease (collectively referred to in this paragraph as the "Taxes") on the land and improvements constituting the Shopping Center. Tenant shall pay to Landlord for each calendar year during the term of this lease or any other period of occupancy of the Premises by Tenant, as additional rent, Tenant's Tax Contribution (as defined in the following sentence). For purposes of this lease Tenant's "Tax Contribution" for a calendar year shall be the Tenant Fraction of the Taxes actually paid by Landlord during such calendar year, regardless of the tax

period to which such Taxes relate. If any portion of the Shopping Center is assessed for real estate tax purposes as a separate parcel and the Taxes on such separate parcel are payable by a tenant or owner other than Landlord, then such Taxes shall not be included in the Taxes for purposes of Tenant's Tax Contribution under this paragraph; and in such event the denominator of the Tenant Fraction for purposes of this paragraph shall be reduced by the number of square feet of leasable floor space contained in the building or buildings located on such separate parcel. Tenant shall pay to Landlord, concurrently with Tenant's payments of monthly installments of Minimum Rent, an amount equal to one-twelfth (1/12) of Tenant's estimated Tax Contribution for the current calendar year, as determined annually and communicated to Tenant in writing by Landlord; within thirty (30) days after the end of each lease year, Tenant shall pay to Landlord any unpaid portion of its actual Tax Contribution for such calendar year or shall be entitled to a credit from Landlord for any excess Tax Contribution actually paid by Tenant for such calendar year. Tenant's Tax Contribution shall be prorated for any period of Tenant's occupancy of the Premises which is less than a full calendar year unless Tenant is otherwise obligated under this lease in respect of all of such calendar year. Tenant's estimated monthly Tax Contribution for the first calendar year is set forth as a Fundamental Lease Provision in paragraph 1(n). Tenant shall be responsible for and shall pay, before the same become delinquent, all federal, state, county and local taxes (other than Landlord's income taxes) levied or assessed upon: (1) any personal property, fixtures, or leasehold improvements of Tenant at any time located in or about the Premises, as well as any increase in the Taxes resulting from any improvements or alterations made to the Premises by Tenant pursuant to paragraph 19; and (2) Tenant's interest under this Lease or the rentals derived from or paid by Tenant under this Lease. Tenant shall also be responsible for and shall pay all sales, excise and other equivalent taxes (however denominated) in any way resulting from Tenant's possession or use of the Premises or payment of rent under this Lease. Tenant agrees to pay, upon receipt of an invoice from Landlord, its pro rata share of any fees and expenses charged by Landlord's tax consultants, if any, and/or fees and expenses (including, without limitation, attorneys' fees and accountants' fees) incurred by Landlord in connection with the pursuit of any reduction, refund, or revaluation of the real estate taxes.

**37. DELAYS IN PERFORMANCE.** The performance by Landlord and Tenant of any of their respective obligations or undertakings provided for in this lease (except the payment of rent or any other sums of money payable by Tenant under this lease) shall be excused and no default shall be deemed to exist in the event and so long as the performance of any such obligation or undertaking is prevented, delayed, retarded, or hindered by any act of nature, weather conditions, fire, earthquake, flood, explosion, war, terrorism, riot, failure of transportation, strikes, lockouts, action of labor unions, condemnation, laws, orders of government or civil or military authorities, inability to procure labor, equipment, facilities, materials, or supplies in the open market, or any other cause beyond the control of Landlord or Tenant, as the case may be.

**38. MANNER AND PLACE OF PAYMENTS.** All payments of rent and any other sums payable by Tenant to Landlord under this lease shall be made by Tenant to Landlord without demand, deduction, or set-off at the address set forth as a Fundamental Lease Provision in paragraph 1(b) or at such other place as Landlord from time to time may designate in writing.

**39. DELINQUENT PAYMENTS.** If any rent or other sums payable by Tenant under this lease are not paid within five (5) days after such rent or other sums are due, then such unpaid rent or other sums shall bear interest at the lesser of (a) the rate of 18% per annum or (b) the highest rate per annum permitted to be contracted for by natural persons under the laws of the State in which the Premises are located, from their respective due dates until paid, which interest shall be due and payable immediately. If Landlord engages an attorney or collection agency to collect any delinquent payment from Tenant or to enforce the performance by Tenant of any other obligation of Tenant which is delinquent under this Lease, then Tenant also shall be liable for and shall pay to Landlord, on demand, an amount equal to the attorney fees, court costs, and other collection expenses incurred by Landlord with respect to the collection of such delinquent payment or the enforcement of such delinquent performance, whether or not suit is filed against Tenant for such purpose. If Tenant is late for three (3) or more consecutive months in making any of its payments of rent due under this Lease, then Landlord, in addition to Landlord's other rights and remedies under this Lease, thereafter shall have the right to require Tenant to make all rent payments under this Lease quarterly in advance rather than monthly in advance.

40. **DEFAULT.** If Tenant defaults in the payment of any rent or other sums when due hereunder, vacates or abandons the Premises or fails to perform or comply with any other term or condition of this Lease and if such nonpayment, vacation, abandonment, or nonperformance shall continue for a period of five days after notice thereof has been given by Landlord to Tenant, then Landlord, at its option, may re-enter and repossess the Premises, with or without process of law, and, at its option, may declare this lease terminated and the term of this lease ended forthwith; and Landlord shall not be liable for damages by reason of such re-entry and repossession. Landlord shall have full and uncontested right to take possession of Tenant's fixtures, equipment, inventory, and other property in or about the Premises. Tenant hereby grants to Landlord a valid security interest in all of Tenant's property presently or hereafter situated in the Premises and all proceeds therefrom of such property. Tenant shall not remove such property without Landlord's consent (except inventory in the normal course of Tenant's business) until all rent and other payments due to Landlord have been paid and all terms and conditions of this Lease have been performed by Tenant. The provisions of this section shall constitute a security agreement under the Uniform Commercial Code, as amended from time to time, and, without limiting the effectiveness of this Paragraph, Tenant shall execute such financing statement(s) as Landlord may request. Only in the event that Tenant has encumbered its fixtures, equipment, inventory, and other property in or about the Premises with a duly chartered lending institution that uses Landlord's standard Waiver and Consent form shall Landlord waive the foregoing right. Notwithstanding such re-entry and repossession by Landlord and the holding of such fixtures, equipment, inventory, and other personal property, and whether or not Landlord exercises its option to terminate this lease, the liability of Tenant for the payment of the rent and other sums due or to become due under this lease and for the performance of Tenant's other obligations under this lease for the remainder of the term of this lease (determined as if Landlord had not terminated this lease) shall not be relinquished or extinguished but shall continue in full force and effect; and Landlord at any time may commence such one or more actions as it may deem necessary to collect any sums due from or payable by Tenant under this lease for such period. In the event of any such re-entry and repossession, Landlord shall have the right to relet all or any portion of the Premises upon such terms and conditions as Landlord may deem appropriate; and any such reletting shall not relieve Tenant of any of its obligations to Landlord under this lease, except to the extent of any net rentals actually received by Landlord from such reletting after deducting all of Landlord's expenses (including but not limited to legal expenses, brokerage commissions, and the costs of remodeling the Premises so as to render the Premises suitable for reletting) incurred in preparing for and accomplishing such reletting. Tenant further agrees to pay, in addition to the rent and other sums payable under this lease, such additional sums as a court of competent jurisdiction may adjudge reasonable as attorneys' fees in any suit or action instituted by Landlord to enforce the provisions of this lease or the collection of the rent or other sums payable by Tenant under this lease. Tenant hereby waives any right of redemption which it may have under any present or future law in the event Tenant is evicted from or dispossessed of the Premises for any reason. Unless Landlord otherwise agrees in writing, Tenant's surrender of possession of the Premises to Landlord prior to the end of the term of this lease and Landlord's acceptance of such surrender shall not effect a termination of this lease or release Tenant from any of its obligations under this lease for the remainder of the term of this lease. To the extent allowed by law, Tenant hereby waives any and all right to a trial by jury in any suit or suits brought to enforce any provisions of this lease or arising out of or concerning any provisions of this lease.

