

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 For the quarterly period ended October 28, 2000

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 For the transition period from _____ to _____

Commission file number 0-23071

THE CHILDREN'S PLACE RETAIL STORES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

31-1241495
(I. R. S. employer identification
number)

915 Secaucus Road
Secaucus, New Jersey 07094
(Address of Principal Executive Offices) (Zip Code)

(201) 558-2400
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, par value \$0.10 per share, outstanding at December 1, 2000: 25,892,516 shares.

THE CHILDREN'S PLACE RETAIL STORES, INC.

QUARTERLY REPORT ON FORM 10-Q

FOR THE PERIOD ENDED OCTOBER 28, 2000

TABLE OF CONTENTS

PART I - FINANCIAL INFORMATION

Item 1. Consolidated Financial Statements:	Page

Consolidated Balance Sheets.....	1
Consolidated Statements of Income.....	2
Consolidated Statements of Cash Flows.....	3
Notes to Consolidated Financial Statements.....	4
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	5
Item 3. Quantitative and Qualitative Disclosures about Market Risks.....	8

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.....	9
Item 6. Exhibits and Reports on Form 8-K	9
Signatures.....	10

PART I - FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

THE CHILDREN'S PLACE RETAIL STORES, INC.

CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	OCTOBER 28, 2000	JANUARY 29, 2000
	-----	-----
ASSETS	(UNAUDITED)	
Current assets:		
Cash and cash equivalents.....	\$ 7,509	\$ 2,204
Accounts receivable.....	13,647	5,112
Inventories.....	77,784	56,021
Prepaid expenses and other current assets.....	11,540	8,527
Deferred income taxes.....	1,720	1,720
	-----	-----
Total current assets.....	112,200	73,584
Property and equipment, net.....	113,648	87,674
Deferred income taxes.....	5,051	5,051
Other assets.....	5,596	4,650
	-----	-----
Total assets.....	\$236,495	\$170,959
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES:		
Current liabilities:		
Revolving credit facility.....	\$ 23,851	\$ 6,507
Accounts payable.....	26,991	20,216
Taxes payable.....	8,435	3,495
Accrued expenses, interest and other current liabilities.....	21,622	16,026
	-----	-----
Total current liabilities.....	80,899	46,244
Other long-term liabilities.....	6,016	4,649
	-----	-----
Total liabilities.....	86,915	50,893
	-----	-----
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDERS' EQUITY:		
Common stock, \$0.10 par value; 100,000,000 shares authorized; 25,889,577 shares and 25,698,120 shares issued and outstanding, at October 28, 2000 and January 29, 2000, respectively.....	2,589	2,570
Additional paid-in capital.....	90,141	88,376
Translation adjustments.....	(15)	(7)
Retained earnings.....	56,865	29,127
	-----	-----
Total stockholders' equity.....	149,580	120,066
	-----	-----
Total liabilities and stockholders' equity.....	\$236,495	\$170,959
	=====	=====

The accompanying notes to consolidated financial statements are an integral part of these consolidated balance sheets.

THE CHILDREN'S PLACE RETAIL STORES, INC.

CONSOLIDATED STATEMENTS OF INCOME
(UNAUDITED)
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THIRTEEN WEEKS ENDED		THIRTY-NINE WEEKS ENDED	
	OCTOBER 28, 2000	OCTOBER 30, 1999	OCTOBER 28, 2000	OCTOBER 30, 1999
Net sales.....	\$165,774	\$119,442	\$403,546	\$285,983
Cost of sales.....	93,173	64,935	233,557	165,356
Gross profit.....	72,601	54,507	169,989	120,627
Selling, general and administrative expenses.....	38,256	28,328	103,384	71,777
Pre-opening costs.....	766	1,156	5,035	3,124
Depreciation and amortization.....	5,525	3,310	15,050	9,497
Operating income.....	28,054	21,713	46,520	36,229
Interest expense, net.....	483	324	941	135
Other expense, net.....	8	4	135	49
Income before income taxes.....	27,563	21,385	45,444	36,045
Provision for income taxes.....	10,718	8,651	17,709	14,526
Net income	\$ 16,845	\$ 12,734	\$ 27,735	\$ 21,519
Basic net income per common share.....	\$0.65	\$0.50	\$1.07	\$0.85
Basic weighted average common shares outstanding....	25,885	25,539	25,805	25,300
Diluted net income per common share.....	\$0.63	\$0.48	\$1.04	\$0.81
Diluted weighted average common shares outstanding...	26,921	26,680	26,646	26,681

The accompanying notes to consolidated financial statements are an integral part of these consolidated statements.

THE CHILDREN'S PLACE RETAIL STORES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(IN THOUSANDS)

	THIRTY-NINE WEEKS ENDED	
	OCTOBER 28, 2000	OCTOBER 30, 1999
	-----	-----
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income.....	\$27,735	\$21,519
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization.....	15,050	9,497
Deferred financing fee amortization.....	40	24
Loss on disposals of property and equipment.....	315	272
Deferred taxes.....	302	(74)
Changes in operating assets and liabilities:		
Accounts receivable.....	(8,535)	(4,196)
Inventories.....	(21,763)	(22,328)
Prepaid expenses and other current assets.....	(3,013)	(2,560)
Other assets.....	(1,785)	(2,937)
Accounts payable.....	6,776	8,140
Accrued expenses, interest and other current liabilities.....	10,890	7,330
Total adjustments.....	(1,723)	(6,832)
Net cash provided by operating activities.....	26,012	14,687
	-----	-----
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property and equipment purchases.....	(39,411)	(46,760)
Net cash used in investing activities.....	(39,411)	(46,760)
	-----	-----
CASH FLOWS FROM FINANCING ACTIVITIES:		
Exercise of stock options and employee stock purchases.....	1,482	2,465
Borrowings under revolving credit facility.....	437,642	167,951
Repayments under revolving credit facility.....	(420,298)	(152,812)
Payment of obligations under capital leases.....	--	(2)
Deferred financing costs.....	(122)	(63)
Net cash provided by financing activities.....	18,704	17,539
	-----	-----
Net increase (decrease) in cash and cash equivalents.....	5,305	(14,534)
Cash and cash equivalents, beginning of period.....	2,204	16,370
Cash and cash equivalents, end of period.....	\$7,509	\$1,836
	=====	=====
OTHER CASH FLOW INFORMATION:		
Cash paid during the period for interest.....	\$1,395	\$ 454
Cash paid during the period for income taxes.....	13,168	10,393

The accompanying notes to consolidated financial statements are an integral part of these consolidated statements.

THE CHILDREN'S PLACE RETAIL STORES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information. Certain information and footnote disclosures required by generally accepted accounting principles for complete financial statements have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. In the opinion of management, the accompanying unaudited financial statements contain all material adjustments, consisting of normal recurring accruals, necessary to present fairly the Company's financial position, results of operations and cash flow for the periods indicated, and have been prepared in a manner consistent with the audited financial statements as of January 29, 2000. These financial statements should be read in conjunction with the audited financial statements and footnotes for the fiscal year ended January 29, 2000 included in the Company's Annual Report on Form 10-K for the year ended January 29, 2000 filed with the Securities and Exchange Commission. Due to the seasonal nature of the Company's business, the results of operations for the thirty-nine weeks ended October 28, 2000 are not necessarily indicative of operating results for a full fiscal year.

2. NET INCOME PER COMMON SHARE

In accordance with Statement of Financial Accounting Standards No. 128, "Earnings Per Share," the following table reconciles income and share amounts utilized to calculate basic and diluted net income per common share.

	THIRTEEN WEEKS ENDED		THIRTY-NINE WEEKS ENDED	
	OCTOBER 28, 2000	OCTOBER 30, 1999	OCTOBER 28, 2000	OCTOBER 30, 1999
Net income (in thousands).....	\$16,845 =====	\$12,734 =====	\$27,735 =====	\$21,519 =====
Basic shares.....	25,884,879	25,538,560	25,805,123	25,299,589
Dilutive effect of stock options.....	1,035,669	1,141,934	841,309	1,381,290
Dilutive shares.....	26,920,548 =====	26,680,494 =====	26,646,432 =====	26,680,879 =====
Antidilutive options.....	189,317	178,510	382,192	64,050

Antidilutive options consist of the weighted average of stock options for the respective periods ended October 28, 2000 and October 30, 1999 that had an exercise price greater than the average market price during the period. Such options are therefore excluded from the computation of diluted shares.

3. LITIGATION

The Company is involved in various legal proceedings arising in the normal course of its business. In the opinion of management, any ultimate liability arising out of such proceedings will not have a material adverse effect on the Company's financial position or results of operations.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of federal securities laws, which are intended to be covered by the safe harbors created thereby. Those statements include, but may not be limited to, the discussions of the Company's operating and growth strategy. Investors are cautioned that all forward-looking statements involve risks and uncertainties including, without limitation, those set forth under the caption "Risk Factors" in the Business section of the Company's Annual Report on Form 10-K for the year ended January 29, 2000. Although the Company believes that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could prove to be inaccurate, and therefore, there can be no assurance that the forward-looking statements included in this Quarterly Report on Form 10-Q will prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by the Company or any other person that the objectives and plans of the Company will be achieved. The Company undertakes no obligation to publicly release any revisions to any forward-looking statements contained herein to reflect events and circumstances occurring after the date hereof or to reflect the occurrence of unanticipated events.

The following discussion should be read in conjunction with the Company's unaudited financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the annual audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended January 29, 2000 filed with the Securities and Exchange Commission.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, selected income statement data expressed as a percentage of net sales:

	THIRTEEN WEEKS ENDED		THIRTY-NINE WEEKS ENDED	
	OCTOBER 28, 2000	OCTOBER 30, 1999	OCTOBER 28, 2000	OCTOBER 30, 1999
Net sales.....	100.0%	100.0%	100.0%	100.0%
Cost of sales.....	56.2	54.4	57.9	57.8
Gross profit.....	43.8	45.6	42.1	42.2
Selling, general and administrative expenses...	23.1	23.7	25.6	25.1
Pre-opening costs.....	0.5	1.0	1.3	1.1
Depreciation and amortization.....	3.3	2.7	3.7	3.3
Operating income.....	16.9	18.2	11.5	12.7
Interest expense, net.....	0.3	0.3	0.2	0.1
Income before income taxes.....	16.6	17.9	11.3	12.6
Provision for income taxes.....	6.4	7.2	4.4	5.1
Net income.....	10.2%	10.7%	6.9%	7.5%
Number of stores, end of period.....	392	282	392	282

Thirteen Weeks Ended October 28, 2000 (the "Third Quarter 2000") Compared to Thirteen Weeks Ended October 30, 1999 (the "Third Quarter 1999")

Net sales increased by \$46.4 million, or 39%, to \$165.8 million during the Third Quarter 2000 from \$119.4 million during the Third Quarter 1999. During the Third Quarter 2000, we opened 21 new stores. Net sales for the 21 new stores, as well as the other stores that did not qualify as comparable stores, contributed \$41.0 million of the net sales increase. As of October 28, 2000, we operated 392 stores in 42 states, primarily located in regional shopping malls. Our comparable store sales increased 5% and contributed \$5.4 million of our net sales increase during the Third Quarter 2000. Sales increases were recorded in all geographic regions. Our comparable store sales increase was primarily attributable to our folding scooter, which was introduced in the Third Quarter 2000. Comparable store sales increased 15% during the Third Quarter 1999. During the fourth quarter of 2000, we are opening an additional 8 stores to end the year with 400 stores.

Gross profit increased by \$18.1 million to \$72.6 million during the Third Quarter 2000 from \$54.5 million during the Third Quarter 1999. As a percentage of net sales, gross profit decreased 1.8% to 43.8% during the Third Quarter 2000 from 45.6% during the Third Quarter 1999. The decrease in gross profit, as a percentage of net sales, was principally due to higher markdowns, lower initial markups and higher occupancy costs. Our markdowns were higher, as a percentage of net sales, due to increased planned promotional activity. Our lower initial markup was primarily due to the lower markup achieved on our scooters. Excluding our folding scooters, our initial markup during the Third Quarter 2000 would have been slightly higher than the Third Quarter 1999. Occupancy costs were higher, as a percentage of net sales, due to increased occupancy costs from new stores that have not been open long enough to leverage their rent through an established sales base.

Selling, general and administrative expenses increased \$10.0 million to \$38.3 million during the Third Quarter 2000 from \$28.3 million during the Third Quarter 1999. Selling, general and administrative expenses were 23.1% of net sales during the Third Quarter 2000 as compared with 23.7% during the Third Quarter 1999. The decrease, as a percentage of net sales, was primarily due to the leveraging of our corporate administrative expenses and lower marketing costs, partially offset by higher store payroll wage rates and costs associated with our E-Commerce website, which was not operational in the Third Quarter 1999.

During the Third Quarter 2000, pre-opening costs were \$0.8 million, or 0.5% of net sales, as compared to \$1.2 million, or 1.0% of net sales, during the Third Quarter 1999. We opened 21 stores, during both the Third Quarter 2000 and the Third Quarter 1999. During the Third Quarter 2000, pre-opening costs were favorably impacted by the timing and location of our new store openings. As a percentage of net sales, pre-opening costs during the Third Quarter 2000 were also favorably impacted by the leveraging of these costs over a significantly higher sales base.

Depreciation and amortization amounted to \$5.5 million, or 3.3% of net sales, during the Third Quarter 2000, as compared to \$3.3 million, or 2.7% of net sales, during the Third Quarter 1999. The increase in depreciation and amortization primarily was a result of increases to our store base and amortization of our E-Commerce assets, which was not operational in the Third Quarter 1999.

During the Third Quarter 2000, we recorded interest expense of \$0.5 million, or 0.3% of net sales, as compared to interest expense of \$0.3 million, or 0.3% of net sales during the Third Quarter 1999.

Our provision for income taxes for the Third Quarter 2000 was \$10.7 million, as compared to a \$8.7 million provision for income taxes during the Third Quarter 1999 due to our increased profitability.

We recorded net income of \$16.8 million and \$12.7 million during the Third Quarter 2000 and the Third Quarter 1999, respectively.

THIRTY-NINE WEEKS ENDED OCTOBER 28, 2000 COMPARED TO THIRTY-NINE WEEKS ENDED OCTOBER 30, 1999

Net sales increased \$117.5 million, or 41%, to \$403.5 million during the thirty-nine weeks ended October 28, 2000 from \$286.0 million during the thirty-nine weeks ended October 30, 1999. Net sales for the 100 stores opened during the thirty-nine weeks ended October 28, 2000, as well as the other stores that did not qualify as comparable stores, contributed \$104.1 million of the net sales increase. During the thirty-nine weeks ended October 28, 2000, we entered several new markets in the Pacific Northwest, California and Texas. Our comparable store sales increased 6% and contributed \$13.4 million of our net sales increase during the thirty-nine weeks ended October 28, 2000. Comparable store sales increased 21% during the thirty-nine weeks ended October 30, 1999.

Gross profit increased \$49.4 million to \$170.0 million during the thirty-nine weeks ended October 28, 2000 from \$120.6 million during the thirty-nine weeks ended October 30, 1999. As a percentage of net sales, gross profit decreased 0.1% of net sales to 42.1% during the thirty-nine weeks ended October 28, 2000 from 42.2% during the thirty-nine weeks ended October 30, 1999. The decrease in gross profit, as a percentage of net sales, was principally due to higher markdowns, occupancy and distribution costs, partially offset by higher initial markups.

Selling, general and administrative expenses increased \$31.6 million to \$103.4 million during the thirty-nine weeks ended October 28, 2000 from \$71.8 million during the thirty-nine weeks ended October 30, 1999. Selling, general and administrative expenses were 25.6% of net sales during the thirty-nine weeks ended October 28, 2000, as compared with 25.1% during the thirty-nine weeks ended October 30, 1999. The increase, as a percentage of net sales, was due primarily to higher store payroll wage rates, costs associated with our E-Commerce website which was not operational in the comparable prior year period, and the settlement of an employment agreement for our former President and Chief Operating Officer, who resigned in February 2000, partially offset by the leveraging of corporate administrative expenses.

During the thirty-nine weeks ended October 28, 2000, pre-opening costs were \$5.0 million or 1.3% of net sales, as compared with \$3.1 million, or 1.1% of net sales, during the thirty-nine weeks ended October 30, 1999. We opened 100 stores and 73 stores during the thirty-nine weeks ended October 28, 2000 and the thirty-nine weeks ended October 30, 1999, respectively. During the thirty-nine weeks ended October 28, 2000, we incurred higher pre-opening expenses due to increased marketing costs to introduce The Children's Place brand in our new markets, as well as increased travel and freight costs to open our first stores on the West Coast.

Depreciation and amortization amounted to \$15.1 million, or 3.7% of net sales, during the thirty-nine weeks ended October 28, 2000, as compared with \$9.5 million, or 3.3% of net sales, during the thirty-nine weeks ended October 30, 1999. The increase in depreciation and amortization primarily was a result of increases to our store base, depreciation recorded for our new distribution center and corporate headquarters facility and amortization of our E-Commerce assets. These increases, as a percentage of net sales, were partially offset by the leveraging of depreciation and amortization expense over a higher sales base. During the thirty-nine weeks ended October 30, 1999, we accelerated depreciation expense by \$1.8 million, or 0.6% of net sales, in conjunction with a store re-fixturing and renovation program.

During the thirty-nine weeks ended October 28, 2000, we recorded interest expense of \$0.9 million, or 0.2% of net sales, due to borrowings under our working capital facility. During the thirty-nine weeks ended October 30, 1999, we recorded interest expense of \$0.1 million, or 0.1% of net sales, due to a net cash investment position during most of the first half of fiscal 1999.

Our provision for income taxes during the thirty-nine weeks ended October 28, 2000 was \$17.7 million, as compared with \$14.5 million during the thirty-nine weeks ended October 30, 1999. Our effective tax rate for the thirty-nine weeks ended October 28, 2000 was 39.0% as compared to an effective rate of 40.3% during the thirty-nine weeks ended October 30, 1999. The decrease in our effective tax rate is attributable to our foreign subsidiary and other state tax savings.

We recorded net income of \$27.7 million and \$21.5 million during the thirty-nine weeks ended October 28, 2000 and the thirty-nine weeks ended October 30, 1999, respectively.

LIQUIDITY AND CAPITAL RESOURCES

DEBT SERVICE/LIQUIDITY

Our primary uses of cash are financing new store openings and providing for working capital, which principally represents the purchase of inventory. Our working capital needs follow a seasonal pattern, peaking during the second and third quarters when inventory is purchased for the back to school and holiday seasons. We have been able to meet our cash needs principally by using cash flows from operations and seasonal borrowings under our working capital facility. As of October 28, 2000, we had no long-term debt obligations.

Our working capital facility with Foothill Capital Corporation currently provides for borrowings up to \$75 million (including a sublimit for letters of credit of \$60 million). As of October 28, 2000, we had \$23.9 million in borrowings under our working capital facility and had outstanding letters of credit of \$23.2 million. Availability under our working capital facility was \$24.0 million. During the Third Quarter 2000, the interest rate charged under our working capital facility for reference rate borrowings was 9.5% per annum and LIBOR borrowings bore interest at 8.0% per annum. The maximum borrowings under our working capital facility during the thirteen weeks ended October 28, 2000 was \$33.5 million. As of October 28, 2000, we were in compliance with all of our covenants under our working capital facility.

CASH FLOWS/CAPITAL EXPENDITURES

Cash flows provided by operating activities were \$26.0 million during the thirty-nine weeks ended October 28, 2000 as compared to \$14.7 million during the thirty-nine weeks ended October 30, 1999. During the thirty-nine weeks ended October 28, 2000, cash flows provided by operating activities increased primarily as a result of improved operating earnings and increases in our current liabilities, partially offset by increases in our accounts receivable due to increases in our construction allowance and credit card receivables.

Cash flows used in investing activities were \$39.4 million and \$46.8 million in the thirty-nine weeks ended October 28, 2000 and the thirty-nine weeks ended October 30, 1999, respectively. During the thirty-nine weeks ended October 28, 2000, cash flows used in investing activities represented capital expenditures primarily for new store openings and remodelings. In the thirty-nine weeks ended October 30, 1999, cash flows used in investing activities represented capital expenditures of approximately \$31 million for new stores, remodelings and re-fixturings, with the majority of the remainder of capital expenditures spent on our new distribution center and corporate headquarters facility, as well as our warehouse management system and equipment.

In the thirty-nine weeks ended October 28, 2000 and the thirty-nine weeks ended October 30, 1999, we opened 100 and 73 stores and remodeled 12 and 9 stores, respectively. During fiscal 2000, we plan to open a total of 108 stores and remodel 14 stores. We anticipate that total capital expenditures during fiscal 2000 will approximate \$55 million, the majority of which we plan to fund with cash flows from operations.

Cash flows provided by financing activities were \$18.7 million during the thirty-nine weeks ended October 28, 2000 as compared to \$17.5 million in the thirty-nine weeks ended October 30, 1999. During the thirty-nine weeks ended October 28, 2000 and the thirty-nine weeks ended October 30, 1999, cash flows provided by financing activities reflected net borrowings under our working capital facility and funds received from the exercise of employee stock options and employee stock purchases.

In September 2000, we signed a seven year lease with options for an approximately 250,000 square foot distribution center and office facility in Ontario, California. Annual rent under this lease is approximately \$1.2 million. We plan to utilize this facility beginning in the summer of 2001 to support the warehousing and distribution of merchandise to our stores in the western portions of the United States. The term of this lease commenced in November 2000. We expect to make a cash outlay of approximately \$7.5 million to install an automated warehouse management system and to renovate this facility. The majority of this cash outlay will occur during the fourth quarter of fiscal 2000, with the remainder in fiscal 2001.

In December 2000, we entered into a six year lease with a three year option period for an approximately 72,500 square foot facility located in Secaucus, New Jersey, near our headquarters. We plan to use this facility for warehousing, distribution and ancillary offices to support our growing business. Annual rent under this lease is approximately \$0.7 million per year. We plan to make a cash outlay during the fourth quarter of fiscal 2000 and the first half of fiscal 2001 of approximately \$3.4 million to renovate this facility.

We believe that cash generated from operations and funds available under our working capital facility will be sufficient to fund our capital and other cash flow requirements for at least the next 12 months. In addition, as we continue our store expansion program we will consider additional sources of financing to fund our long-term growth.

Our ability to meet our capital requirements will depend on our ability to generate cash from operations and successfully implement our store expansion plans.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS

(Not applicable)

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is involved in various legal proceedings arising in the normal course of its business. In the opinion of management, any ultimate liability arising out of such proceedings will not have a material adverse effect on the Company's financial position or results of operations.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

EXHIBIT NO.	DESCRIPTION OF DOCUMENT
27.1	Financial Data Schedule.
10.2	Amended and Restated Merchant Services Agreement between the Company and Hurley State Bank, dated as of July 1, 2000.
10.3	Lease Agreement between the Company and Haven Gateway LLC, dated as of August 17, 2000.
10.4	Lease Agreement between the Company and Hartz Mountain Associates, dated as of October 31, 2000.

(b) REPORTS ON FORM 8-K

None

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE CHILDREN'S PLACE
RETAIL STORES, INC.

Date: December 11, 2000

By: /s/ Ezra Dabah

Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Date: December 11, 2000

By: /s/ Seth L. Udasin

Vice President and
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 10.2

AMENDED AND RESTATED MERCHANT SERVICES AGREEMENT

BETWEEN THE COMPANY AND HURLEY STATE BANK

DATED AS OF JULY 1, 2000

AMENDED AND RESTATED MERCHANT SERVICES AGREEMENT

This AMENDED AND RESTATED MERCHANT SERVICES AGREEMENT ("Agreement") made as of July 1, 2000, by and between HURLEY STATE BANK ("Bank"), a banking corporation organized and existing under the laws of the State of South Dakota, with its offices at Sioux Falls, South Dakota, and THE CHILDREN'S PLACE RETAIL STORES, INC. ("Company"), a corporation organized and existing under the laws of the State of Delaware, with its offices at 915 Secaucus Road, Secaucus, New Jersey 07094.

WITNESSETH:

WHEREAS, Bank and Company entered into a Merchant Services Agreement dated December 12, 1994, (the "Predecessor Agreement"), under which Bank issues to consumers private label credit cards for use at Company's retail establishments and via the Internet; and

WHEREAS, Bank and Company desire to continue their relationship but wish to amend and supplement certain provisions.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank and Company agree as follows:

ARTICLE I - DEFINITIONS

1.1 DEFINITIONS. Except as otherwise specifically indicated, the following terms will have the meaning specified herein:

"Account" means a Card account, whether issued under this Agreement or the Predecessor Agreement. An Account may have more than one Card issued for it. All Accounts are deemed to be the property of Bank. Bank will determine the terms and conditions under which Accounts will be established.

"Active Account" means any Account that has not been written off and that has a debit or credit balance at any time during a billing period.

"Application" means Bank's credit application which must be completed by persons who wish to become Cardholders and which must be submitted to Bank for review.

"Authorization" means permission from Bank to make a Card Sale.

"Authorized Goods and Services" means goods and services normally and customarily offered by Company at Stores and through the Internet.

"Authorization Center" means the facility designated by Bank as the facility at which Card Sales are authorized.

"Business Day" means Mondays through Fridays except days when Bank is closed for business.

"Card" means a credit card issued by Bank with Company's name and logo appearing on such card or with such other design as mutually acceptable to the parties, which evidences an Account.

"Card Plan" means the program under which Accounts will be established and Cards issued to qualified applicants.

"Card Sale" means any sale of Authorized Goods and Services that Company makes to a Cardholder pursuant to this Agreement that is charged to an Account.

"Cardholder" means any person to whom a Card has been issued and/or any authorized user.

"Chargeback" means the refusal of Bank to pay Company for a Card Sale or the return to Company and reimbursement to Bank of a Card Sale for which Company was previously paid.

"Company Mark" means any name, logo, trademark, service mark or other proprietary designation selected for use in connection with the Card Plan. The Company Marks are set forth in Schedule C, as amended from time to time.

"Credit" means a non-cash refund issued by Company to a Cardholder of all or a portion of the amount of a Card Sale.

"Credit Slip" means evidence of a Credit in electronic or paper form.

"Effective Date" means the date set forth in Section 4.4(a) of this Agreement.

"Electronic Location" means a Company location at which there is an Electronic Terminal.

"Electronic Terminal" means an electronic terminal or computer capable of communicating by means of an on-line or dial-up electronic link (whether routed through Bank's facilities or otherwise) with an Authorization Center to obtain Authorization.

"Floor Limit" means the United States dollar amount designated by Bank, as it may be changed from time to time, at or above which Authorization must be obtained to make a Card Sale.

"Net Card Sales" means the total amount of Card Sales properly remitted to Bank minus the total amount of Credits properly remitted to Bank.

"Operating Regulations" means the standard operating procedures of Bank, as

they may be changed by Bank from time to time in accordance with Section 2.4 of this Agreement. The current version of the Operating Regulations is attached hereto as Exhibit A. For purposes of this Agreement, the Operating Regulations are deemed an integral part of this Agreement and references to this Agreement will be deemed to include the Operating Regulations.

"Regular Revolving Card Plan" means all Card Plans other than Special Credit Plans.

"Required Disclosures" means forms of credit disclosures and disclosure documents provided by Bank which must be used by Company in connection with advertising, marketing and promoting the Card Plan, accepting Applications and making Card Sales.

"Sales Data" means the electronic data transmission of Card transactions (e.g., Card Sales and Credits).

"Sales Slip" means evidence of a Card Sale in electronic or paper form.

"Second Look Account" means an Account which did not qualify for an Account under the Bank's standard credit granting criteria but which did qualify for an Account under a higher risk - score model maintained by the Bank, which shall have the sole and exclusive right to establish and modify credit granting criteria for Second Look Accounts. Either party shall also have the right to terminate the establishment of new Second Look Accounts at any time.

"Settlement" means the reimbursement to Company for the Net Card Sales.

"Settlement Account" means the deposit account(s) at the financial institution(s) designated by Company as the account(s) to be debited and/or credited, as applicable, for the Settlement of Card transactions and the payment of any fees and charges due hereunder.

"Special Credit Plan" means a Card Plan under which interest is either waived or deferred for a period of time after the Card Sale. Payments may or may not be required during the interest deferral or waiver period, and a minimum purchase amount may be required. Special Credit Plans include without limitation those described in Schedule E of this Agreement: "90 Days Same As Cash".

"Store" means a retail store in the United States and its territories owned and operated by Company.

1.2. CONSTRUCTION. Unless the context otherwise clearly indicates, words used in the singular include the plural and words used in the plural include the singular.

ARTICLE II - ISSUANCE OF ACCOUNTS AND ACCEPTANCE OF CARDS

2.1 CONDITIONS OF OPENING ACCOUNTS. Subject to the terms and conditions of this Agreement, Bank shall receive Applications for Card Accounts and approve or decline Accounts in accordance with Bank's Account issuance criteria.

(a) WRITTEN APPLICATIONS. Applications which are received by Bank through the mail and are not made contemporaneously with a sale will be reviewed in accordance with Bank's customary practice for written Applications.

(b) APPLICATIONS WITH ACCOMPANYING SALE. Applications transmitted to Bank in a mutually acceptable manner and format by Company's employees in conjunction with a sale will be reviewed by Bank in accordance with Bank's Account issuance criteria. Company shall be responsible for the following:

(i) Providing all information required on the Application which has been requested by Bank's representative.

(ii) Obtaining positive identification and verification of the person applying for the Account in accordance with the Operating Regulations, which includes but is not limited to obtaining the person's driver's license number or state issued identification card number and social security number.

(iii) Obtaining the signature on the Application of all persons whose names will appear on the Account or who will be responsible for the Account.

(iv) Upon either approval or decline, sending the Application to Bank at the designated address within five (5) Business Days.