41. **CUMULATIVE RIGHTS.** The rights, options, elections, and remedies of Landlord and Tenant contained in this lease shall be cumulative and may be exercised on one or more occasions; and none of them shall be construed as excluding any other or additional right, priority, or remedy allowed or provided by law.

42. **SUBORDINATION.** Landlord may assign its rights under this lease as security to the holders of one or more mortgages (which term shall include a mortgage, deed of trust, or other encumbrance) now or hereafter in force against the Premises or the Shopping Center. Within ten (10) days written request of Landlord, Tenant agrees, at no charge, to subordinate its rights under this lease to the lien of one or more mortgages (which term shall include a mortgage, deed of trust, or other encumbrance now or hereafter in force against the Premises or the Shopping Center and to all advances made or hereafter to be made upon the security thereof; provided, that any such mortgage shall provide, or the mortgagee shall agree, that the mortgagee, in the event of its acquiring title to the Premises or the Shopping Center, whether through foreclosure, judicial process, power of sale, or otherwise, shall recognize the validity of this lease

and shall honor the rights of Tenant under this lease so long as Tenant (a) is not in default under this lease at the time such mortgagee acquires title to the Premises or the Shopping Center and (b) agrees to attorn to such mortgagee as if it were the original landlord under this lease. Such subordination shall be in such form as Landlord or the mortgagee may require.

43. **EMINENT DOMAIN.** If the whole of the Premises or the Shopping Center or the parking area in the Shopping Center shall be taken under the power of eminent domain, then this lease shall terminate and expire as of the date upon which possession must be surrendered to the public authority involved; the rent and any other sums payable under this lease shall be prorated as of such date; and Landlord and Tenant shall be released from any further liability under this lease. If more than twenty-five percent (25%) but less than all of the floor area of the Premises or of the Shopping Center shall be taken or condemned or if the parking area of the Shopping Center is reduced by more than twenty-five percent (25%) through condemnation or eminent domain proceedings and Landlord does not within ninety (90) days begin and thereafter complete the construction of substitute parking replacing at least the majority of the parking so taken using double decking, contiguous land, or underground areas, then either Landlord or Tenant may terminate this lease by serving upon the other party a written notice of termination effective as of the date upon which possession must be surrendered to the public authority involved. In the event that such option to terminate is exercised, the Minimum Rent and any other sums payable under this lease shall be prorated as of such date of surrendering possession; and Landlord and Tenant shall be released from any further liability under this lease. If any portion of the Premises or the Shopping Center is taken for public use and if neither party is entitled to exercise or does exercise its option to terminate this lease as permitted above in this paragraph, then the Minimum Rent shall be reduced as of the date upon which possession must be surrendered to the public authority involved in the proportion which the actual floor area in the Premises taken bears to the total floor area originally demised in the Premises; and Landlord promptly shall repair, restore, or rebuild for occupancy by Tenant the portion of the Premises not so taken. If, during the repair, restoration, or rebuilding required, the Premises are not usable in the opinion of Landlord, then Landlord and its contractors temporarily shall have possession of the Premises during the period of repair, restoration, or rebuilding; but the reduced rent provided for in this paragraph shall not abate. All compensation and damages awarded or other sums or awards paid on account of any condemnation or taking, whether temporary or permanent, under the power of eminent domain of the Premises, the Common Areas, or the Shopping Center, or any portion of portions thereof, shall belong to and be the sole property of Landlord whether such damages or other sums are awarded as compensation for the loss, taking, or diminution in value of any fee, leasehold, easement, or other interest in the Premises, the Common Areas, the Shopping Center, or otherwise or for the acquisition by the condemning authority of any temporary easement or other rights therein; and in no event shall Tenant have any claim whatsoever against Landlord or the condemning authority for the loss or diminution in value of its leasehold interest in the Premises or any leasehold improvements therein or for the value of any unexpired term of this lease, Tenant hereby expressly assigning to Landlord any such right or claim; provided, however, that Tenant shall be entitled to any separate award made by the condemning authority solely for or on account of any loss or expense which Tenant may sustain or incur in removing Tenant's merchandise, trade fixtures, or equipment from the Premises or for any loss of or damage to such items of Tenant's personal property. Nothing contained in this paragraph shall be construed to release any liability of Tenant to Landlord which arose prior to the effective date of any termination of this lease pursuant to this paragraph.

44. **CONTINUOUS OCCUPANCY.** Tenant agrees continuously throughout the term of this lease to occupy the Premises and to conduct its business therefrom during all normal business hours, except when the Premises are untenable by reason of the occurrence of any damage thereto or the destruction thereof; and Tenant's failure to comply with the preceding provisions of this sentence shall constitute a default under this lease. In the event that Tenant does not so occupy the Premises and conduct its business therefrom, then Tenant shall pay monthly as additional rent (over and above and in addition to the Minimum Rent and any other sums required to be paid by Tenant) during any such period of non-occupancy or non-conduct of its business a sum equal to 50% of the Minimum Rent payable during such period.

45. **BINDING AGREEMENT.** All rights and liabilities given to or imposed upon Landlord or Tenant in this lease shall extend to and bind their respective heirs, executors, administrators, personal representatives, successors, and assigns. No rights, however, shall inure



to the benefit of any assigns of Tenant unless the assignment thereof to such assignee has been approved in writing by Landlord.

46. **ESTOPPEL CERTIFICATES.** Tenant, from time to time upon written request from Landlord, agrees to execute, acknowledge, and deliver to Landlord within ten (10) days after such written request, without charge, in form reasonably satisfactory to Landlord, a written statement certifying that Tenant has accepted the Premises, that this lease is unmodified and in full force and effect (or, if there have been modifications, that this lease is in full force and effect as modified, setting forth the modifications), that Landlord has performed all of its obligations under this lease and is not in default under this lease, and such additional facts as reasonably may be required by Landlord. Tenant understands and agrees that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the Premises, any mortgagee or prospective mortgagee of the Premises, and their respective successors and assigns. Tenant's failure to comply with this paragraph shall at Landlord's option constitute an event of default under this lease.

47. **GOVERNING LAW.** This lease shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

48. **MULTIPLE COUNTERPARTS.** This lease may be executed in multiple counterparts, each of which shall be deemed to be an original for all purposes.

49. **DEFINITIONS.** Except as otherwise expressly stated in this lease, the "term" of this lease shall include the original term and any additional period as to which this lease may be extended, and references to this "lease" shall include this document and any properly executed amendment thereof or supplement thereto.

50. **NO PERSONAL LIABILITY.** Notwithstanding any other provision of this lease, Tenant agrees that it will look solely to the equity, estate, and property of Landlord in the land and buildings comprising the Shopping Center (subject to prior rights of the holder of any mortgage or deed of trust thereon) for the collection of any judgment requiring the payment of money by Landlord; and Tenant understands and agrees that no other assets of Landlord shall be subject to levy, execution, or other process for the satisfaction of any such judgment or for the enforcement of any rights or remedies of Tenant.

51. **SALE OR UNDERLYING LEASE.** In the event of a sale or transfer of all or any portion of the Shopping Center or any undivided interest therein, or in the event of the making by Landlord of an underlying lease of all or substantially all of the Shopping Center, or in the event of an assignment or transfer of the leasehold estate under any such underlying lease, the respective grantor, transferor, landlord, or assignor, as the case may be, thereafter shall be entirely relieved of all obligations to be performed by Landlord under this lease to the extent of the interest in or portion of the Shopping Center so sold, transferred, or leased. Notwithstanding the foregoing provisions of this paragraph, the grantor, transferor, landlord, or assignor, as the case may be, referred to in this paragraph shall not be relieved of any liability to Tenant arising or occurring prior to the sale, transfer, or lease referred to in this paragraph.