(v) Entering the sale into Company's Electronic Terminal. If requested to do so by Bank's representative, Company's employee shall also enter into the Electronic Terminal the approval code provided by Bank to Company.

(vi) Providing to each applicant a copy of the Hurley State Bank Credit Card Agreement and any other Required Disclosures Bank provides to Company for distribution to applicants.

(c) INTERNET APPLICATIONS. Customers of Company who wish to apply for a Card Account may do so via Company's Internet website, when such becomes available. All Applications received by Bank via the Internet will be processed only if all of the information requested on the website Application form has been completed. Bank will request Customers who submit incomplete Applications to provide missing information.

Failure to adhere to the above procedures may result in a Chargeback in accordance with Section 2.10 of this Agreement.

2.2 HONORING OF CARDS.

(a) CONDITIONS FOR HONORING CARDS. Subject to the terms and conditions of this Agreement, Company agrees to accept the Card for payment of Authorized Goods and Services in those instances when a Cardholder wishes to charge the purchase of Authorized

Goods and Services to his/her Account and Company shall not attempt to suppress or discriminate against use of a Card by a Cardholder (except in accordance with this Agreement). Company shall not knowingly permit Authorized Goods and Services sold to commercial enterprises to be charged to Accounts. Company shall accept the Card at all of its Stores in the United States and its territories for the purchase of Authorized Goods and Services, provided the Sales Data resulting from such acceptance of the Card is submitted to Bank in United States dollars. Bank will advise Company if Bank develops the capability to accept Sales Data in currencies other than United States dollars. In such event, Card transactions may be made in such other currencies upon terms and conditions to be mutually determined at that time. If any facility or service is operated on Company premises under a franchise, lease or license from Company and such franchisee, lessee or licensee (which is not a party to a merchant services agreement with Bank) agrees with Company to accept Cards, Card transactions made at such facility or service will be subject to the terms and conditions of this Agreement and must be handled through Company as if Company had transacted such Card transactions. Company shall be obligated to pay its franchisee, lessee or licensee with respect to such Card transactions.

(b) COMMENCEMENT OF CARD ACCEPTANCE; PROMOTION OF CARD PLAN.

Acceptance of Cards by Company will commence on or about the date of this Agreement or as soon thereafter as agreed to by the parties and will continue until the termination of this Agreement. Company shall actively and consistently promote, participate in and support the Card program and Card Plan throughout the term of this Agreement. Company shall encourage customers to apply for Cards and shall encourage Cardholders to use Cards for purchases of Authorized Goods and Services. During the term of this Agreement neither Company nor any other party on behalf of Company will enter into any arrangement or agreement with a third party provider under which Company issues, sponsors, participates in or accepts another private label credit card, or private label credit account; nor shall Company or any other party on behalf of Company enter into any arrangement or agreement with a third party provider under which Company issues, sponsors or participates in the marketing of any cobranded credit card or credit account. Notwithstanding the foregoing, nothing contained in this Agreement will be construed to prohibit Company from accepting any major general purpose credit card (e.g., NOVUS, American Express, MasterCard, Visa, Diner's Club and JCB) as a means of payment by customers for purchases of Authorized Goods and Services. Company agrees that Bank shall have the right to review, and approve or decline each credit application submitted by a customer or prospective customer of Company before such credit application is provided to any other party. Subject to the foregoing sentence, Company may offer secondary sources of financing to those of its customers that do not qualify for an Account, provided Company does not issue, arrange to issue, or accept any private label credit card or private label credit account in connection with such financing.

2.3 ACCEPTANCE OF CARDS. Company shall accept each Card or valid Active Account number presented by a Cardholder as payment for Authorized Goods and Services provided that all of the following conditions are met with respect to each Card Sale and that Company further complies with all of the procedures set forth elsewhere in this Agreement and in the Operating Regulations relating to the acceptance of Cards each time it makes a Card Sale:

- (a) The Card or valid Active Account number is presented to

Company on or before the expiration date, if any, shown on its face;

(b) The Card or valid Active Account number is used as payment for Authorized Goods and Services purchased by a Cardholder;

(c) Company will not accept a Card or valid Active Account number for the purpose of advancing money to a Cardholder or paying money to a Cardholder for any amount that is included in a Card Sale;

(d) Company has followed the procedures for the completion of Sales Slips as set forth in Section 2.5 of this Agreement; and

(e) Company has obtained Authorization for the Card Sale if required pursuant to Section 2.6 of this Agreement.

2.4 OPERATING REGULATIONS. The Operating Regulations may be changed by Bank from time to time upon not less than sixty (60) days prior written notice to Company, provided, however, that changes which do not require major systems or operational modifications and changes required for security measures shall become effective as soon as possible following Company's receipt of notice thereof but in all events shall become effective within ten (10) days of Company's receipt of notice thereof. In the event of any conflict or inconsistency between the terms of this Agreement and those of the Operating Regulations, the former shall govern.

2.5 COMPLETION OF SALES SLIPS.

(a) GENERAL REQUIREMENTS. For each Card Sale, Company shall prepare a Sales Slip using a form that is mutually acceptable to Bank and Company, E.G., a universal sales slip. Each Sales Slip must be legible and fully completed with the information required under Section 2.5 of this Agreement, as applicable. Company shall include all Authorized Goods and Services purchased in a single transaction on one Sales Slip.

(b) MAIL/TELEPHONE/INTERNET ORDERS. For each mail/telephone/Internet order Card Sale, Company shall record the following on the Sales Slip:

(i) The date and location (city/state) of the Card Sale, unless otherwise provided to Bank, E.G. batch reports, etc.;

(ii) A brief description of the Authorized Goods and Services;

(iii) The total amount of the Card Sale, including tax;

(iv) The Account number;

(v) The expiration date, if any, of the Card;

(vi) The Authorization number or code (where applicable);

(vii) Company's merchant number, unless otherwise provided to Bank, E.G. batch reports;

(viii) Work or daytime telephone number;

(ix) The shipping address; and

(x) The shipping date.

(c) RETAIL SALES. Each Sales Slip must be legible and fully completed with the same information required for mail/telephone/Internet order Card Sales (specified in Section 2.5(b) of this Agreement) excluding information pertaining to a shipping address, work or daytime telephone number or shipping date. Each Sales Slip relating to a Card transaction made at a retail location must be imprinted to obtain a clear imprint of the Card; provided that in the case of Sales Data which are electronically produced by Company, Company shall not be required to obtain an imprint of the Card. A Sales Slip must be signed by the Cardholder for each Card Sale at the time the Card Sale is made and in the presence of an authorized representative or employee of Company. The signature on the Sales Slip must be reasonably similar to the signature appearing on the signature panel of the Card. After completion of the Card Sale, Company shall provide a legible and completed copy of the Sales Slip to the Cardholder. If Company fails to obtain the signature of the Cardholder on a Sales Slip and the Cardholder has not authorized the Card Sale or denies the validity of the Card Sale, the Card Sale shall be subject to Chargeback pursuant to Section 2.10 of this Agreement.

2.6 AUTHORIZATION.

(a) GENERAL REQUIREMENTS. In accordance with the terms of this Section 2.6, Company must obtain Authorization for each proposed Card Sale at or above the Floor Limit. For purposes of this Agreement, the purchase of one or more items or other Authorized Goods and Services made by a Cardholder at one Company Store and at one time will be deemed to constitute a single Card Sale.

(b) FLOOR LIMIT. The Floor Limit is \$0. Bank may change the Floor Limit upon notice to Company.

(c) OBTAINING AUTHORIZATION.

(i) ELECTRONIC LOCATIONS. To obtain Authorization for Card Sales made at Electronic Locations, Company shall utilize an Electronic Terminal in accordance with procedures applicable for the use of that terminal. Company agrees that the Electronic Terminals it uses will be those provided to Company by Bank or its designee (at Company's expense) or will be otherwise reasonably acceptable to Bank. At an Electronic Location, if a referral code is displayed on an Electronic Terminal, Company shall telephone Bank to obtain further instructions, using a toll-free telephone number provided by Bank for such purpose.

(ii) NON-ELECTRONIC AUTHORIZATION. To obtain Authorization when Bank's electronic capability to provide Authorization or Company's electronic capability to obtain Authorization is not operational, Company shall contact Bank using a toll-free telephone number provided by Bank for such purpose. If the Authorization Center approves the Card Sale, Company will be given an Authorization code or number which must be written on the Sales Slip.

(d) RIGHT OF CHARGEBACK. If Authorization for any Card Sale is not obtained by Company, or requested by Company but declined by Bank, Bank may process a Chargeback for such Card Sale pursuant to Section 2.10 of this Agreement.

(e) CANCELLATION OF ACCOUNT/AUTHORIZATION. Once a consumer has received the terms and conditions which apply to the credit card account, they will have the option to not accept the terms and conditions and close their Account. If this occurs, no sale can be posted to nor billed through the Account. Bank will promptly notify Company and Company will be responsible for making alternate payment arrangements with the consumer. In addition, at Bank's expense, Bank will make available during Bank's normal authorization hours, a toll-free number which Company may call in the event a previously authorized Card Sale is canceled by the Cardholder.

2.7 SETTLEMENT OF CARD TRANSACTIONS.

(a) REMITTANCE OF SALES DATA BY COMPANY. At least weekly, Company shall remit Sales Data to Bank. All such remittances must be in Bank's form and format. Remittances of Sales Data must contain all of the information specified in this Agreement and the Operating Regulations. Upon receipt thereof, Bank will balance and edit the data submitted and make appropriate adjustments for errors or invalid or incomplete transactions. In the event all or a portion of the required data is not received by Bank or such data is unreadable, Bank shall not be required to process the Sales Data containing the missing or unreadable data, but shall promptly inform Company or its designated agent of the missing or unreadable data. Company shall be responsible for retrieving and resubmitting the Sales Data in completed form. Company shall be responsible for the loss, damage or destruction of Sales Data until such Sales Data is received by Bank or by Bank's designated processor.

(b) OBLIGATION TO REIMBURSE COMPANY FOR SALES DATA. Subject to Bank's right of Chargeback, Bank shall reimburse Company for all Card Sales properly remitted by Company and received by Bank. Bank will pay Company an amount equal to the total amount of Card Sales submitted to and received by Bank, less the amount of Credits, if any, submitted by Company, plus or minus the applicable amount, if any, for other adjustments to the amounts so submitted. Bank will not be required to reimburse Company for any Card Sale not submitted within sixty (60) days of the date of the Card Sale.

(c) METHOD AND TIMING OF SETTLEMENT. For each electronic remittance of Sales Data received in Bank's form and format by 10:00 a.m. local time on a Business Day at the location specified by Bank, Bank will use its best efforts to initiate the appropriate credit or debit, as applicable, to the Settlement Account through the Automated Clearing House Network

or any other method, including FedWire, as mutually agreed to by the parties ("ACH Network") by the following Business Day. With respect to each such remittance of Sales Data received by Bank after 10:00 a.m. local time on a Business Day, Bank will use its best efforts to initiate the appropriate credit or debit, as applicable, to the Settlement Account through the ACH Network by the second Business Day after the date of receipt. Bank will not accept remittance of Card transaction data in paper form (hard copy). Company hereby (i) agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time, and (ii) authorizes Bank and its designated agents and representatives to initiate credit or debit entries and adjustments to the Settlement Account. Bank shall not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties. The following obligations of Company will survive the termination of this Agreement. Company shall not close the Settlement Account without providing Bank at least five (5) Business Days prior written notice of such closure and substitution of another account. Upon termination of this Agreement, Company agrees to maintain the Settlement Account with sufficient funds until such time as Bank has processed all Chargebacks and other adjustments and Company agrees to permit Bank to credit and debit such Settlement Account until all charges, Chargebacks and other adjustments are settled as provided for in this Agreement. Company shall be solely liable for all fees and costs associated with the Settlement Account. This authority will remain in effect until five (5) Business Days after Bank receives written notice from Company of its cancellation of such authorization, provided that in the event of termination of this Agreement, Company agrees to maintain the Settlement Account with sufficient funds until such time as Company and Bank agree that all Chargebacks and other adjustments are processed and to permit Bank to credit and debit such Settlement Account until all charges, Chargebacks and other adjustments are settled as provided in this Agreement. Bank shall not be liable to Company for any delays in receipt of funds or errors in credit entries caused by Company or by third parties including, but not limited to, a clearinghouse, Company's financial institution, or any agent of Company.

2.8 CARDHOLDER CREDITS AND PAYMENTS. Unless specifically required by law, Company shall not give cash refunds to any Cardholder in connection with a Card Sale. For each Credit issued by Company, Company shall prepare and deliver to the Cardholder a Credit Slip which Company shall complete in accordance with the Operating Regulations. Company shall submit Sales Data evidencing each Credit to Bank within seven (7) days after the Credit is issued in order that the appropriate Credit may be entered on the Cardholder's Account. Company shall be permitted to receive Cardholder payments to Bank at Company's retail establishments.

2.9 BILLING INQUIRIES AND CARDHOLDER DISPUTES. Bank will notify Company on a current basis when a Cardholder has made a billing inquiry or filed a billing error notice relating to a Card Sale made by Company. Company agrees to investigate and make a good faith effort to resolve each billing inquiry or dispute referred to it by Bank or received directly from a Cardholder. Within fifteen (15) Business Days from the date Bank sends a billing inquiry or dispute to Company, Company shall notify Bank in writing of the resolution thereof or the action Company will take to resolve the billing inquiry or dispute. Company shall provide Bank with all such information as Bank may reasonably request in connection therewith.

2.10 CHARGEBACK RIGHTS AND PROCEDURES.

(a) CHARGEBACK RIGHTS. If Company has not complied with the terms of this Agreement or with the Operating Regulations with respect to either the opening of Accounts or a Card Sale made by Company, or if, at the end of the fifteen (15) Business Day billing inquiry/dispute resolution period specified in Section 2.9 of this Agreement, the billing inquiry or dispute is not resolved (or Bank has not been informed of the resolution or the action Company will take to resolve the billing inquiry or dispute), Bank may process a Chargeback to Company for the amount of the Card Sale, the Account balance or the disputed portion thereof, as applicable. If Bank processes a Chargeback and the disputed amount is subsequently paid by the Cardholder, Bank will reimburse Company for the disputed amount.

(b) METHOD OF RECOURSE. Bank is not required to pay Company for a Card Sale which is being charged back. If Bank has already paid Company for such Card Sale, Bank, at its sole discretion, may deduct the amount to be charged back from the Settlement Account or offset such amount from a future payment to Company. Any Chargebacks which are not paid by the aforesaid means shall be due and payable by Company promptly on demand.

(c) COMPLIANCE WITH LAWS. Notwithstanding anything to the contrary contained herein, in the event a Cardholder, in accordance with the provisions of applicable state law or the federal Truth in Lending Act and Regulation Z, as they may be amended from time to time, files with Bank a billing error inquiry or alleges a quality dispute with respect to goods or services purchased from Company, Bank has the right of Chargeback against Company with respect to the Card Sale which is the subject of such inquiry or dispute.

(d) EXCESSIVE CHARGEBACKS. If Chargebacks exceed 1.5% of the total number of Card Sales submitted by Company with respect to an individual Company Store in any calendar quarter, Bank reserves the right to assess, and Company agrees to pay, a fee of \$7.50 for each Chargeback in excess of the 1.5% limit.

(e) NON-RECEIPT OF AUTHORIZED GOODS OR SERVICES. Bank may offset from the Settlement Account the amount of any loss incurred by Bank which results from a claim by a Cardholder that he or she did not receive a purchase and receipt of such purchase is not evidenced by a valid cardholder's signature, and was billed to the Cardholder's Account.

2.11 REPRESENTATIONS AND WARRANTIES. Company makes the following representations and warranties to Bank with respect to each Account, all Sales Data remitted to Bank, and as to each Card transaction evidenced thereby. Each and all of the representations and warranties made by Company will survive the termination of this Agreement.

(a) The information set forth on each Application is accurate and correct to the best of Company's knowledge, as provided by the applicant and each Application has been completed in compliance with this Agreement and the Operating Regulations.

(b) The Sales Data represents a bona fide sale made at a Store or on the Internet by Company of Authorized Goods and Services, not previously submitted and is originated by Company in compliance with this Agreement and the Operating Regulations.

2.12 REPORTS. Bank shall supply Company with monthly report(s) containing information regarding the Card program. Company may elect to receive additional reports available from Bank at Bank's then current price for such reports.

ARTICLE III - FEES

3.1 FEES.

(a) For each Card Sale made by Company, Bank shall charge and Company agrees to pay a fee in the amount set forth in Schedule E (the "Merchant Fee"), which Merchant Fee will be subject to adjustment as provided herein and in Schedule E. In addition, for each Card Sale made by Company on a Second Look Account, Bank shall charge and Company agrees to pay to Bank a fee (in addition to the Merchant Fee) in the amount set forth in Schedule E for each particular card plan ("Supplemental Merchant Fee"). The Merchant Fee and Supplemental Merchant Fee will be calculated in accordance with Section 3.1(c) of this Agreement. Bank shall have the right to adjust the Merchant Fee and the Supplemental Merchant Fee, upon not less than thirty (30) days prior written notice to Company; provided, however, that Bank shall not adjust the Merchant Fee more than one (1) time nor more than fifty (50) basis points in any twelve (12) month period and that during the Initial Term, such Regular Revolving Plan Merchant Fee shall not exceed 4.5%, net any adjustments to such fee based on changes in the Prime Rate as provided in this Section 3.1(a). The Bank shall provide Company with the reasons for any adjustments to the Merchant Fee at the time such adjustments are made. The Assumptions upon which the Card Program is based, are set forth in Schedule B. In addition, Merchant Fees are subject to adjustment by Bank for changes in the Prime Rate as published in the "Money Rates" section of THE WALL STREET JOURNAL.

(b) For each electronic remittance of Sales Data made to Bank in accordance with Section 2.7(c) of this Agreement, Bank will determine the amount of Card Sales made by Company and then calculate and collect the Merchant Fee based on that amount.

(c) Bank may offset the amount of the Merchant Fee and any other amounts owed by Company under this Agreement from the Settlement amount due Company, or Bank may debit the Settlement Account in the amount of the Merchant Fee and any other amounts owed by Company under this Agreement. If Bank elects the former and the Settlement amount due Company is insufficient to cover the Merchant Fee and any other amounts owed under this Agreement, Bank, at its option, may offset the amounts owed under this Agreement or any remaining portion thereof from subsequent amounts due Company or debit the Settlement Account. Any amounts owed which cannot be paid by the aforesaid means shall be due and payable by Company on demand.

ARTICLE IV - MISCELLANEOUS

4.1 INDEMNIFICATION.

(a) INDEMNIFICATION BY COMPANY. Company shall be liable to and shall indemnify, defend and hold harmless Bank and its officers, employees and directors from any

losses, damages, claims or complaints (including reasonable outside attorney's fees and disbursements) incurred by Bank or its respective officers, employees and directors arising out of:

- (i) Any claim, complaint or setoff made by or on behalf of a Cardholder with respect to Card Sales or Credits submitted by Company pursuant to this Agreement;
- (ii) Anything wrongfully done or not done by Company in connection with the furnishing of any Authorized Goods and Services purchased by Cardholders pursuant to this Agreement;
- (iii) The death or injury to any person or the loss, destruction or damage to any property arising out of the furnishing by Company of any Authorized Goods and Services purchased with the Card;
- (iv) Any claim or complaint of a third party in connection with the use of any Company Mark on the Card or in advertising, marketing, promoting or administering the Card program and Card Plan;
- (v) Any breach by Company of an obligation under this Agreement;
- (vi) Any Card transaction that does not represent obligations of the Cardholder for the amounts in the transaction and is not only for Authorized Goods and Services actually sold and delivered or actually rendered (including taxes) and does not involve any element of credit for any other purpose.
- (vii) Any Sales Data that has been altered by Company in any way that is not authorized by the Cardholder.
- (viii) Any transaction that is not in compliance with all applicable law except if same results from an act or omission by Bank.
- (ix) Any indebtedness represented by the Sales Data that is pledged as collateral for payment of any indebtedness or obligation of Company or any other person.
- (x) Any knowledge or notice of information that Company has that would lead it to believe that the enforceability or collectibility of the Sales Data is in any manner impaired.
- (xi) With respect to any transaction in which a Card is not physically presented to Company, any Card and Account information contained in the Sales Data that is not accurate and correct.

(b) INDEMNIFICATION BY BANK. Bank shall be liable to and shall

indemnify,

defend and hold harmless Company and its officers, employees and directors from any losses, damages, claims or complaints (including reasonable outside attorney's fees and disbursements) incurred by Company or its officers, employees and directors arising out of any claim or complaint by a Cardholder with respect to anything wrongfully done or not done by Bank in connection with such Cardholder's Account. Notwithstanding the foregoing, the indemnification by Bank shall not apply to any claim or complaint relating to Company's failure to resolve a billing inquiry or dispute with a Cardholder.

(c) NOTICE OF CLAIM. If any claim is made or any suit or action is commenced against the indemnified party in respect of which indemnification may be sought under this Section 4.1, the indemnified party shall promptly give the indemnifying party written notice thereof and the indemnifying party will be entitled to assume the defense thereof and to take over and control the settlement thereof (with counsel satisfactory to the indemnified party) at the indemnifying party's cost and expense by giving written notice of its intention to do so to the indemnified party within thirty (30) days after receipt by the indemnifying party of notice of the claim, suit or action. If the indemnifying party assumes the defense of any claim, suit or action, it shall not settle such claim, suit or action unless the indemnified party consents to such settlement. Notwithstanding the assumption by the indemnifying party of the defense of any claim, suit or action, the indemnified party will be permitted to join in the defense thereof and to employ counsel at its own cost and expense. If the indemnifying party fails to notify the indemnified party of its desire to assume the defense of any claim, suit or action or notifies the indemnified party that it will not assume the defense thereof, then the indemnified party may assume the defense thereof, at the indemnifying party's cost and expense. Any settlement or compromise of, or any final judgment entered on or in, any claim, suit or action which the indemnifying party declines to defend in accordance with this Agreement, will be deemed to have been consented to by, and will be binding upon, the indemnifying party as fully as if the indemnifying party had assumed the defense thereof and a final judgment or decree had been entered in such suit or proceeding, or with regard to such claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree. In any case, the indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) in the settlement or defense of any such claim, suit or action.

(d) PAYMENT OF INDEMNIFIED AMOUNTS. The indemnified party shall notify the indemnifying party of any amounts due and owing by the indemnifying party under this Section 4.1 and the indemnifying party shall pay such amounts to the indemnified party within thirty (30) after receipt of such notice.

(e) SURVIVAL. Except for this Section 4.1 and Sections 2.7, 2.11 and 4.7, no other terms of this Agreement will survive the termination of this Agreement.

4.2 CARD PLAN PROMOTION; ADVERTISING AND SERVICE MARKS.

(a) LIMITED LICENSE. Company hereby authorizes Bank for purposes of this Agreement to use Company Marks on the Card and in advertising, marketing, promoting and administering the Card program and Card Plan, subject to Company's periodic reasonable review of such use and to Company's reasonable specifications directly related to the legal maintenance of Company Marks. In addition, Company authorizes Bank and Bank's affiliates to

identify Company as a client in advertising and promotional material, and to use pictures or representations of the Card.

(b) PROMOTION OF THE CARD PLAN. Company shall actively and consistently promote, participate in and support the Card program and Card Plan throughout the term of this Agreement. Company shall prominently display at each of its Stores advertising and promotional materials relating to the Card Plan, including without limitation, take-one Applications for the Card. Further, Company shall advertise and promote the Card Plan at least to the same extent as it advertises and promotes the most favored of other credit cards, charge cards or credit plans. Company shall only use or display promotional materials relating to the Card Plan in accordance with the Operating Regulations and in accordance with any specifications provided by Bank. Company shall use and distribute Required Disclosures, as such may change from time to time, in accordance with Bank's requirements. Bank and Company agree to cooperate in the development of advertising, marketing, and promotional materials (in any media form), as well as operating forms and other materials which promote the Card and any Card related programs (collectively or individually, the "Promotional Materials"). Company acknowledges and agrees that it will present all Promotional Materials to Bank, in writing, for Bank's review and written approval as follows:

(i) Company will deliver Promotional Materials to Bank at least five (5) Business Days prior to the last date upon which preliminary changes can be made to such materials. Company will allow itself sufficient time to make changes as required by Bank including time to provide Bank with the revised Promotional Materials for Bank's review and written approval before such materials are utilized.

(ii) Company will deliver Promotional Materials in the form and/or format media as they are intended to be utilized. Non-printed Promotional Materials shall be accompanied by a written transcript.

(iii) Company acknowledges and agrees not to use, publish, or distribute (in any media form) any Promotional Materials without the prior written approval of Bank.

(iv) Notwithstanding anything else to the contrary herein, (1) Company will be solely responsible for, and will indemnify Bank (subject to Section 4.1(a)) against, any claim and any expense incurred by Bank as a result of Company's use of materials not approved by Bank in accordance with the terms of this Section 4.2; and (2) Bank will have the option to terminate this Agreement immediately if Bank reasonably believes that Company's failure to comply with the terms of this Section 4.2 places Bank at risk.

(c) CARDHOLDER SOLICITATION. For purposes of mutually agreed upon solicitations for prospective Cardholders, Company shall provide Bank with its customer lists and any other lists of consumers that Company owns or has a right to use. Bank and Company

shall mutually agree upon plans for solicitation of Company's customers. Company shall be responsible for the costs of providing such lists and any solicitations which may be mutually agreed upon by Bank and Company. Any such Cardholder solicitations of Company's customers or any other consumers by Bank shall be in accordance with Bank's policies and procedures and subject to Bank's credit analysis and determination. Cardholders' names and addresses are the property of Bank. Company may use Cardholder names and addresses to conduct promotional programs for Authorized Goods and Services during the term of this Agreement, upon notifying Bank in writing prior to such use. Cardholder information may be used by Bank for such purposes as it chooses so long as Bank does not use such information in a manner that is injurious to Company's retail business. Bank and its affiliates may from time to time make the products or services of third parties available to Cardholders with Company's written approval. Notwithstanding the foregoing, Bank has the right to solicit Cardholders to purchase credit insurance four (4) times each calendar year. The dates upon which such solicitations will occur shall be mutually agreed upon by the parties.

(d) PROMOTIONAL FUNDS. Bank and Company agree to establish a Promotional Fund for Card promotions and marketing activities related to the Card Plan ("Marketing Activities"). Bank shall make available \$200,000 each calendar year, including the calendar year 2000, for joint Marketing Activities for so long as the projected Annual Net Card Sales of Company as projected by Bank, based upon the previous twelve (12) months Net Card Sales and projected growth, are greater than or equal to \$60,000,000 but less than or equal to \$67,000,000. When Company's projected Annual Net Card Sales are greater than \$67,000,000 but less than or equal to \$85,000,000, Bank shall calculate the contribution to the Promotional Fund as follows: multiply projected Annual Net Card Sales by .0030. If Company's projected Annual Net Card Sales exceed \$67,000,000 the calculated contribution described in this paragraph will be provided to the Promotional Fund in place of, not in addition to, the \$200,000. When Company's projected Annual Net Card Sales are greater than \$85,000,000 but less than \$150,000,000, Bank shall calculate the contribution to the Promotional Fund as follows: multiply projected Annual Net Card Sales by .0040. When Company's projected Annual Net Card Sales are greater than or equal to \$150,000,000, Bank shall calculate the contribution to the Promotional Fund as follows: multiply projected Annual Net Card Sales by .0045. On a semi-annual basis, Bank shall review the actual Annual Net Card Sales of Company to determine whether any adjustments regarding Bank's contribution to the Promotional Fund are required for the remainder of the calendar year. Bank shall only contribute to the Promotional Fund, provided Company contributes the same amount during such period for such purpose. Bank and Company shall mutually agree, in writing, upon the plans and cost for Marketing Activities prior to the expenditure of amounts in the Promotional Fund. The party responsible for the agreed upon Marketing Activity shall provide the funds required for the activity and invoice the other party for the required contribution. In addition, Bank shall contribute fifty percent (50%) of all revenue earned by Bank directly from any fees or commissions paid by vendors whose products or services are sold to Cardholders using inserts with monthly billing statements, with the exception of products or services related to credit insurance. Any amounts in the Promotional Fund that are not used for Marketing Activities during any year of the Initial Term or any Subsequent Term will be returned to each party at the end of such period on the same percentage basis as the amounts were contributed by each party. Any amounts remaining in the Promotional Fund at the termination of this Agreement will be returned to each party on the same percentage basis as the amounts were contributed by each party.

4.3 BOOKS AND RECORDS. Company shall retain an original copy of each Sales Slip and Credit Slip for one hundred and eighty (180) days following the date of the Card Sale and a microfilm or other copy thereof for a total of seven (7) years. Company shall send to Bank the original or a legible copy of any Sales Slip, Credit Slip or any other record relating to this Agreement retained by Company within fifteen (15) Business Days of a request from Bank. In the event of a cardholder dispute pertaining to the Authorized Goods and Services for which Company does not send Bank the requested information as described in the Section 4.3, Bank shall Chargeback the amount of such Sale to Company.

4.4 TERM AND TERMINATION.

(a) TERM. This Agreement will be effective as of July 1, 2000 ("Effective Date") when executed by authorized officers of each of the parties. Subject to earlier termination as provided herein, this Agreement (i) will remain in effect for a period of five (5) years from the Effective Date ("Initial Term"), and (ii) thereafter will continue for additional three (3) year periods ("Subsequent Term(s)") unless either party provides written notice of termination at least one (1) year prior to the end of the Initial Term or any Subsequent Term. The termination of this Agreement will not affect the rights and obligations of the parties with respect to transactions and occurrences which take place prior to the effective date of termination, except as otherwise provided herein.