52. **PARAGRAPH TITLES.** The titles of the various paragraphs of this lease have been inserted merely as a matter of convenience and for reference only and shall not be deemed in any manner to affect the meaning or construction of the language contained in the body of such paragraphs.

53. **SEVERABILITY.** If any provision of this lease shall be declared legally invalid or unenforceable, then the remaining provisions of this lease nevertheless shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.

54. **TIME OF ESSENCE.** Time is of the essence of this lease, and all provisions of this lease relating to the time of performance of any obligation under this lease shall be strictly construed.

55. **LANDLORD'S RIGHT TO CURE.** Landlord may, but shall not be obligated to, cure any default by Tenant in the performance of any of Tenant's obligations under this lease, including but not limited to Tenant's failure to pay any taxes, obtain any insurance, make any

repairs, or satisfy any lien claims, after complying with the notice provisions contained in paragraph 40; in the event that Landlord elects to so cure any default by Tenant, then all costs and expenses paid by Landlord in so curing such default, including but not limited to reasonable attorneys' fees, shall be deemed to be additional rent due immediately after such payment by Landlord, together with interest thereon (except in the case of such attorneys' fees) at the rate provided for in paragraph 39 from the date of such payment by Landlord to the date of repayment by Tenant to Landlord.

56. **SECURITY DEPOSIT.** Tenant shall deposit with Landlord as a security deposit under this lease the amount set forth as a Fundamental Lease Provision in paragraph l(q). Such security deposit shall be held by Landlord, without interest, as security for the faithful performance by Tenant of all the terms of this lease to be observed and performed by Tenant. The security deposit shall not be mortgaged, assigned, transferred, or encumbered by Tenant without the written consent of Landlord; and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any rent or other sum payable by Tenant to Landlord is overdue and unpaid, or if Landlord makes any payments on behalf of Tenant, or if Tenant fails to perform any of the terms of this lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply such deposit or so much thereof as may be necessary toward the payment of the rent or other sum due Landlord by reason of such breach on the part of Tenant or toward the performance of any other overdue obligation of Tenant under this lease; and Tenant forthwith upon demand by Landlord shall restore such deposit to its original amount. If Tenant fails to conform or comply with terms or conditions of this Lease resulting in three (3) defaults within a twelve (12) month period, as provided in this Lease, Tenant's security deposit requirement may be increased to 300% of the existing security deposit as an additional default cure provision. If Tenant complies with all of the terms of this lease, then such deposit (or the portion thereof not applied by Landlord to cure a default by Tenant) shall be returned to Tenant at the end of the term of this lease. In the event of bankruptcy or other creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of rent and other sums due Landlord for periods prior to the commencement of such proceedings. Landlord may deliver such security deposit to the purchaser of Landlord's interest in the Premises in the event that such interest is sold, and thereupon Landlord shall be discharged from any further liability with respect to such deposit.

57. **BROKERS.** Tenant warrants that it had no dealings with any broker or agent in connection with the negotiation or execution of this lease other than Landlord's broker, if any; and Tenant agrees to indemnify Landlord against and to hold Landlord harmless from any expense or liability for commissions or other compensation or charges claimed by any other broker or agent with respect to this lease.

58. **NUMBER AND GENDER.** Where the context of this lease requires, singular words shall be read as if plural, plural words shall be read as if singular and words of neuter gender shall be read as if masculine or feminine.

59. **ENTIRE AGREEMENT.** Landlord and Tenant hereby agree that this document contains the entire agreement between them and that there are no other agreements, written or verbal, between them pertaining to the Premises or the subject matter hereof. This lease may not be amended or supplemented orally but only by an agreement in writing which has been signed by the party against whom enforcement of any such amendment or supplement is sought. Further, the electronic "scanning" or other means of electronically reproducing or revising this protected Lease document with the intent to add or delete certain sections, paragraphs, words or punctuation without the express permission of Landlord is strictly prohibited.

60. **SURRENDER.** Upon the expiration or termination of this lease, Tenant agrees forthwith to surrender to Landlord possession of the Premises and the fixtures and equipment constituting a part thereof with all keys thereto.

61. **ENVIRONMENTAL MATTERS.** For purposes of this paragraph "Hazardous Substance" shall have the meaning given to such phrase in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) and also shall include any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials which are regulated by any

federal, state, or local law, ordinance, rule, regulation, or policy relating to the protection of the environment. For purposes of this paragraph an "Environmental Regulation" is any federal, state, or local law, ordinance, rule, regulation, or policy governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, discharge, emission, or disposal of any Hazardous Substance. Tenant shall not use, store, handle, produce, dispose of, discharge, take any other actions, or allow anyone else to take any of such actions, with respect to any Hazardous Substance in, at, on, or from the Premises in any manner which violates any Environmental Regulation. During the term of this lease and any other periods of Tenant's occupancy of the Premises, Tenant at its expense shall obtain, maintain in effect, and comply with all permits and licenses required by any Environmental Regulation applicable to Tenant or the Premises. Within three (3) business days after Tenant is notified of otherwise becomes aware of any actual or potential violation or alleged violation of any Environmental Regulation involving or relating to the Premises, Tenant shall notify Landlord in writing of such actual or potential violation or alleged violation and promptly shall deliver to Landlord copies of any written materials that Tenant may have or thereafter receive which pertain to or purport to give notice of such actual or potential violation or alleged violation. Tenant at its expense promptly shall conduct and complete all investigations, studies, sampling, testing, removal, and other actions necessary to clean up and remove from the Premises any Hazardous Substance which may have been introduced into or upon the Premises during the term of this lease or any other period of occupancy of the Premises by Tenant, all in accordance with and as required by any applicable Environmental Regulation and the orders and directions of federal, state, and local governmental authorities having jurisdiction over the Premises or such actions. Tenant shall provide Landlord and Landlord's agents or representatives with access to the Premises and to Tenant's files and records at all reasonable times for the purpose of verifying Tenant's compliance with the requirements of this paragraph. Each party shall indemnify the other party against and hold such other party harmless from any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature (including but not limited to attorney fees, fees of environmental consultants, and laboratory fees) known or unknown, contingent or otherwise, arising out of or in any way related to the presence, release, threatened release, or disposal of any Hazardous Substance in, upon, or from the Premises or arising out of or in any way related to the violation by the indemnifying party or the Premises of any Environmental Regulation during the term of this lease and any other period of Tenant's occupancy of the Premises. The obligations of the parties under this paragraph shall survive the termination of this lease and of Tenant's occupancy of the Premises.

62. **PROMOTION CHARGE.** Intentionally deleted.

63. **ODORS.** Tenant expressly agrees to prevent the permeation or spread of odors from the Premises which interfere or are likely to interfere with the business of the other tenants in the Shopping Center. Tenant shall install a ventilation system in the Premises which is sufficient to insure that odors do not permeate through the walls or ceiling of the Premises into adjacent bays of the Shopping Center. In the event such odors should permeate or spread, Tenant agrees, at its own expense, to timely make all necessary repairs or take other remedial action to insure the containment of such odors and to indemnify and hold Landlord harmless from all damages, liabilities, costs and expenses incurred by Landlord, including without limitation reasonable attorneys' fees which in any way result from the permeation or spread of odors from the Premises.