(b) TERMINATION. This Agreement may otherwise be terminated:

(i) by Bank or Company upon notice to the other in the event the other party elects to wind up or dissolve its operation or is wound up and dissolved; becomes insolvent or repeatedly fails to pay its debts as they become due; makes an assignment for the benefit of creditors; files a voluntary or involuntary petition in bankruptcy or for reorganization or is adjudicated as bankrupt or insolvent; or has a liquidator or trustee appointed over its affairs and such appointment continues for more than thirty (30) days.

(ii) by Bank or Company upon notice to the other party in the event (1) the other party fails to comply in any material respect with any representation, warranty, term or obligation under this Agreement; or (2) the other party suffers a material adverse change in its business, financial condition, business practices, products or services.

(iii) by Bank or Company upon not less than thirty (30) days notice to the other in the event the other materially breaches its obligations hereunder provided that such termination will be deemed ineffective if the breaching party cures its breach within the thirty (30) day period.

(iv) by Bank upon not less than thirty (30) days prior written notice to Company in the event (1) the aggregate Net Card Sales made by Company during any twelve (12) month period decrease by more than twenty percent (20%) from the aggregate Net Card Sales made by Company during the same

period of the prior year; or (2) Company or Company's parent sells, merges, consolidates or transfers twenty percent (20%) or more of Company's business or assets without obtaining Bank's prior written consent, as required under Section 4.11 of this Agreement.

(v) by Company upon six (6) months prior written notice to Bank, if Bank meets three or less of the Performance Standards set forth in Schedule D ("Performance Standards") more than five (5) months in any twelve (12) month period. Such Performance Standards are subject to adjustment by Bank based on changes in the demographics of Company's applicants or economic issues affecting the credit card industry generally. Company shall have the right, upon request, to inspect the books, records or any related source information utilized by Bank for purposes of reporting Performance Standards results to Company. Prior to any such adjustment, Bank shall obtain Company's prior written consent, which consent shall not be unreasonably withheld or delayed.

(c) TERMINATION OF CARD ACCEPTANCE. Bank upon notice to Company may elect to terminate acceptance of the Card at a particular Company Store if acceptance of the Card at such Store is subject to high fraudulent activity, excessive Chargebacks (that is, in excess of 1.50% of the total number of Card Sales) or other course of business conduct that is injurious to the business relationship between Bank and Company. Termination of Card acceptance at an individual Company Store will not affect this Agreement unless such termination materially affects the volume of Card Sales made by Company, in which event Bank may elect to terminate this Agreement upon not less than thirty (30) days prior written notice to Company.

(d) DUTIES UPON TERMINATION. Upon termination of this Agreement, all amounts payable by either party shall be due and payable in full without demand or notice of any kind from the other party and Company shall promptly submit to Bank all Sales Data for Card transactions made up to the date of termination. Bank shall cooperate with Company in transferring any necessary Account data and other relevant data to Company or its designees at Company's cost, and shall perform its duties hereunder to the best of its ability notwithstanding such notice of termination.

(e) PURCHASE OPTION. If this Agreement is terminated by Bank, (except under paragraphs 4.4(b)(I), (ii), (iii), (iv), 4.4(c) or 4.11), or by Company pursuant to its rights of termination under this Agreement, Company shall, upon at least sixty (60) days prior written notice to Bank, given prior to the date termination is to be effective, have the right to purchase from Bank, all of the outstanding Card receivables (subject to the terms of any then current securitization agreements of Bank) at the then current value as determined by Bank. In the event that Company does not agree with the current value as determined by Bank, the parties shall retain the services of a designated third party which shall be an agreed upon independent public accounting firm that is one of the five (5) largest recognized public accounting firms. The agreed upon third party shall conduct the appraisal in accordance with generally accepted appraisal standards as promulgated by the American Society of Appraisers. The expense of such appraisal by such third party shall be paid by Company. Bank and Company agree to

provide the designated third party access to information reasonably necessary to assist in the valuation. Such information shall be deemed confidential provided that Company may share such valuation with a bona fide prospective purchaser, provided that such prospective purchaser first executes a confidentiality agreement provided by Bank. The purchase shall be under such terms and conditions that are mutually acceptable to Bank and Company, provided that Bank shall not be required to accept as the purchase price less than 101% of the value of all of the outstanding Card receivables as of the effective date of the termination and that this Agreement shall remain in effect until such purchase is consummated. In the event that Company does not purchase the outstanding Card receivables as provided in this Section 4.4(e), Bank shall have the right to use such Card receivables in any manner Bank deems appropriate, provided however; during the eighteen (18) months immediately following the date termination is effective, Bank shall not sell such receivables to a third party that is engaged, as its primary business, in any business that directly competes with Company's primary business.

4.5 RESERVE ACCOUNT. If any event arises that would be a basis for termination of this Agreement by Bank under paragraph 4.4(b)(i), Bank may immediately establish a reserve account ("Reserve") against potential liability to Cardholders for Credits and refunds for advance Card Sales. The amount of such Reserve shall be determined by Bank based on Company's Chargeback history. Company shall immediately pay to Bank the amount of such Reserve, or Bank may debit the Settlement Account or withhold Settlement until the Reserve is fully funded. Company agrees that Bank may set off against the Reserve any Credits, Chargebacks or adjustments that Company does not or is unable to satisfy through Settlement. Bank will release all remaining amounts held in the Reserve not later than two hundred ten (210) days after the termination date of this Agreement, upon satisfaction of all Company's obligations to Bank. Bank will provide Company with an accounting of any amounts withdrawn from the Reserve.

4.6 STATUS OF THE PARTIES. In performing their responsibilities pursuant to this Agreement, Bank and Company are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or an association for profit between Bank and Company. Further, notwithstanding anything to the contrary contained in this Agreement, any third party designated by Company to perform obligations or functions of Company under this Agreement, including without limitation, obtaining Authorization or performing data capture, remittance or Settlement functions, will be subject to the approval of Bank and will be deemed to be the agent of Company for all such purposes and not the agent of Bank and Company shall be fully liable for the fees and actions of any such third party with respect to the performance of such functions.

4.7 FORCE MAJEURE. Neither party to this Agreement will be liable to the other by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include, but are not limited to acts of God or of the public enemy, acts of civil or military authority, fires, strikes, unavailability of energy resources, delay in transportation, riots or war. In the event of any force majeure occurrence, the disabled party shall use its best efforts to meet its obligations as set forth in this Agreement. The disabled party shall promptly and in writing advise the other party if it is unable to perform due to a force majeure event, the expected duration of such inability to perform, and of any developments (or changes therein) that appear likely to affect the ability of that party to perform any of its obligations hereunder in

whole or in part.

4.8 CONFIDENTIALITY. In performing its obligations under this Agreement, each party may have access to and receive certain confidential or proprietary information about the other party, including, but not limited to: such party's marketing philosophy and objectives, competitive advantages and disadvantages, Cardholder and customer names and addresses, financial results, technological development, Store locations, sales volume(s), merchandise mix or other information of the business or affairs of each party, its parent company, or its affiliated and subsidiary companies, which that party reasonably considers confidential and/or proprietary (collectively referred to as "Confidential Information"). Each party agrees that it will reveal such Confidential Information only to those of its directors, officers, employees (or, with regard to Company, directors, officers or employees of any of its operating divisions/subsidiaries which accept or may consider accepting the Card, and, with regard to Bank, directors, officers, employees of Bank, or its affiliates which are involved in the development of the Card program and Card Plan) who are engaged in the implementation of policies, programs or procedures with regard to the acceptance of the Card by Company. Each party agrees not to use such Confidential Information nor to disclose Confidential Information to any third party, except as may be necessary for that party to perform its obligations pursuant to this Agreement and except as may be agreed upon by the parties. If either should disclose Confidential Information to a third party, such party shall cause said third party to agree to the confidentiality provisions set forth in this Section 4.8.

Confidential Information does not include information in the public domain, information already known by the party receiving the information prior to commencing the discussions that led to this Agreement, and information lawfully obtained from a third party. The terms of this Section 4.8 will survive the termination of this Agreement.

4.9 ACCESS TO CARDHOLDER LIST. Company may request, on a monthly basis, from Bank the names and addresses of Cardholders who have opened Accounts at Stores. With respect to any request more frequently than once per calendar month, Bank will charge and Company agrees to pay a fee in the amount set forth in Schedule A. Company may only use such Cardholder information in connection with sales promotions of Authorized Goods and Services or Company may sell such information to a third party that is mutually agreed upon by Bank and Company provided such third party is not engaged in a business that competes either directly or indirectly with any business that either Bank or Company or any of their affiliates may be engaged in. Bank and Company agree to share equally in any revenue generated by the sale or use of the Cardholder list to a third party as provided in this Section 4.9. Except as specifically provided herein, during the term of this Agreement any other use of such Cardholder information by Company including, without limitation, the disclosure or sale of such information to third parties, is prohibited and is subject to the confidentiality provisions of Section 4.7 of this Agreement.

4.10 FINANCIAL INFORMATION. At least annually, upon written request by Bank, Company shall provide to Bank audited financial statements prepared for Company by an independent public accounting firm. Quarterly, upon written request by Bank, Company shall provide to Bank quarterly financial statements prepared by or for Company.

4.11 ASSIGNABILITY; SUCCESSORS AND ASSIGNS. This Agreement and any of the rights, interests and obligations of either of the parties hereunder may be assigned to a parent, subsidiary, or affiliate of either party, provided that any such assignee shall have as of the date of assignment a financial net worth equal to or greater than the assigning party as of the Effective Date. Bank may assign this Agreement to a third party upon the sale of all or substantially all of its assets or stock to such third party. This Agreement may not otherwise be assigned without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld or delayed. The rights and obligations of the parties hereto will inure to the benefit of and will be binding upon the successors and permitted assigns of each of them. Company shall notify Bank and obtain Bank's written consent before Company or its parent corporation, if any, is purchased by another entity or agrees to merge or be consolidated into or transfer all or substantially all of either of their respective assets to another entity.

4.12 AMENDMENT. Except as otherwise provided herein, neither this Agreement nor any of its provisions will be amended or modified except in writing executed by a duly authorized officer of each party.

4.13 SEVERABILITY. If any provision, or portion thereof, of this Agreement is held invalid, illegal, void or unenforceable by reason of any rule or law, administrative order, judicial decision or public policy, all other provisions of this Agreement will nevertheless remain in full force and in effect.

4.14 ENTIRE AGREEMENT. This Agreement, including the Operating Regulations and any schedules, exhibits and documents referenced herein, constitutes the entire agreement between the parties in connection with the Card program and Card Plan and supersedes all prior agreements, supplements, negotiations and communications on such subject matter.

4.15 GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota.

4.16 APPLICABLE LAW OR REGULATION. It is expressly understood that changes in the performance of either party's obligations under this Agreement necessitated by a change in interpretation of any applicable federal or state statute or regulation will not constitute a breach of this Agreement.

4.17 WAIVERS. Neither party will be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is approved in writing by the waiving party.

4.18 NOTICES. Whenever notice or demand under this Agreement is given to or made upon either party by the other party, such notice or demand must be given in writing, either (i) by depositing it in the United States mail addressed to such party at its address as set forth below, with postage thereon prepaid, and any notice or demand so mailed will be deemed to have been given at the time when it was mailed, or (ii) by courier, telecopier, or similar method, and such notice or demand will be deemed to have been given when the writing or other form of notice or demand is either personally delivered to the party or delivered to the address set forth below. Notwithstanding the foregoing, notice of intent to terminate this Agreement and notice of default must be sent by certified or registered mail, return receipt requested.

If to Bank: Hurley State Bank
1503 East 10th Street
Sioux Falls, South Dakota 57103
Attn: Senior Vice President

With a copy to: Associates Commerce Solutions, Inc.
Four Parkway North
Deerfield, Illinois 60015
Attn: Vice President - Controller

If to Company: The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 07094
Attn: CFO

With a copy to: The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 07094
Attn: General Counsel

EITHER PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICE MUST BE SENT BY GIVING WRITTEN NOTICE OF SUCH CHANGE TO THE OTHER PARTY IN THE MANNER PROVIDED HEREIN.

4.19 NO THIRD-PARTY RIGHTS. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any person not party to this Agreement.

4.20 CAPTIONS. The captions used in this Agreement have been inserted for convenience and for reference only and will not be deemed to limit or define the text of this Agreement.

4.21 COUNTERPARTS. This Agreement may be executed in separate counterparts, each of which will constitute an original but all of which will constitute one and the same Agreement.

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

THE CHILDREN'S PLACE RETAIL
STORES, INC.

HURLEY STATE BANK
(Accepted at its Home Office)

By: /s/ Steven Balasiano

By: /s/ Phil Layher

Title: Vice President and General Counsel

Title: Senior Vice President

SCHEDULE A

FEES

ITEM	AMOUNT
----	-----
1. In-store forms, including Applications, point-of-sale forms, Sales Slips and Credit Slips with the exception of changes to any of the forms in this paragraph initiated by Bank	Cost plus handling
2. Each tape file of Cardholder names and addresses in excess of one (1) per month	\$150.00 per request
3. System changes requested by Company	At Bank's cost
4. Business reply mail and special handlings	Pass-through costs and Expenses

SCHEDULE B
ASSUMPTIONS

1.	Account Application volume	314,300 Applications each year
2.	Account Application processing	100% of Applications* that are processed at the point of sale for submission through remote entry application processing
3.	New Account activation rate	85%
4.	Average number of Card Sales per Active Account each year	4
5.	Average annual Card Sales per Active Account	\$300
6.	Average amount of each Card Sale ticket	\$78 for first purchase \$56 for subsequent purchases
7.	Percentage of aggregate regular revolving credit Account balances that incur finance charges	79%
8.	Minimum annual percentage rate applicable to Accounts	21.96%
9.	Average outstanding balance per Active Account	\$135
10.	Aggregate Net Card Sales by Company under the Card program	\$64,000,000
11.	Annual net charge-off rate	Not to exceed 8.0% during the first year of the Initial Term
12.	Special Credit Plan Card Sales Volume	Less than ten percent (10%) of total Net Card Sales in any twelve (12) month period

* provided that Bank's processing system is available by remote entry.

SCHEDULE C

COMPANY MARKS

24

SCHEDULE D
PERFORMANCE STANDARDS

- | | |
|--|------------|
| 1. Monthly Average Speed of Answer for New Accounts: | 40 seconds |
| 2. Monthly Average Speed of Answer for Phoned-In Authorizations: | 35 seconds |
| 3. Monthly Average Speed of Answer for Customer Service: | 50 seconds |
| 4. Monthly Average Abandon Rate: | 5% |
| 5. Minimum Year-To-Date Average Approval Rate: | 50% |

SCHEDULE E

MERCHANT FEE

1. Regular Revolving Plan:

Bank shall charge and Company agrees to pay a Merchant Fee equal to 3.49% of the Net Card Sale. On or around January 1, of each calendar year for the Initial Term and any Subsequent Terms, Bank shall adjust the Merchant Fee for the immediately following calendar year according to the chart below. Such adjustments shall be based on Net Card Sales for the immediately preceding calendar year.

PREVIOUS CALENDAR YEAR NET CARD SALES			MERCHANT FEE	
-----			-----	
\$	0.00	-	85,000,000	3.49%
\$	85,000,001	-	115,000,000	3.24%
\$	115,000,001	-	150,000,000	2.99%
\$	150,000,001	-	175,000,000	2.74%
\$	175,000,001	+		2.49%

2. Special Credit Plans:

90 Days Same As Cash Current Merchant Fee plus 2.46%
WITH A \$150 MINIMUM PURCHASE

Supplemental Merchant Fees

For each Card Sale made on a Second Look Account, the Bank shall charge and Company agrees to pay, in addition to the Merchant Fee set forth above, a Supplemental Merchant Fee of 4.00% of each Net Card Sale.

EXHIBIT A
HURLEY STATE BANK
OPERATING REGULATIONS

REVISED 7/30/99

1001 COMPANY SERVICE CALLS

Bank, directly or through its servicer will staff a service department to handle all new Accounts, Authorization and Cardholder inquiries. The service department will handle Cardholder inquiries from 9:00 a.m. to 5:00 p.m. (local time), Monday through Friday, on all Business Days.

1002 CARD LOGO

Company will properly display the appropriate Card logo on promotional materials to inform the public that the Card will be honored at Company's place(s) of business. Use of decals, signs, and print and broadcast materials which bear the Card logo must comply with the specifications provided to Company. Company may use the Card logo or the Card name or representations thereof, on promotional, print or broadcast materials to indicate that the Card is accepted. All advertisements for the Card Plan or promotional uses of the Card must be done in accordance with the Merchant Services Agreement.

1003 ALTERED AND COUNTERFEIT CARDS

Company's employees and representatives should be familiar with the appearance of a valid Card and the validity of Card Account numbers as issued by Bank and must check each Card and Card Account number presented for signs of counterfeiting or alterations. Company's employees and representatives should exercise reasonable care in checking each Card and Card Account number. Bank may issue a Chargeback if Company's employees or representatives process a Card Sale with invalid Cards or Card Account numbers. [Chargeback Code: 19]

1004 PREPARATION OF SALES SLIP AND CREDIT SLIP

Company's employees and representatives must provide the Cardholder with a completed copy of the Sales Slip or Credit Slip at the time of each completed Card transaction. For purchases made over the telephone, via Company's Internet website or through Company's catalog, if applicable, Company's employees and representatives must provide the Cardholder with a completed copy of the Sales Slip or Credit Slip with the merchandise. Sales Slips or Credit Slips must contain the following information:

1. The Cardholder's Account number.
2. Company's name and store location (city/state).

3. The description of merchandise or service purchased.
4. The total amount of the transaction (including sales tax).
5. The transaction date.
6. The Cardholder's signature. (For telephone orders, Internet order, facsimile orders and mail orders without the Cardholder's signature must designate the words "phone order", "Internet order," "fax order" or "mail order" in the signature block.) The signature block must never be left blank.
7. Authorization code.
8. For credits, original sales date and reason for refund.
9. Company's Merchant Account number.
10. "Ship to" address, if applicable.

1005 AUTHORIZATION REQUIREMENTS

Company will inform its franchisees, participating merchants, licensees, independent marketers or dealers, if any, that Cardholders may only use their Account or the Card for personal, family, household and charitable purposes. Bank may issue a Chargeback if Company's employees or representatives process a Card Sale in violation of the above stated consumer use. [Chargeback Code: 20]

Bank, directly or through its servicer will provide Authorization services to Company's locations located within the United States. Company's employees and representatives will obtain an electronic Authorization using a point-of-sale terminal certified by Bank or its servicer. In the event Authorizations cannot be obtained electronically, each Operations Center will provide telephone Authorizations through the Authorization department. Bank will advise Company of the Authorization department's business hours. Company's employees and representatives must enter the following information into the terminal for electronic Authorization:

1. The Cardholder's Account number.
2. The total amount of the transaction (including sales tax).

If Company's employees and representatives cannot obtain an electronic Authorization, Company's employees and representatives must obtain Authorization by telephone from the Authorization department, and must provide the following information to the Authorization department:

1. The Cardholder's Account number.
2. The total amount of the transaction (including sales tax).
3. Company's merchant account number.
4. Credit Plan number, if applicable.

Company's employees or representatives must enter the above information into the terminal and include the Authorization code provided by the Authorization department.

1006 REQUEST FOR NEW ACCOUNT AT POINT-OF-SALE

For applications taken at Company's retail locations the applicant must complete the application in its entirety, and sign the application. Both applicants must sign the application if it is a request for a joint Account. Company's employees or representatives must provide a copy of the Hurley State Bank Cardholder Agreement (the "Cardholder Agreement") to the applicant. If Company's employees or representatives fail to provide a copy of the Cardholder Agreement at the point-of-sale, Bank may issue a Chargeback if: (i) the applicant challenges or disputes the terms of the Cardholder Agreement and alleges that he/she did not receive the Cardholder Agreement, and (ii) Bank is unable to enforce collection because Company's employees or representatives allegedly failed to provide the Cardholder with a copy of the Cardholder Agreement. [Chargeback Codes: 10, 21]

Company's employees or representatives must ask the applicant (both applicants if a Joint Account) for two (2) pieces of identification to verify the applicant's identity. For applicants residing in all states or territories except New Jersey, the first piece of identification must have the applicant's picture on it and must be a valid (as hereinafter defined) driver's license, state-issued I.D., military I.D., resident alien card or voter registration card. For purposes of this paragraph, the term "valid" means (i) that the applicant must be a resident of the state for which the identification was issued, if applicable; (ii) the address on the identification must match the address on the application unless the applicant has represented on the application that he/she has lived at the place of residence listed on the application for six (6) months or less; and (iii) the identification must not have expired. The second piece of identification can be any other form of identification that identifies the applicant, contains the applicant's signature and contains information that is consistent with the information on the first piece of identification. For applicants residing in the state of New Jersey, the first piece of identification must be a valid driver's license, state-issued I.D., military I.D., or resident alien card. The second piece of identification can be any other form of identification that identifies the applicant, contains the applicant's signature and contains information that is consistent with the information on the first piece of identification. If the second form of identification is a credit card, Company's employees or representatives cannot write down such credit card number. Company's employees or representatives must then compare the pictures, if applicable and signatures on the forms of identification with the applicant and the applicant's signature. If Company's employee or representative fails to obtain and verify the appropriate identification, Bank may issue a Chargeback if Bank is unable to enforce collection due to Company's employee's or representative's alleged failure in obtaining and verifying the appropriate identification. [Chargeback Code: 22]

Then, the following procedure will be utilized:

1. Bank's New Accounts associate will request verification of signature and I.D. information. If the application is processed through Remote Entry Application Process (REAP), Company's employees or representatives must verify signature and I.D. information. In addition, Bank may require additional information from the store associate such as the form number of the application that the applicant filled out.

2. Company's employee or representative will be prompted to provide the required information contained in the application, and the total amount of the sale including applicable sales tax and any service, shipping, warranties, and handling costs.
3. If approved, Bank's New Accounts associate will provide the Account number and credit limit to Company's employee or representative. In order to obtain Authorization for the Card Sale, Company's employee or representative must enter the Account number and total amount of the Card Sale into the point-of-sale terminal.
4. If Bank declines an application or is unable to render an immediate decision, Bank will provide Company's employee or representative with an application pending number that Company's employee or representative must place in the designated area on the application. Company's employee or representative must then advise the applicant that Bank will notify the applicant of the final decision by mail.

If the total amount of the Card Sale exceeds the line of credit offered to the applicant, Bank's associate will communicate the Bank's counteroffer for a lower line of credit to Company's employee or representative, who must communicate it to the applicant. Bank will provide Company's employee or representative with an application pending number to place in the designated area on the application. Company's employee or representative must then notify Bank's associate of the applicant's decision to accept or decline the counteroffer for a lower line of credit within twenty-four (24) hours of the initial credit offer. If the applicant declines the counteroffer, Company's employee or representative must treat the application as if Bank declined the application.

5. EACH COMPANY'S LOCATION MUST SEND ALL APPROVED, DECLINED OR PENDING APPLICATIONS, INCLUDING THE INFORMATION CONTAINED IN THOSE APPLICATIONS RECEIVED BY TELEPHONE, TO THE DESIGNATED CARD OPERATIONS CENTER ON A WEEKLY BASIS AND INCLUDE ALL APPLICATIONS IN THE SAME ENVELOPE. IF BANK DOES NOT RECEIVE THE APPLICATIONS ON A WEEKLY BASIS, BANK MAY ISSUE A CHARGEBACK FOR THESE ACCOUNTS. [Chargeback Code: 13]

1007 REQUEST FOR NEW ACCOUNT BY THE TELEPHONE IN CONJUNCTION WITH A PURCHASE

Bank will consider a consumer's application for an Account made via the Internet or by telephone. For Internet applications, the Cardholder Agreement shall be transmitted to the consumer by Bank through the website. If approved, Accounts opened via the Internet application process are immediately available for Card Sales. For applications made in conjunction with the consumer's catalog order to Company, the Account will be immediately available for Card Sales only if the consumer received the full Cardholder Agreement in the catalog. If the consumer applies for an Account by telephone and did not receive a catalog containing the Cardholder Agreement, Company's employee or representative may not process the Card Sale on the Account opened via telephone until the consumer receives a written copy of the Cardholder Agreement by mail or express

delivery. If Company delivers the Cardholder Agreement to the consumer by next-day delivery, the Card Sale for such purchase will be processed by Bank on the same day that the Cardholder Agreement is received by the Cardholder. If Company delivers the Cardholder Agreement to the consumer via standard U.S. Mail, Company shall submit the Card Sale to Bank for processing one (1) day after mailing the Cardholder Agreement, and Bank will post the Card Sale to the Cardholder's Account three (3) days later. For Card Sales made pursuant to this paragraph, Bank may issue a Chargeback for such Card Sale if: (i) the Cardholder challenges or disputes any portion of the Cardholder Agreement, (ii) or alleges non-receipt of the Cardholder Agreement and Bank is unable to enforce collection due to Company's employee's or representative's alleged failure to provide a copy of the Cardholder Agreement to the Cardholder. [Chargeback Code: 21]

1008 SPECIAL CREDIT PLANS

Company must provide Cardholders who make a purchase under a Special Credit Plan with the point-of-sale disclosure that Bank provides to Company prior to the time Company's employee or representative completes the Card Sale. If Company's employee or representative fails to provide a Cardholder with the point-of-sale disclosure prior to the time the Card Sale is completed, Bank may issue a Chargeback if: (i) the Cardholder challenges or disputes the purchase made under the Special Credit Plan and alleges that he/she did not receive the point-of-sale disclosure, and (ii) Bank is unable to enforce collection because Company's employee or representative did not give the Cardholder the point-of-sale disclosure. [Chargeback Codes: 17 and 18]

1009 ADD-ON SALE AUTHORIZATION

Company's employees or representatives must complete a Sales Slip and obtain an Authorization for every sale made on the Card prior to concluding the transaction. If Company's employees or representatives receive a "call center" message on the point-of-sale terminal, or a Company's employee or representative cannot obtain an electronic Authorization, Company's employees or representatives must obtain Authorization via the "800" Authorization system. If Company's employees or representatives fail to follow this procedure Bank may issue a Chargeback if : (i) the Cardholder challenges or disputes the purchase, and (ii) Bank is unable to collect the Card Sale because Company's employees or representatives did not provide the disclosure. [Chargeback Codes: 1 and 2]

1010 ADD-ON SALE WITHOUT A CARD

1. For purchases made at Company's retail locations:

If a Cardholder wants to make a purchase at a retail location of Company and does not have his/her Card, Company's employee or representative must obtain two (2) pieces of acceptable identification (as set forth in paragraph 1006, above) from the Cardholder and verify the Cardholder's identity. Company's employee or representative must notate on

the sales slip the two (2) types of identification (i.e., driver's license number and type of credit card) and that no card was present at the time of sale. Then, Company's employee or representative must call the Operations Center to obtain the Cardholder's Card number.

2. For catalog purchases and all other purchases made by phone or facsimile:

Company's employees or representatives must obtain the following additional information from the Cardholder and reflect such information on the Sales Slip:

- (i) The Cardholder's full address.
- (ii) The Cardholder's telephone number.

If Company's employees or representatives fail to follow these procedures, Bank may issue a Chargeback if the Cardholder disputes the transaction. [Chargeback Codes: 23 and 24]

1011 REQUEST FOR CANCELLATION OF AUTHORIZATION

If a Company employee or representative, or a Cardholder cancels a Card Sale before Company's employee or representative completes the Card Sale and Company's employee or representative previously obtained an Authorization for the Card Sale, Company's employee or representative must call the Authorization Center and cancel the previous Authorization. Company can only cancel an Authorization on the same day it is made.

1012 "CODE 10" ALERT

A Company employee or representative who is suspicious of the validity of a Card or Card Account number or the presenter of the Card or Card Account number for any reason should notify the Authorization Center via the "Code 10" Alert. The "Code 10" Alert should be used regardless of the dollar amount of the sale. The procedure is as follows:

1. Call the Authorization Center and ask for a "Code 10" Authorization.
2. The Authorization Center associate will request the Cardholder's Account number and Company's name and will immediately alert the Fraud Department.
3. The Fraud Department personnel will ask a brief series of Yes or No questions about the Card or the presenter, or may ask the Company employee to attempt to obtain a photo I.D. from the presenter.
4. If the Fraud Department is able to confirm the identity of the presenter as a valid Cardholder or authorized user of the Card, Bank will approve the Card Sale. The presenter should not be aware that anything unusual has transpired.

5. IF, ON THE OTHER HAND, COMPANY'S EMPLOYEE OR REPRESENTATIVE IS INSTRUCTED TO RETAIN THE CARD, OR NOT AUTHORIZE THE SALE, THE COMPANY'S EMPLOYEE OR REPRESENTATIVE SHOULD DO SO, BUT ONLY BY PEACEFUL AND REASONABLE MEANS.

1013 ARRESTS FOR FRAUDULENT CARD USAGE

Each Operations Center through its Fraud Department may request Company's employee or representative to assist in the arrest of a Card presenter who is suspected of fraudulent use of a Card. Company employee or representative must use reasonable, lawful means when complying with this request.

Anyone arrested for fraudulent use of a Card will be appropriately prosecuted. Except as provided below, each Operations Center shall bear all responsibility for the arrest of a person when such Operations Center has requested the Company employee or representative to cause such an arrest.

BANK EXPECTS THAT A COMPANY EMPLOYEE OR REPRESENTATIVE WILL NOT INITIATE AN ARREST OF A CARD PRESENTER EXCEPT AT THE REQUEST OF BANK. IF A COMPANY EMPLOYEE OR REPRESENTATIVE CAUSES THE ARREST OR PROSECUTION OF ANY PERSON FOR THE USE OF A CARD WITHOUT THE BANK'S SPECIFIC REQUEST AND AUTHORIZATION OR FAILS TO USE REASONABLE, LAWFUL MEANS IN EFFECTING AN ARREST THAT BANK REQUESTED AND AUTHORIZED, COMPANY WILL BEAR ALL CLAIMS, LIABILITIES, COSTS, AND EXPENSES RESULTING FROM THE ARREST OR PROSECUTION.