64. **EXHIBITS.** The following Exhibits are an integral part of this lease and have been attached to this lease prior to its execution:

- A - Shopping Center Site Plan showing location of the Premises
- B - Description of Landlord's work to be done in the Premises
- C - Sign Criteria for the Shopping Center
- D - Additional provisions of this lease consisting of paragraphs 1 through 15, inclusive. Such additional provisions are a part of this lease with the same force and effect as if they were fully set forth in the body of this lease rather than in such Exhibit.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease the day and year first above written.

**LANDLORD:**

AK-SAR-BEN VILLAGE, L.L.C.  
A Nebraska Limited Liability Company

BY: [Signature]  
Jay B. Noddle, President/Treasurer

**TENANT:**

THREE CLOTHING, INC.  
a Nebraska Corporation

By: [Signature]  
(title)

Tax ID# 45-4244449

Landlord's Acknowledgment:

STATE OF NE )  
COUNTY OF Douglas ) ss:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2012, by Jay. B. Noddle, President/Treasurer of AK-SAR-BEN VILLAGE, L.L.C., a Nebraska Limited Liability Company. Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires 9/08/2013.



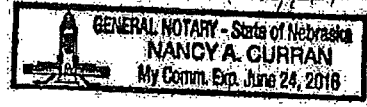
Tenant's Acknowledgment:

STATE OF Nebraska )  
COUNTY OF Douglas ) ss:

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2012 by London Woolman, as President of Three Clothing, Inc., a corporation. Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires 6/24/16.



## GUARANTY

In consideration of the execution of the foregoing lease (the "Lease") by the Landlord named therein (the "Landlord"), at the request of the undersigned and on the faith of this guaranty, the undersigned (referred to herein as "Guarantor", whether one or more) hereby unconditionally and irrevocably guarantees unto Landlord the full and timely payment of all rent, additional rent, and all other charges, expenses and costs of every kind and nature under the Lease and the performance of all of the covenants and obligations of the Tenant (the "Tenant") under the Lease. This is a continuing guaranty of payment and performance and not of collection, and is in no way conditional or contingent. Guarantor hereby indemnifies and agrees to hold Landlord harmless from and against all liabilities, obligations, losses, damages, costs and expenses, including but not limited to reasonable attorneys' fees, incurred by Landlord in enforcing the obligations of the Tenant under the Lease or incurred in enforcing this guaranty. Guarantor hereby waives notice of any default on the part of the Tenant under the Lease, and Guarantor agrees that the liability of Guarantor under this guaranty shall not be released or affected by any extension of time for payment or by any forbearance, waiver, or consent given or granted by Landlord or by any modifications, extensions or amendments of the Lease. Guarantor agrees that Landlord may settle or compromise any claims which Landlord may have against the Tenant under the Lease without notice to Guarantor and without thereby releasing Guarantor from any obligations under this guaranty or limiting or impairing the liability of Guarantor under this guaranty. Guarantor waives notice of acceptance of this guaranty, presentment, protest, notice of protest, all demands for performance and all notices of non-performance that might otherwise be a condition precedent to the liability of Guarantor hereunder. The general waiver of suretyship defenses contained herein shall be applicable to all obligations undertaken herein. Without limiting the generality of the foregoing, Guarantor agrees (a) that the liability of Guarantor under this guaranty is primary, (b) that Landlord, at its option, may proceed to enforce the obligations of Guarantor under this guaranty without having commenced any action, or obtained any judgment against the Tenant under the Lease or without having first attempted to collect from or secure performance by the Tenant, (c) that the liability of Guarantor under this guaranty shall not be affected, limited, impaired, released, or discharged by any bankruptcy, receivership, insolvency, or other creditor proceedings involving the Tenant or by the rejection or disaffirmance of the Lease in any such proceedings, (d) that the liability of Guarantor shall not be affected by any repossession of the premises covered by the Lease, (e) that no action brought under this guaranty and no recovery in pursuance thereof shall be a bar or defense to any further action which may be brought under this guaranty by reason of any further default(s) hereunder or in the performance and observance of the terms, covenants and conditions of the Lease, and (f) to submit to the jurisdiction of the courts of the state where the premises covered by the Lease is located with respect to the enforcement of this guaranty and does hereby appoint Landlord or at Landlord's election, Landlord's attorney, as Guarantor's agent for service or process in such state. Landlord's consent to any assignment by the Tenant of the Tenant's interest in the Lease or subletting of any interest in the premises covered by the Lease shall not release or impair the liability of Guarantor under this guaranty. This guaranty shall remain in full force and effect notwithstanding such consent to assignment or subletting and during any extension of the term of the Lease. Notwithstanding the satisfaction by Guarantor of any liability hereunder, Guarantor shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or property of Tenant. In connection with the foregoing, Guaranty expressly waives any and all rights of subrogation to Landlord against Tenant and any rights to enforce any remedy which Landlord may have against Tenant. Guarantor agrees that any and all claims of the Guarantor against the Tenant shall be subordinate and subject in right of payment to the prior, irrevocable payment and performance of all of Tenant's obligations under the Lease. Guarantor represents and warrants to Landlord that the execution, delivery and performance of this Guaranty are duly authorized and this guaranty is a valid and legally binding obligation of Guarantor, enforceable in accordance with its terms. This guaranty shall be binding upon the heirs, personal representatives, successors, and assigns of the undersigned and shall inure to the benefit of the successors and assigns of Landlord. If this guaranty is executed by more than one party, then the obligations and liabilities of the undersigned under this guaranty shall be joint and several in all respects. **GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WAIVES, RELINQUISHES, AND FOREVER FORGOES: (1) THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF LANDLORD OR GUARANTOR, OR ANY PERSONS**

AFFILIATED WITH LANDLORD OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE; AND (2) ANY AND ALL DEFENSES, CLAIMS AND DISCHARGES OF TENANT OR GUARANTOR PERTAINING TO THE OBLIGATIONS HEREUNDER, EXCEPT THE DEFENSE OF DISCHARGE OF THE OBLIGATION, INCLUDING WITHOUT LIMITATION, ANY DEFENSE, WAIVER, RELEASE, DISCHARGE IN BANKRUPTCY, STATUTE OF LIMITATIONS, RES JUDICATA, STATUTE OF FRAUDS, ANTI-DEFICIENCY STATUTE, FRAUD, INCAPACITY, MINORITY, ILLEGALITY OR UNENFORCEABILITY WHICH MAY BE AVAILABLE TO GUARANTOR OR ANY OTHER PERSON LIABLE IN RESPECT OF ANY OBLIGATION HEREUNDER, OR ANY SETOFF AVAILABLE AGAINST LANDLORD TO TENANT OR ANY OTHER PERSON. By execution of this guaranty, the undersigned Guarantor acknowledges receipt of a copy of the Lease to which this guaranty is annexed and to which this guaranty applies.

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS GUARANTY, LANDLORD AGREES TO ABIDE THE LAWS OF THE STATE OF NEBRASKA.