1014 CREDIT ISSUED FOR RETURNED MERCHANDISE AND ADJUSTMENTS

Bank will honor Company's return policy as long as the policy complies with all federal, state and local laws and Company clearly posts or otherwise notifies the Cardholder of the policy at the time of the Card Sale. Company must not give cash refunds to any Cardholder in connection with a Card Sale. If a Cardholder returns goods or services purchased with a Card at Company's retail establishments in accordance with Company's policy, Company's employees or representatives must give a Credit to the Cardholder's Account by completing a Credit Slip, as described in Section 1004. If a Cardholder receives merchandise or services that are defective or not as agreed upon at the time of the Card Sale and Cardholder requests a Credit, Company must give the Cardholder the Credit. Employees or representatives must send the Bank Sales Data for each Credit within 7 calendar days after Company's employees or representatives issue the Credit to the Cardholder. [Chargeback Codes: 5 and 8]

1015 PAYMENTS

Company is not allowed to receive or process a Cardholder's payment to Bank unless the Merchant Services Agreement specifically authorizes Company to process Cardholder payments.

1016 TICKET RETRIEVALS

Company has fifteen (15) Business Days to review and respond to any Cardholder billing dispute. Bank may issue a Chargeback if the inquiry or dispute is not resolved or if the Company fails to notify the Card Operations Center that it resolved the dispute by the end of the fifteenth (15th) Business Day.
[Chargeback Code: 16]

1017 FORMS

Company must use the Card forms provided by Bank as soon as Bank provides the forms to Company. Company must destroy all Card forms that Bank replaces. If Company fails, Bank may process a Chargeback for the amounts uncollectible by Bank because Company failed to use current Card forms. [Chargeback Code: 25]

1018 CHARGEBACKS

Under certain circumstances Bank may return a Card Sale to Company unpaid, or Bank may return a previously paid Card Sale to Company for repayment to Bank. These returned charges are called "Chargebacks". If a billing error is asserted by a Cardholder with respect to a Card Sale, or if a Cardholder complains to Bank about the quality of goods or services obtained with the Card at Company's establishment, Company agrees to act in good faith to attempt to resolve the problem with the Cardholder. If the Cardholder refuses to pay Bank for goods or services due to a quality dispute, Bank will process a Chargeback for the charge or disputed portion of it. If Bank is involved in a lawsuit with a Cardholder relating to a Card Sale made at Company's establishment, Company agrees to cooperate with Bank and to provide any assistance to Bank. If Company does not follow all the terms of the Merchant Services Agreement and these Operating Regulations when making a transaction with a Card, or if a Card Sale which is the subject of a billing dispute or quality dispute is subject to Chargeback as specified in these Operating Regulations or the Merchant Services Agreement, Bank may refuse to pay Company for the Card Sale or the disputed portion of it. If Bank has already paid Company, Company must immediately pay the amount it owes Bank on demand, or Bank may deduct the amount in question from Company's Settlement Account or from future payments that they would otherwise owe Company. Bank will notify Company of Card Sales that are subject to Chargeback as they arise, but in some instances Bank may process Chargebacks prior to notification as specified in these Operating Regulations. If Company and a Cardholder resolve a billing inquiry or dispute on a Card Sale for which Bank issued a Chargeback, and Bank is permitted by law to rebill the Cardholder for all or a portion of the disputed amount, Bank will reimburse Company for the portion of the Chargeback which Bank can rebill to the Cardholder, provided Company requests the reimbursement within ninety (90) days from the date of Chargeback. If, due to federal or state laws, or both, Bank is not permitted to rebill a Cardholder for all or a portion of a disputed transaction, Bank will not be required to reimburse Company for the Chargeback, even if Company has complied with the terms of the Merchant Services Agreement and the procedures as outlined in the Operating Regulations. Attached as Exhibit A is a chart summarizing Chargeback Codes, Definitions, Explanations and Required Documentation to support or refute Chargebacks. For purposes of Exhibit A the phrase "promptly collected from the Cardholder" means that Bank has attempted to collect from the Cardholder for at least

fifty-nine (59) consecutive days. Bank's failure to issue a Chargeback to Company immediately after the fifty-nine (59) consecutive days have passed does not mean that Bank has forfeited its right to charge back the transaction to Company.

1019 REVERSALS OF CHARGEBACKS

If within ninety (90) days from the date of the Chargeback, Company has been unable to resolve the dispute with the Cardholder, Company may request a Chargeback reversal from Bank. Bank will review all relevant facts and circumstances pertaining to Company and the Cardholder and determine if Bank should reverse the Chargeback. If Bank determines that it should reverse the Chargeback, Bank will issue a separate credit to the Company and debit the Cardholder. Company must not submit a new Card Sale transaction in an identical amount in order to recover from a Cardholder for a transaction for which Bank has issued a Chargeback. Company may request a reversal of a Chargeback by submitting to Bank a copy of the original Sales Slip and documentation to support the request for reversal of the Chargeback as set forth in Exhibit A. Bank will advise Company where it should send Chargeback reversal requests. Bank, exercising its reasonable judgment, will decide whether it will reverse any Chargeback.

1020 TELEPHONE MONITORING

Company must notify its associates and obtain each associate's written consent that, from time to time, Bank or its processor may monitor and tape record telephone calls between Company's associates and Bank's or its processor's associates for training purposes.

1021 COMPANY EMPLOYEE FRAUD

Bank and Company will work together to minimize possible fraud by Company employees. Company employees must not issue or accept temporary credit cards. The store manager must either mail in or phone in to the Operations Center employee applications for a Card. If Company suspects that one of its employees is involved with or may be involved with fraud relating to the Card Plan, Company must notify Bank within forty-eight (48) hours of its discovery of the possible fraud and provide Bank with the employee's name and address, the reasons why Company suspects the employee and any documentation Company has relating to the possible fraud. [Chargeback Codes: 14 and 26]

1022 CLAIM BY CARDHOLDER OF NON-RECEIPT OF PURCHASE

If a Cardholder advises Bank that he or she did not receive a purchase which was billed to his or her Account, Bank will make a reasonable investigation. If, after investigation, Bank cannot determine that the Cardholder actually received the purchase, Bank shall remove the amount of the purchase from the Cardholder's Account and charge that amount back to Company. [Chargeback Code 11] Capitalized terms used herein and not otherwise defined will have the meanings given to them in the Merchant Services Agreement. If there are any conflicts between the terms

of the Merchant Services Agreement and these Operating Regulations, the former shall govern.

EXHIBIT A

CODE	DEFINITION	EXPLANATION
01	Transaction without Required Authorization	A valid Authorization was not obtained. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
02	Declined Authorization	The transaction was completed after the Company received a decline. This Chargeback will be exercised only when such transaction cannot be promptly collected from the Cardholder.
03	Invalid Cardholder Account Number	The transaction was submitted using an Account number for which no valid Account exists or can be located.
04	Late Presentation of Transaction	The time from transaction date to date of processing exceeds the 60-day limit allowed by Bank, and the transaction cannot be promptly collected from the Cardholder. In the event the Company's employees or representatives accept payments at Company's retail locations and such payment is returned to Company for insufficient funds, Company must present Bank with the insufficient funds item within fourteen (14) days of Company's receipt of the item from its bank.
05	Cardholder Disputes Merchandise/Services	The Cardholder disputes the quality of merchandise purchased or service rendered or any portion thereof, and Company has not responded to such dispute in accordance with Section 2.9 of the Merchant Services Agreement.
06	Alteration of Amount	The Cardholder claims that the purchase amount for which the Cardholder signed was altered after the Cardholder signed the Sales Slip and without the Cardholder's consent or direction. Only the difference will be charged back to the Company.

CODE	DEFINITION	DOCUMENTATION TO SUPPORT CHARGEBACK	DOCUMENTATION TO REVERSE CHARGEBACK
01	Transaction without Required Authorization	D02 Authorization Report for Sales Data; Cardholder Statement.	None
02	Declined Authorization	D02 Authorization Report showing Decline; Cardholder Statement.	Sales Ticket
03	Invalid Cardholder Account Number	R15 Reject-Re-entry Report; Purged Account Report.	None
04	Late Presentation of Transaction	Sales Ticket; Cardholder Statement.	None
05	Cardholder Disputes Merchandise/Services	Written Cardholder Claim.	Resolution of dispute by Company within time frame set forth in section 2.9 of the Merchant Services Agreement evidenced by a signed agreement. Partial/Full Credit posted to Account.
06	Alteration of Amount	Cardholder's Receipt does not match copy of Sales Ticket received from Company or the Bank's Transaction Report.	POS Transaction Log proving Cardholder altered the amount.

CODE - - - - -	DEFINITION -----	EXPLANATION -----
07	Duplicate Processing	Cardholder claims they have been charged twice for a transaction.
08	Non-Receipt of Credit	Cardholder claims that a Credit issued by the Company has never been posted to the Cardholder's Account or Cardholder received a cash refund in connection with a Card Sale and the Cardholder did not pay the Bank for such Card Sale. The Chargeback is limited to the amount of the Credit.
09	Unauthorized Purchase	The Cardholder, in writing, claims that neither the Cardholder nor any party authorized by the Cardholder participated in the transaction and that the Cardholder has no knowledge of the transaction.
10	Missing Signature	The Application or the Sales Slip is missing the Cardholder signature and the Cardholder does not recognize the Card Sale.
11	Non-Receipt of Goods or Services	Company submitted a Card Sale in which the goods or services were not yet shipped or otherwise provided to the Cardholder or the Cardholder claims they have not received the goods or services for which they have been charged.
12	Split Sale (where applicable)	A purchase for a single item cannot be split between the Card and another credit card or financing vehicle. However, the purchase can be split between the Card and cash or check or the Card and an unsecured general purpose bank card such as Visa, MasterCard or a NOVUS brand card.
13	No Card Application	Any transaction made by a Cardholder for whom a written Card application has not been submitted in accordance with Section 1006, paragraph 5, above, and the Cardholder claims they did not open an Account.

CODE - - - - -	DEFINITION -----	DOCUMENTATION TO SUPPORT CHARGEBACK -----	DOCUMENTATION TO REVERSE CHARGEBACK -----
07	Duplicate Processing	Cardholder statement(s).	Production of two Sales Slips with different authorization codes. POS Transaction Log
08	Non-Receipt of Credit	Cardholder's Credit Slip and Credit was not posted to Cardholder's Account.	None
09	Unauthorized Purchase	Written claim from Cardholder and copy of Sales Slip from Company. Bank compares signature on the Cardholder letter with signature on Sales Slip. Additional investigation may also be necessary.	None
10	Missing Signature	Unsigned Sales Slip/	None
11	Non-Receipt of Goods or Services	Written Cardholder Complaint.	Shipping Invoice Signed Delivery Ticket
12	Split Sale (where applicable)	Sales Slip; Written Cardholder Claim.	None

CODE	DEFINITION	EXPLANATION
14	Sale made with a Temporary Credit Card	Any transaction made with a temporary credit card.
15	Mismatched or Incomplete Application	One or more of the following items on the Application provided by the Company employee or representative at the point-of-sale for telephone approvals or REAP approvals does not match the written application information provided by the applicant. 1. Type of Residence 2. Length of time at Residence 3. Employment information 4. Banking relationship 5. Applicant's and Joint Applicant's identification 6. Absence of Primary and/or Joint Applicant's signature 7. Income
16	Non-Receipt of Requested Document	Sales Slip or Credit Slip has not been provided within 15 business days in response to ticket retrieval request or within any other date as otherwise specified in the Merchant Services Agreement.
17	Non-Receipt of Special Credit Plan Disclosure	Cardholder claims they have not received a point-of-sale disclosure describing the terms of the Special Credit Plan. This Chargeback will be exercised only when such transaction cannot be promptly collected from the Cardholder.
18	Invalid Credit Plan	Company charged a sale to an invalid credit plan or misrepresented the type of the credit plan to the Cardholder and the Cardholder claims they were told the plan was either valid or for a longer period of time.
19	Altered or Counterfeit Cards	Card Sale made with invalid Cards and/or Card Account number. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
20	Improper Card Use	Card use for purposes other than personal, family, household and charitable purposes.

CODE	DEFINITION	DOCUMENTATION TO SUPPORT CHARGEBACK	DOCUMENTATION TO REVERSE CHARGEBACK
14	Sale made with a Temporary Credit Card	Card type listed on Sales Slip.	Slip with Card Swipe
15	Mismatched or Incomplete Application	Application copy; NAPS record.	None
16	Non-Receipt of Requested Document	Request made to Company and Sales Slip or Credit Slip is not received within specified time.	None
17	Non-Receipt of Special Credit Plan Disclosure	Written Cardholder Claim.	Set procedure in place and written documentation regarding point-of-sale disclosures.
18	Invalid Credit Plan	Monetary File/Authorization Report reveals an invalid credit plan number; Written Customer complaint.	None
19	Altered or Counterfeit Cards	Invalid Card.	None
20	Improper Card Use	Name on Application is a business name.	None

CODE	DEFINITION	EXPLANATION
- - - - -	- - - - -	- - - - -
21	Failure to Give Cardholder Agreement to Cardholder	The Cardholder claims that they did not receive the Cardholder Agreement at the point-of-sale for a new Account or that the Cardholder did not receive a catalog containing the Cardholder Agreement prior to opening an Account over the telephone in conjunction with a catalog order. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
22	No Proper Identification For New Account Application	Company submitted an application that did not contain evidence that Company's employees or representatives obtained and verified the appropriate identification for a New Account application. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
23	No Proper Identification For an Add-On-Sale without a Card	Company's employee or representative failed to note on the sales slip the two (2) types of identification used and that no card was present at the time of the sale. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
24	No Proper Identification For Catalog, Phone or Fax Purchase	Company's employee or representative failed to note on the sales slip the Cardholder's full address and telephone number for a catalog, phone or fax purchase. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
25	Expired Cardholder Forms	Company's employees or representatives used Card forms that have expired or have been otherwise replaced by new forms by Bank. Only the portion of the transaction affected by the expired forms will be charged back to Company. This Chargeback will only be exercised when such transaction cannot be promptly collected from the Cardholder.
26	Employee Fraud	Company's employee or representative involved in fraud relating to the Card Plan.