IN WITNESS WHEREOF, the undersigned have (has) executed this Guaranty this 26 day of July, 2012.

x   
London Woolman

Address: 5046 Miami St

Omaha, NE 68104

Telephone: 402-968-5425

SSN: 505-17-7128

x   
Shawn Stafunas

Address: 5046 MIAMI ST

OMAHA NE 68104

Telephone: 402-218-3813

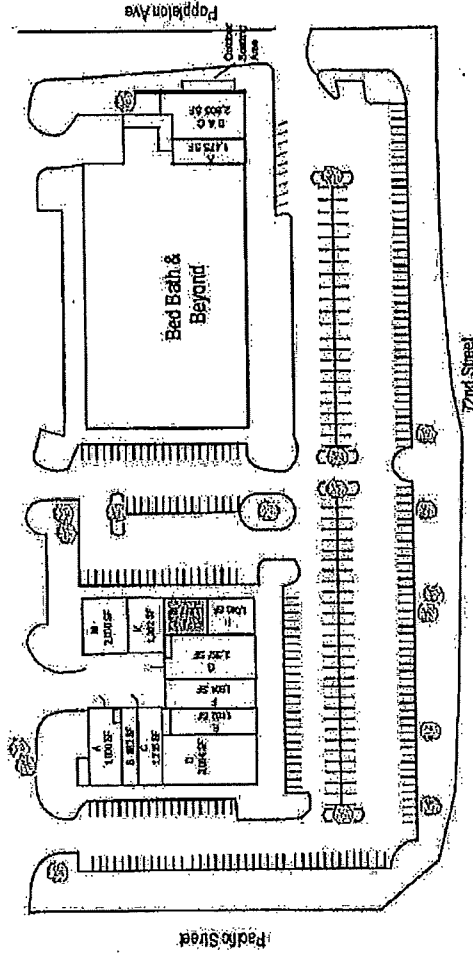
SSN: 001-66-7048

**EXHIBIT A  
SITE PLAN**

**Shoppes at Aksarben**  
Omaha, Nebraska

- |                               |                               |
|-------------------------------|-------------------------------|
| <b>1110 South 71st Street</b> | <b>1722 South 71st Street</b> |
| Bay A - 1,900 SF              | The Best Powder - 1,700 SF    |
| Bay B - 822 SF                | Bay 1 - 2,200 SF              |
| Bay C - 1,270 SF              | Bay 2 - 2,200 SF              |
| Bay D - 1,000 SF              |                               |
| Bay E - 1,000 SF              | <b>1720 South 71st Street</b> |
| Bay F - 1,000 SF              | ANCHOR - 3,100 SF             |
| Bay G - 1,000 SF              | MEHLEN - 2,200 SF             |
| Bay H - 1,000 SF              | CORRIDOR                      |
| Bay I - 1,000 SF              |                               |
| Bay J - 1,000 SF              |                               |
| Bay K - 1,000 SF              |                               |
| Bay L - 1,000 SF              |                               |
| Bay M - 1,000 SF              |                               |
| Bay N - 1,000 SF              |                               |
| Bay O - 1,000 SF              |                               |
| Bay P - 1,000 SF              |                               |
| Bay Q - 1,000 SF              |                               |
| Bay R - 1,000 SF              |                               |
| Bay S - 1,000 SF              |                               |
| Bay T - 1,000 SF              |                               |
| Bay U - 1,000 SF              |                               |
| Bay V - 1,000 SF              |                               |
| Bay W - 1,000 SF              |                               |
| Bay X - 1,000 SF              |                               |
| Bay Y - 1,000 SF              |                               |
| Bay Z - 1,000 SF              |                               |

71st Street



For further information, contact Maddie Companies  
800-565-3616 Fax: 402-495-8229  
www.maddiecompanies.com

**EXHIBIT B**  
**LANDLORD'S WORK**

**THE FOLLOWING WORK IS TO BE PERFORMED BY THE LANDLORD AT LANDLORD'S SOLE EXPENSE:**

1. Inspect and repair (if necessary) the area above the suspended ceiling where there is evidence of water damage.
2. Replace all damaged ceiling tiles pursuant to #1 above.
3. Cap all unwanted water sources identified by Tenant.
4. Remove the existing non-restroom-related water heater.
5. Provide Tenant with an allowance in the amount of \$2,500.00 for Tenant to perform repair/modification to the existing Premises floor.
6. Replace the toilet seat in the existing restroom.
7. Replace one (1) scratched store front glass pane.

**OTHERWISE, TENANT HEREBY ACCEPTS THE LEASED PREMISES IN AN "AS-IS" CONDITION**

Landlord agrees to reimburse Tenant in the amount of ten thousand two hundred sixteen and no/100 dollars (\$10,216.00) for Tenant performing the following work to prepare the Premises for occupancy:

- General Premises Improvements.

Landlord will fund the Tenant Improvement Allowance within thirty (30) days after all of the following criteria have been met by Tenant:

- Verification by Landlord that the Lease contemplated reimbursable work has been completed by Tenant pursuant to the Lease.
- All partial and final lien waivers have been properly executed and delivered to Landlord.
- Tenant's exterior signage, approved by Landlord is fully installed.
- Tenant is open and fully operating.
- No Lease defaults exist at the time of reimbursement.



**EXHIBIT C**  
**SIGN CRITERIA**

This criteria has been established for the purpose of assuring uniform signage for the shopping center and for the mutual benefit of all Tenants. Conformance will be strictly enforced, and any nonconforming installation or unapproved sign must be brought to conformance at the expense of the Tenant.

**A. GENERAL REQUIREMENTS.**

1. Each Tenant shall submit or cause to be submitted to the Landlord before fabrication, two (2) copies of detailed sign drawings for approval. Drawings shall include location, size, layout, method of attachment, design, and color of the proposed sign including all lettering and/or graphics. Tenant should note that approval action may take one or two weeks. Notwithstanding, no manufacturing or installation will be permitted without prior approval by Landlord.
2. All permits for signs and their installation shall be obtained by Tenant or Tenant's Representative. Tenant is responsible for compliance with all government criteria and fees.
3. All signs will be reviewed by the Landlord for conformance with this criteria and overall design quality. Approval or disapproval of sign submittal based on aesthetics or design shall remain the sole right of the Landlord.
4. All signs and their installation shall comply with all local building and electrical codes.
5. No projections above or below the sign limits will be permitted. Signs must be within the limits indicated.
6. Within fourteen (14) calendar days of the termination of Tenant's Lease, Tenant shall have the sign removed by a sign company (approved by Landlord). If the sign is not removed within fourteen (14) days, Landlord reserves the right to have the sign removed at Tenant's expense. Sign fascia shall be replaced with a new matching panel. Vinyl letters attached to the sign band shall be removed and the face of the sign band fully cleaned.
7. Each Tenant who has a non-customer door for receiving merchandise may have, as approved by Landlord, uniformly applied on said door in location as directed by Landlord in 2" high letters, the Tenant's name and address. Where more than one Tenant uses the same door, each name and address shall be applied.
8. No script will be permitted unless it is part of an established trademark of Tenants.
9. Each Tenant shall be permitted to place upon each entrance of its premises not more than one hundred and forty-four (144) square inches of gold leaf or decal-applied lettering not to exceed 2" in height, indicating hours of business, emergency telephone numbers, etc.
10. All signs shall be constructed and installed, including electrical hook-up, at Tenant's expense. Tenant shall cause his sign to be installed no later than thirty (30) days after Tenant opens for business.
11. Landlord shall have and hereby reserves at any time during the term of this Lease the right to designate and to change the signage of the shopping center.
12. All interior or exterior signs, posters, advertising, graphic designs, decals, paintings, window coverings, etc. must be approved by Landlord. Tenant must remove anything in the windows that has not been approved by Landlord within 7 days of receiving notice from Landlord or Tenant will be in default of the Lease Agreement.
13. Reference Detail C-1 of this exhibit for base sign construction requirements.

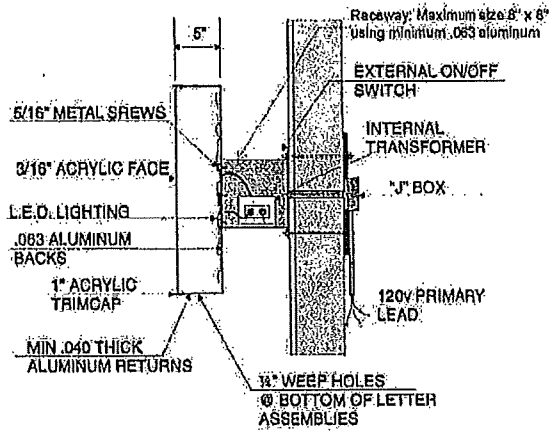
**B. MATERIALS:**

1. All signs shall have individual channel letters installed on a raceway. Channel letter construction shall at a minimum consist of .063 thick aluminum backs and .040 thick aluminum returns. The raceway construction shall be a minimum of .063 thick aluminum.
2. The raceway must match the fascia and shall not exceed 8" x 8".
3. All signs shall be entirely illuminated.
4. All signs must be UL approved.
5. Width of Tenant fascia shall not exceed (66%) of width of store or shop and shall be centered within the Tenant's space.
6. No exposed lamps, transformers, tubing, raceways, conductors, conduit will be permitted.
7. No audible, flashing, or animated signs will be permitted.
8. No exposed fastening shall be permitted.
9. No labels will be permitted on exposed surface of sign except those required by local ordinance, and those shall be placed in an inconspicuous location.

**C. INSTALLATION:**

1. Tenant shall be responsible for the installation and maintenance of his signs.
2. Electrical service and hook-up to all signs shall be from Tenant's meter at Tenant's expense.
3. Tenant's sign contractor shall repair any damage caused by said contractor.
4. Tenant shall be liable for the operations of Tenant's sign contractor.
5. All penetration of the building structure required for sign installation shall be sealed in a watertight condition and shall be patched to match the adjacent finish.
6. Landlord insists upon the utilization of the above criteria/specification in order to maintain a uniform sign program.
7. All channel letters minimum height is 12" with maximum height of 30".

**NOTWITHSTANDING THE ABOVE CRITERIA, TENANT ACKNOWLEDGES THAT DUE TO SPECIAL CIRCUMSTANCES REGARDING SPECIFIC STRUCTURE(S) RESERVED FOR THE PREMISES EXTERIOR SIGNAGE, LOCATION AND APPLICATION MAY VARY FROM SAID CRITERIA AND MUST BE PRE-ARRANGED WITH LANDLORD.**



Detail C-1: Base Sign Construction Requirements

**EXHIBIT D**  
**ADDITIONAL PROVISIONS**

This Exhibit is made and entered into contemporaneously with the Lease, by and between AK-SAR-BEN VILLAGE, L.L.C., a Nebraska Limited Liability Company ("Landlord"), and THREE CLOTHING, INC., A Nebraska Corporation ("Tenant"). This Exhibit shall constitute an integral part of the Lease. In the event of any inconsistency between the terms and provisions of this Exhibit and the other terms and provisions of the Lease, the terms and provisions of this Exhibit shall be controlling for all purposes and in all respects.

1. **RECAPTURE OF CONCESSIONS**. Tenant acknowledges and agrees that, in entering into this Lease, Landlord is relying upon receipt of all rent and other monies to become due with respect to all the Premises originally leased hereunder for the full initial Term in granting certain concessions to Tenant or the payment of any real estate broker commission or fee. Accordingly, Tenant agrees that Landlord's offer to Tenant of a free rent period, Landlord's promise to pay Tenant a construction allowance, and/or Landlord's payment of any lease commission or fee in connection with this Lease is expressly contingent on Tenant occupying the Premises for the entire initial Term. If Tenant's right to possession of the Premises shall be terminated, for any reason, as of any date prior to the expiration of the full initial Term, Tenant must immediately pay, as additional rent hereunder, Landlord all such sums that have been paid by Landlord to Tenant or on Tenant's behalf, or any rent or other fees that were left unpaid by Tenant.

2. **RELOCATION**. It is expressly understood and agreed between Landlord and Tenant herein that Landlord shall have the right, at its sole option, to require Tenant to relocate to another space of similar size and visibility in the Shopping Center. Landlord shall serve upon Tenant a written notice of relocation specifying the date on which such relocation is to take place, such date to be at least sixty (60) days from the date on which the notice of relocation is mailed or delivered to Tenant. Tenant shall relocate to the space identified in Landlord's written notice within such sixty (60) day period. If Tenant fails to relocate, within such sixty (60) day period, Landlord shall have the right at its sole option, to cancel this Lease and all of the terms, covenants, conditions and agreements herein contained shall become null and void and of no further force and effect as of the date on which Tenant would have been required to relocate, as set forth in Landlord's written notice. In the event of relocation, Tenant agrees to execute any Lease addendums incorporating the new location into the Lease. Landlord shall pay all out-of-pocket costs and expenses of relocating Tenant.

3. **LENDER'S RIGHTS**. Landlord shall have the right, at any time and from time to time during the term of this Lease and any renewals or extensions thereof, to place or renew a mortgage or deed of trust on the Shopping Center. Landlord shall notify Tenant in writing of the existence of such mortgage or deed of trust, if any. This notice shall include the name and address of the lending institution ("Lender") that is the holder of the mortgage or deed of trust. Following the receipt of such notice, Tenant agrees to give such Lender a copy of any notice of default served by Tenant on Landlord within five (5) days of the delivery of such notice to Landlord. Tenant further agrees that it will not terminate the Lease or seek any remedy against Landlord for such default without first allowing Lender a reasonable opportunity to cure such default. Furthermore, this Lease and any extension, modification, renewal, or amendment to this Lease must first be approved by Lender, if any, prior to its execution. This Lease and any such extension, modification, renewal, or amendment executed without the prior express written consent of Lender shall be void and of no effect.

4. **OTHER TENANTS**. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, which it may determine best promotes the interest of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent that any specific tenant or number of tenants shall during the term of this Lease occupy any space in the Shopping Center. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are not other representatives or warranties between the parties.

and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

5. **DIGNIFIED USE.** Tenant agrees that it shall conduct its business in a dignified and ethical manner consistent with the highest standard of service and merchandising, and not in a disrupting or immoral manner or in violation of any state or local laws. This shall include, but not be limited to the following: 1) Adult supervision shall be in evidence within the Premises during all business hours. 2) Tenant shall prohibit loitering of its customers within the Premises or within the common areas of the Shopping Center. 3) Noise associated with the operation of the business, including recorded music, shall be kept at an acceptable level so as not to interfere with the "quiet enjoyment" of other tenants in the Shopping Center.

Landlord shall notify Tenant, in writing, of any violation in connection with this Paragraph. The determination of said violation shall be at the sole discretion of the Landlord. If Tenant shall not have cured said condition within ten (10) days after being notified by Landlord, Landlord may terminate this Lease and take possession of the Premises without waiving any rights which it may have at law.

6. **ALTERATIONS.** Advanced written approval is required by Tenant to Landlord if it should become necessary to change existing glass frontage (including door and windows), for the installation, repair, or removal of any and all equipment. Tenant shall be fully responsible for all expenses and damages incurred as a result of said installation, repair, or removal of such equipment. Tenant agrees not to affect the structural support of the Premises and shall return the Premises to its original condition.

7. **CONSTRUCTION SPECIFICATIONS.** Tenant agrees that Landlord or Landlord's designated representative must approve any and all plans for any initial new construction and/or remodel of Tenant's Premises during the entire time Tenant occupies said Premises. Tenant shall inform Landlord or Landlord's designated representative in writing of Tenant's requirements and shall provide Landlord with detailed reproducible drawings in Autocad format showing said construction to be done and Tenant shall request in writing Landlord's approval and acceptance of said plans. Landlord agrees to not unreasonably withhold approval of construction and shall notify Tenant in writing within ten (10) business days of acceptance or denial of Tenant's request and reasons for denial of request if Landlord does in fact not elect to allow said construction to occur.

8. **OPTION TO RENEW** Tenant shall have, and is hereby given the right and option to renew this Lease for one (1) additional term of two (2) years upon the expiration date hereof, providing Tenant shall have theretofore performed and complied with all of the terms, provisions and conditions of this Lease on its part to be performed with, by serving written notice upon Landlord of said option at least One Hundred and Eighty (180) days prior to the expiration date hereof. Such renewal Lease shall be upon the same terms and conditions as herein contained with the exception of the Minimum Rent during the additional term of two (2) years shall reflect the then negotiated rental rates as offered by Landlord.

9. **TENANT'S COMMON AREAS CHARGE.** Tenant will pay its prorata share of Tenant's Common Areas Charge but limited to no more than a cumulative one hundred five per cent (105%) of the controllable expenses using the calendar year 2012 as the base year. Such 105% limitation shall not apply to taxes, insurance, snow removal or common area utilities.

10. **BENEFICIAL OCCUPANCY.** Tenant shall be granted beneficial occupancy from final Lease execution and delivery of the Premises through the first ninety (90) days thereafter, in order to commence with Tenant's construction estimates and work to be completed by Tenant. Beneficial occupancy shall be defined as Landlord's waiver of Minimum Rent and Additional Rent as defined in Fundamental lease Provisions 1 (j), (l), (m) and (n), as defined in the Lease, for the term specified. All utility costs, however, shall be the sole responsibility of Tenant during the Beneficial Occupancy period.

11. **PARKING AREA LIABILITY.** No representation, guaranty or warranty is made or assurance given that the communications or security systems, devices or procedures of the parking areas will be effective to prevent injury to Tenant or any other person or damage to or loss (by theft or otherwise) of any of Tenant's property or of the property of any other person,

and Landlord reserves the right to discontinue or modify at any time such communications or security systems or procedures without liability to Tenant.

12. **SUBJECT TO FINANCIAL INFORMATION.** This Lease Agreement shall be contingent upon the Tenant (and Guarantor(s)) providing a standard financial statement or other information, signed and dated by the appropriate party to the Landlord. Tenant further agrees to allow Landlord to perform a thorough credit investigation to determine the financial stability of Tenant and Guarantor(s). Landlord may, in its sole discretion, terminate this Lease, prior to delivery to Tenant, based upon its review of the financial statements or other information provided by Tenant and Guarantor(s).

13. **CERTAIN EXPENSE TENANT FRACTIONS.** Notwithstanding the provisions set forth in Paragraphs 12, 21, and 36 of this Lease, certain expenses concerning the operation of the Common Area, the separation of real estate tax parcels within the defined Shopping Center and the self insured provision or separately paid insurance premiums by certain tenants within the Shopping Center as defined may alter the Tenant Fraction set forth in this Lease (i.e.: certain Common Area services utilized by Non-Anchor tenants only; tax parcels separately assessed that exclude certain tenants; self insured anchor tenants or separately insured parcels within the Shopping Center as defined.)

In these type circumstances, Tenant's Tenant Fraction shall mean the quotient of leasable square footage of the Premises divided by the leasable square footage of all of the tenants utilizing such services, are a part of said separate parcel or are part of the separated insurance premium.

14. **HVAC EQUIPMENT.** Landlord agrees to deliver the Premises with the heating, air conditioning, and ventilating equipment (HVAC) in satisfactory and operable working condition, prior to occupancy. Tenant shall keep in force during the term hereof and any renewal periods a maintenance contract covering the HVAC. The contract shall provide for semi-annual servicing of all such equipment and shall be contracted with a contractor reasonably acceptable to the Landlord. Tenant shall provide Landlord with a copy of the maintenance contract at anytime the Landlord requests. Furthermore, notwithstanding Paragraph No. 17 of the Lease, throughout the term of the Lease, Tenant shall be responsible for the first \$500.00 each calendar year for repair and maintenance of the HVAC in addition to the semi-annual servicing costs and expenses.

15. **LENDER'S APPROVAL.** This Lease Agreement is subject to the approval of Landlord's Lender. If approval is not granted, this Lease shall be considered null and void.



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

AK-SAR-BEN VILLAGE, L.L.C., a Nebraska )  
Limited Liability Company, )  
 )  
Plaintiff, )

CASE NO. CI 14-8337

v. )

THREE CLOTHING, INC., a Nebraska )  
Corporation; LONDON WOOLMAN, an )  
individual; and SHAWN SLATUNAS, an )  
individual, )  
Defendants. )

ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT AGREEMENT

#21 FILED  
IN DISTRICT COURT  
DOUGLAS COUNTY NEBRASKA

OCT 28 2015

JOHN M. FRIEND  
CLERK DISTRICT COURT

*PCB*

THIS MATTER <sup>*came*</sup> ~~is~~ before the Court <sup>*on Oct. 26, 2015*</sup> on Plaintiff's Motion to Enforce Settlement Agreement ("Motion"). Attorney Luke Klinker appeared on behalf of the Plaintiff, Ak-Sar-Ben Village, L.L.C. ("Plaintiff"). Attorney Kristopher Covi appeared on behalf of the Defendants, Three Clothing, Inc., London Woolman, and Shawn Slatunas (collectively, "Defendants"). The Court, having reviewed the Motion and the Affidavit of Luke J. Klinker and any other evidence submitted, and having heard and considered the arguments of counsel, and otherwise being fully advised in the premises, hereby grants Plaintiff's Motion.

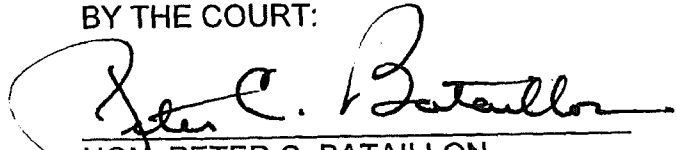
IT IS THEREFORE ORDERED that (a) Defendants shall sign the agreed-upon Stipulation for Payment and Release and any other settlement documents and deliver them to Plaintiff's counsel, within seven (7) days of the date of this Order, and (b) Defendants shall deliver the first lump sum settlement payment of \$10,000.00 and the first monthly settlement payment of \$416.67, also within seven (7) days of the date of this Order.

IT IS FURTHER ORDERED that if the agreed-upon Stipulation for Payment and Release and any other settlement documents are not signed by Defendants and delivered to Plaintiff's counsel within seven (7) days of the date of this Order, or the first lump sum settlement payment of \$10,000.00 and the first monthly payment of \$416.67 are not delivered to Plaintiff's counsel within seven (7) days of the date of this Order,

Plaintiff shall be entitled to bring the matter before the Court on a Motion to Declare Settlement Terms, so that the Court can enter the terms of Settlement on the record.

DATED this 28 day of October, 2015.

BY THE COURT:

  
HON. PETER C. BATAILLON  
District Court Judge

Prepared and Submitted By:

Luke J. Klinker, #23419  
FRASER STRYKER PC LLO  
500 Energy Plaza  
409 South 17th Street  
Omaha, NE 68102-2663  
(402) 341-6000  
(402) 341-8290 (Facsimile)  
[lklinker@fslf.com](mailto:lklinker@fslf.com)  
ATTORNEYS FOR PLAINTIFF

1358733



**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 29, 2015 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Kristopher J Covi  
kcovi@mcgrathnorth.com

Luke J Klinker  
lklinker@fraserstryker.com



Date: October 29, 2015

BY THE COURT:

*John M. Friend*  
CLERK

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

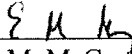
Ak-Sar-Ben Village, LLC )  
Plaintiff, ) CASE NO. CI 14-8337  
)  
vs. )  
)  
Three Clothing Inc., )  
London Y Woolman, )  
Shawn Slatunas, )  
)  
Defendants. )  
\_\_\_\_\_ )

SUGGESTION OF BANKRUPTCY – LONDON Y. WOOLMAN ONLY

COMES NOW the Defendant, London Y Woolman, through her undersigned attorney, and would show the Court:

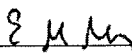
1. She has filed a petition for relief under Title 11, United States Code, in the United States Bankruptcy Court for the District of Nebraska, which bears the case number BK#15-81777.
2. Relief was ordered on **October 29, 2015**.
3. This action is founded on a claim from which a discharge would be a release or that seeks to impose a charge on the property of the estate.
4. This is for informational purposes only, and does not constitute a notice of appearance by the undersigned.

WHEREFORE, the defendant suggests that this action has been stayed by the operation of 11 U.S.C. § 362.

  
Erin M. McCartney 23663  
JOHN T. TURCO & ASSOCIATES, P.C., L.L.O.  
2580 South 90<sup>th</sup> Street  
Omaha, NE 68124  
Tel.: (402) 933-8600  
Fax: (402) 934-2848  
Attorney for Defendant

IT IS HEREBY CERTIFIED that a copy of the foregoing Suggestion of Bankruptcy was delivered by U.S. mail, postage prepaid, to the following named parties on 10/30/2015:

Luke J Klinker  
409 S 17 St, #500  
Omaha, NE 68102

  
Erin M. McCartney 23663  
Attorney for the Defendant

## Open Voluntary Bankruptcy Case

U.S. Bankruptcy Court

District of Nebraska

### Notice of Bankruptcy Case Filing

The following transaction was received from Erin M. McCartney entered on 10/29/2015 at 5:33 PM CDT and filed on 10/29/2015

**Case Name:** London Y Woolman

**Case Number:** 15-81777

**Document Number:** 1

#### **Docket Text:**

Chapter 13 Voluntary Petition Fee Amount \$310. Schedules A-J due 11/12/2015. Statement of Financial Affairs due 11/12/2015. Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period Form 22C-1 Due 11/12/2015 Incomplete Filings due by 11/12/2015. Filed by Erin M. McCartney of Turco Law Offices on behalf of London Y Woolman.(McCartney, Erin)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**Z:\ECF\Woolman, London Y\Petition.PDF

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=988131013 [Date=10/29/2015] [FileNumber=8513103-0] [40130bc1d622466277a3989d660a87e333b27c41a02d3f2c59ac06a41d7987dea623051b2ffca5d64baf6b60cb43f4a486b3aeb58635d8b3c6b71f3b8d1a981d]]

**15-81777 Notice will be electronically mailed to:**

Patricia Fahey  
ustpreion13.om.ecf@usdoj.gov

Erin M. McCartney on behalf of Debtor London Y Woolman  
erin@johnturcolaw.com, ecf@johnturcolaw.com

**15-81777 Notice will not be electronically mailed to:**

## Certificate of Service

I hereby certify that on Monday, November 02, 2015 I provided a true and correct copy of the Suggestion in Bankruptcy to the following:

Woolman,London, represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to kcovi@mcgrathnorth.com

Slatunas,Shawn, represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to kcovi@mcgrathnorth.com

AK-SAR-BEN VILLAGE LLC represented by Klinker,Luke James (Bar Number: 23419)  
service method: Electronic Service to lklinker@fraserstryker.com

Three Clothing Inc represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to kcovi@mcgrathnorth.com

Signature: /s/ Erin McCartney (Bar Number: 23663)

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

AK-SAR-BEN VILLAGE, L.L.C., a Nebraska )  
Limited Liability Company, )

Plaintiff, )

v. )

THREE CLOTHING, INC., a Nebraska )  
Corporation; LONDON WOOLMAN, an )  
individual; and SHAWN SLATUNAS, an )  
individual, )

Defendants. )

CASE NO. CI 14-8337

MOTION FOR DETERMINATION THAT  
AUTOMATIC STAY DOES NOT APPLY

COMES NOW the Plaintiff, Ak-Sar-Ben Village, L.L.C. ("Plaintiff"), pursuant to § 6-1506(A) of the Nebraska Uniform District Court Rules of Practice and Procedure, and moves for an order declaring that the automatic stay imposed by 11 U.S.C. § 362 as a result of the Chapter 13 bankruptcy filing by Defendant London Woolman does not apply to Plaintiff's ongoing lawsuit against Defendant Three Clothing, Inc. or Defendant Shawn Slatunas in this case.

In support of its motion, Plaintiff shows the Court as follows:

1. On October 16, 2014, Plaintiff filed its Complaint in this matter against Defendants Three Clothing, Inc. ("Defendant Three Clothing"), London Woolman ("Defendant Woolman"), and Shawn Slatunas ("Defendant Slatunas"), arising out of the breach of a lease agreement and guaranties of the lease agreement.

2. On October 29, 2015, Defendant Woolman filed a Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court for the District of Nebraska. As a result of Defendant Woolman's bankruptcy filing, an automatic stay was entered pursuant to 11 U.S.C. § 362.

3. 11 U.S.C. § 362 only operates as a stay of judicial proceedings against the debtor who filed bankruptcy.

4. Because Defendant Three Clothing and Defendant Slatunas have not filed bankruptcy, 11 U.S.C. § 362 does not apply to Plaintiff's claims against Defendant Three Clothing or Defendant Slatunas in this case.

WHEREFORE, Plaintiff prays for an order determining that the automatic stay resulting from the filing of Defendant Woolman's bankruptcy petition does not apply to Plaintiff's ongoing lawsuit against Defendant Three Clothing and Defendant Slatunas and that Plaintiff can continue its litigation against Defendant Three Clothing and Defendant Slatunas in this case.

AK-SAR-BEN VILLAGE, L.L.C., Plaintiff

BY: /s/ Luke J. Klinker  
Luke J. Klinker, #23419  
FRASER STRYKER PC LLO  
500 Energy Plaza  
409 South 17th Street  
Omaha, Nebraska 68102  
(402) 341-6000  
(402) 341-8290 (Facsimile)  
[lklinker@fraserstryker.com](mailto:lklinker@fraserstryker.com)  
ATTORNEYS FOR PLAINTIFF

**NOTICE OF HEARING**

TO: THREE CLOTHING, INC., LONDON WOOLMAN, and SHAWN SLATUNAS, Defendants, and KRISTOPHER J. COVI, attorney for Defendants.

Please take notice the Plaintiff will call up for hearing its Motion for Determination That The Automatic Stay Does Not Apply on **April 22, 2016, at 8:45 a.m.** before the Honorable Peter C. Bataillon, Courtroom No. 413, Fourth Floor, Douglas County Hall of Justice, 17th and Farnam Streets, Omaha, Nebraska 68183, or as soon thereafter the same may be heard.

/s/ Luke J. Klinker  
Luke J. Klinker, #23419

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served by regular United States mail, postage prepaid, this 6th day of April, 2016, upon:

Kristopher J. Covi  
McGrath North Mullin & Kratz, PC LLO  
First National Tower, Suite 3700  
1601 Dodge Street  
Omaha, NE 68102  
[kcovi@mcgrathnorth.com](mailto:kcovi@mcgrathnorth.com)

/s/ Luke J. Klinker  
Luke J. Klinker, #23419

1433397

# Certificate of Service

I hereby certify that on Wednesday, April 06, 2016 I provided a true and correct copy of the Motion Filed to the following:

Woolman,London, represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to [kcovi@mcgrathnorth.com](mailto:kcovi@mcgrathnorth.com)

Slatunas,Shawn, represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to [kcovi@mcgrathnorth.com](mailto:kcovi@mcgrathnorth.com)

Three Clothing Inc represented by Kristopher Covi (Bar Number: 21462) service method:  
Electronic Service to [kcovi@mcgrathnorth.com](mailto:kcovi@mcgrathnorth.com)

Woolman,London, represented by Erin McCartney (Bar Number: 23663) service method:  
Electronic Service to [erin.mccartney@johnturcolaw.com](mailto:erin.mccartney@johnturcolaw.com)

Signature: /s/ Klinker,Luke James (Bar Number: 23419)