CODE	DEFINITION	DOCUMENTATION TO SUPPORT CHARGEBACK	DOCUMENTATION TO REVERSE CHARGEBACK
- - - - -	- - - - -	- - - - -	- - - - -
21	Failure to Give Cardholder Agreement to Cardholder	Written Cardholder Claim.	Well-documented procedure in place and training regarding handing out cardholder agreements and forms.
22	No Proper Identification For New Account Application	Application Copy; NAPS record of verification of identification.	None
23	No Proper Identification For an Add-On-Sale without a Card	Sales Slip.	Sales Slip with identification notation.
24	No Proper Identification For Catalog, Phone or Fax Purchase	Sales Slip.	None
25	Expired Cardholder Forms	Copy of Application-Form number indicates date on Form; Written Cardholder Claim.	None
26	Employee Fraud	Copy of Cardholder forms indicating Employee or Former-employee involvement.	None

EXHIBIT 10.3

INDUSTRIAL LEASE AGREEMENT

BETWEEN THE COMPANY AND HAVEN GATEWAY LLC

DATED AS OF AUGUST 17, 2000

HAVEN GATEWAY CENTRE
INDUSTRIAL LEASE

THIS HAVEN GATEWAY CENTRE INDUSTRIAL LEASE (this "Lease") is made as of August 17, 2000, by and between

"LANDLORD" HAVEN GATEWAY LLC, a Delaware limited liability company
and

"TENANT" THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware corporation

SECTION 1: DEFINITIONS

- 1.1 DEFINITIONS: Each underlined term in this section shall have the meaning set forth next to that underlined term.
- 1.2 ACCESS LAWS: The Americans With Disabilities Act of 1990 (including the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities) and all other Governmental Requirements relating to the foregoing.
- 1.3 ADDITIONAL RENT: Defined in paragraph captioned "ADDITIONAL RENT".
- 1.4 BASE BUILDING. Defined in the Work Letter Agreement attached hereto as EXHIBIT C.
- 1.5 BASE RENT:

Monthly Base Rent:

LEASE MONTHS	MONTHLY BASE RENT
1-29	\$73,800.56
30-59	\$79,422.04
60-87	\$84,844.53

Annual Base Rent:

LEASE MONTHS	ANNUAL BASE RENT
1-29	\$885,606.72
30-59	\$953,064.48
60-87	\$1,018,134.36

- 1.6 **BROKERS:** Tenant was represented in this transaction by The Seeley Company, a licensed real estate broker. Landlord was represented in this transaction by Investment Development Services and Cushman and Wakefield, licensed real estate brokers.
- 1.7 **BUILDING:** A free-standing industrial building being constructed on the Land, which Building shall be commonly known as 3800 East Philadelphia Street, Ontario, California, which will contain approximately 248,738 rentable square feet and be built substantially in accordance with the Shell Specifications.
- 1.8 **BUSINESS DAY:** Calendar days, except for Saturdays and Sundays and holidays when banks are closed in Los Angeles, California.
- 1.9 **CLAIMS:** An individual and collective reference to any and all claims, demands, damages, injuries, losses, liens, liabilities, penalties, fines, lawsuits, actions, other proceedings and expenses (including attorney's fees and expenses incurred in connection with the proceeding whether at trial or on appeal).
- 1.10 **COMMENCEMENT DATE:** The earlier to occur of: (a) the date on which Tenant first conducts business in any portion of the Premises, or (b) thirty (30) days after Substantial Completion. Except as set forth in this Lease, Tenant shall not be obligated to pay Base Rent or Additional Rent under this Lease until the Commencement Date occurs.
- 1.11 **ESTIMATED OPERATING COSTS ALLOCABLE TO THE PREMISES:** Defined in paragraph captioned "ADDITIONAL RENT".
- 1.12 **EVENTS OF DEFAULT:** One or more of those events or states of facts defined in the paragraph captioned "EVENTS OF DEFAULT".
- 1.13 **EXCESS ALLOWANCE:** Defined in the Work Letter Agreement attached hereto as EXHIBIT C.
- 1.14 **GOVERNMENTAL AGENCY:** The United States of America, the state in which the Land is located, any county, city, district, municipality or other governmental subdivision, court or agency or quasi-governmental agency having jurisdiction over the Land and any board, agency or authority associated with any such governmental entity, including the fire department having jurisdiction over the Land.
- 1.15 **GOVERNMENTAL REQUIREMENTS:** Any and all statutes, ordinances, codes, laws, rules, regulations, orders and directives of any Governmental Agency as now or later amended.
- 1.16 **HAZARDOUS SUBSTANCE(S):** Asbestos, PCBs, petroleum or petroleum-based chemicals or substances, urea formaldehyde or any chemical, material, element, compound, solution, mixture, sub-stance or other matter of any kind whatsoever which is now or later defined, classified, listed, designated or regulated as hazardous, toxic or radioactive by any Governmental Agency.
- 1.17 **LAND:** The land upon which the Building is located in County of San Bernardino, State of California, as legally described in EXHIBIT A attached to this Lease.
- 1.18 **LANDLORD:** The limited liability company named on the first page of this Lease, or its successors and assigns as provided in paragraph captioned "ASSIGNMENT BY LANDLORD".
- 1.19 **LANDLORD'S AGENTS:** Landlord's partners, officers, directors, agents, employees, trustees, members, investment advisors, consultants and contractors.
- 1.20 **LEASE TERM:** Commencing on the Commencement Date, and ending eighty seven (87) months later, subject to renewal or earlier termination in accordance with the terms of this Lease. If the Commencement Date is a date other than the first day of a calendar month, the Lease Term shall be extended by the number of days remaining in the month in which the Commencement Date occurs.

- 1.21 MANAGER: Investment Development Services, Inc., or its replacement, as specified by written notice from Landlord to Tenant.
- 1.22 MANAGER'S ADDRESS: 888 West Sixth Street, 9th Floor, Los Angeles, California 90017, which address may be changed by written notice from Landlord to Tenant.
- 1.23 OPERATING COSTS: Defined in paragraph captioned "ADDITIONAL RENT".
- 1.24 OPERATING COSTS ALLOCABLE TO THE PREMISES: Defined in paragraph captioned "ADDITIONAL RENT".
- 1.25 PARKING RIGHTS: As of the Commencement Date, Tenant shall be permitted to use two hundred (200) parking spaces on an exclusive basis in the Building's parking area (as reasonably designated by Landlord) for the following: 161 passenger cars (6 of which are for handicapped spaces), 2 vans and 37 trailers. Tenant is aware and agrees that the final number of parking spaces may change if required by any Governmental Agency.
- 1.26 PERMITTED USE: Warehousing and Distribution of goods that are non-Hazardous Substances, and related office use incidental thereto, so long as such use is consistent with Governmental Requirements and with first-class industrial buildings of the same or similar use as the Building and located in the metropolitan area in which the Building is located.
- 1.27 INTENTIONALLY OMITTED
- 1.28 PREPAID RENT: \$93,276.75, to be applied toward Base Rent and Additional Rent for the first full calendar month of the Lease Term or to the first calendar month in which full Base Rent and Additional Rent is due.
- 1.29 PREMISES: The entire Building, as depicted on the Plan attached hereto as EXHIBIT B. Landlord and Tenant hereby agree that the Premises consist of approximately 248,738 rentable square feet. Landlord and Tenant acknowledge and agree that the term "Premises" is used interchangeably with the term "Building" throughout this Lease. On or about the Commencement Date, Landlord shall provide to Tenant the certification of Landlord's architect or civil engineer as to the exact square footage of the Premises, and such certification shall be binding and conclusive on Landlord and Tenant for all purposes under this Lease. If the amount of the rentable square feet and/or the usable square feet of the Premises is adjusted as a result of such architect's certification, then Base Rent, Tenant's Pro Rata Share of the Project and the Tenant Improvement Allowance shall be equitably adjusted by Landlord accordingly.
- 1.30 PRIME RATE: Defined in paragraph captioned "Default Rate".
- 1.31 PROJECT: The Haven Gateway Centre within which the Building and Land are located, which Project shall consist of approximately 73.64 acres and, when completed, estimated to be approximately 1,530,777 rentable square feet, as the same may be adjusted by Landlord from time to time. If the amount of rentable square feet of the Project is adjusted, then Tenant's Pro Rata Share shall be equitably adjusted by Landlord accordingly.
- 1.32 PROPERTY TAXES: (1) Any form of ad valorem real or personal property tax or assessment imposed by any Governmental Agency on the Land, Building, related improvements or any personal property owned by Landlord associated with the Building or Land; (2) any other form of tax or assessment, license fee, license tax, tax or excise on rent or any other levy, charge, expense or imposition made or required by any Governmental Agency on any interest of Landlord in the Building, Land, related improvements or personal property; (3) any fee for services charged by any Governmental Agency for any services such as fire protection, street, sidewalk and road

maintenance, refuse collection, school systems or other services provided or formerly provided to property owners and residents within the general area of the Land; (4) any governmental impositions allocable to or measured by the area of any or all of the Building, Land, related improvements or personal property, or the amount of any base rent, additional rent or other sums payable under any lease for any or all of the Building, Land, related improvements or personal property, including any tax on gross receipts or any excise tax or other charges levied by any Governmental Agency with respect to the possession, leasing, operation, maintenance, alteration, repair, use or occupancy of any or all of the Land or Building, related improvements or personal property or the rent earned by any part of or interest in the Building or Land, related improvements or personal property; (5) any impositions by any Governmental Agency on any transaction evidenced by a lease of any or all of the Building or Land, related improvements or personal property or charge with respect to any document to which Landlord is a party creating or transferring an interest or an estate in any or all of the Building or Land, related improvements or personal property; and (6) any increase in any of the foregoing based upon construction of improvements or change of ownership of any or all of the Land, related improvements or personal property. Property Taxes shall not include taxes on Landlord's net income, any inheritance, estate or gift taxes, excess profits taxes, franchise taxes and capital stock taxes.

- 1.33 PUNCH LIST WORK: Minor items of repair, correction, adjustment or completion as such phrase is commonly understood in the construction industry in the metropolitan area in which the Land is located.
- 1.34 SECURITY DEPOSIT: Fifty Thousand Four Hundred Eighty Two and 00/100 Dollars (\$50,482.00).
- 1.35 SHELL SPECIFICATIONS: Defined in the Work Letter Agreement attached hereto as EXHIBIT C.
- 1.36 SHELL WORK: Defined in the Work Letter Agreement attached hereto as EXHIBIT C.
- 1.37 SUBSTANTIAL COMPLETION: The date that the Shell Work has been substantially completed substantially in accordance with the Shell Specifications, subject only to Punch List Work.
- 1.38 TENANT: The person or entity(ies) named on the first page of this Lease.
- 1.39 TENANT ALTERATIONS: Defined in paragraph captioned "TENANT ALTERATIONS".
- 1.40 TENANT IMPROVEMENT ALLOWANCE: The maximum amount to be expended by Landlord (subject to the Excess Allowance) for the cost of Tenant Improvements (including architectural, engineering, permitting and space planning fees), which maximum shall not exceed Four Hundred Thirty Five Thousand Two Hundred Ninety One and 50/100 Dollars (\$435,291.50).
- 1.41 TENANT IMPROVEMENTS: Those alterations or improvements to be constructed in the Premises by Tenant in accordance with and subject to the terms and conditions of the Work Letter Agreement attached hereto as EXHIBIT C.
- 1.42 TENANT'S AGENTS: Any and all officers, partners, contractors, subcontractors, consultants, licensees, agents, concessionaires, subtenants, servants, employees, customers, guests, invitees or visitors of Tenant.
- 1.43 TENANT'S PRO RATA SHARE: One Hundred Percent (100%) of Operating Costs pertaining to the Building and/or the Land; Sixteen and 25/100 Percent (16.25%) of Operating Costs pertaining to the Project as a whole.
- 1.44 YEAR: A calendar year commencing January 1 and ending December 31.

SECTION 2: PREMISES AND TERM

- 2.1 LEASE OF PREMISES. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, upon the terms and conditions set forth in this Lease.
- 2.2 LEASE TERM. The Lease Term shall be for the period stated in the definition of that term, unless earlier terminated as provided in this Lease. The estimated date of Substantial Completion is currently October 1, 2000, and the estimated Commencement Date is accordingly October 31, 2000. Subject to Section 2.6 below, if Landlord is unable to deliver the Base Building to Landlord by the estimated date of Substantial Completion, this Lease shall not be void or voidable, and Landlord shall not be deemed to be in default hereunder, nor shall Landlord be liable for any loss or damage directly or indirectly arising out of or resulting from such delay. Tenant agrees to accept possession of the Base Building at such times as Landlord is able to tender the same.
- 2.3 EARLY ENTRY INTO PREMISES. Tenant may enter into the Premises prior to Substantial Completion, upon receipt of Landlord's prior written consent (which shall not be unreasonably withheld or delayed), solely for the purpose of installing furniture and trade fixtures, and installing and testing telephones, wiring, computers, photocopy equipment, and other business equipment. Such early entry will not advance the Commencement Date so long as Tenant does not commence business operations from any part of the Premises. All of the provisions of this Lease shall apply to Tenant during any early entry, including the insurance provisions of the Lease, but excluding the obligation to pay Base Rent unless and until Tenant has commenced business operations in the Premises, whereupon Base Rent shall commence. Landlord may revoke its permission for Tenant's early entry if Tenant's activities or workers interfere with the completion of the Tenant Improvements. If Tenant is granted early entry, Landlord shall not be responsible for any loss, including theft, damage or destruction to any work or material installed or stored by Tenant at the Premises or for any injury to Tenant or Tenant's Agents except that caused as a direct result of the gross negligence or willful misconduct of Landlord. Landlord shall have the right to post appropriate notices of non-responsibility and to require Tenant to provide Landlord with evidence that Tenant has fulfilled its obligation to provide insurance pursuant to the provisions of this Lease. During such early entry, Landlord shall have in place the insurance set forth in Section 4.14 below, and shall, after written request by Tenant, provide certificates of insurance, or their equivalents, to Tenant, evidencing the same.
- 2.4 TENANT IMPROVEMENTS. Tenant shall construct the Tenant Improvements pursuant to the Work Letter attached as EXHIBIT C.
- 2.5 SUBSTANTIAL COMPLETION. Landlord shall notify Tenant in writing at least five (5) Business Days in advance of the estimated date of Substantial Completion. If Tenant believes that Substantial Completion has not occurred, Tenant shall notify Landlord in writing of its objections within ten (10) Business Days after its receipt of the Landlord's notice described in the preceding sentence. Landlord shall have a reasonable time after its receipt of Tenant's notice in which to take such action as may be necessary to achieve Substantial Completion, and shall notify Tenant in writing when such has been completed. Taking of possession by Tenant shall establish the date of Substantial Completion as specified in the definition of that term and the establishment of such fact upon the taking of possession shall occur even if Tenant disputes whether Substantial Completion has occurred or attempts to condition or qualify the taking of possession. Such taking of possession shall further establish that the Base Building is in good and

satisfactory condition when possession was so taken. Tenant acknowledges that no representations as to the condition of the Premises or Base Building have been made by Landlord, unless such are expressly set forth in this Lease. In the event of any dispute as to whether Substantial Completion has occurred, the certificate of Landlord's general contractor shall be conclusive, except that any delay in receipt of such certificate or in Substantial Completion which is caused by Tenant or Tenant's Agents shall be charged to Tenant in the amount of the daily Base Rent multiplied by the number of days of such delays. If on the date of Substantial Completion, Punch List Work remains to be completed, Landlord and Tenant shall agree on such Punch List Work and Landlord will diligently complete such Punch List Work. In no event shall Tenant's refusal or failure to agree on the nature and extent of Punch List Work or the existence of items of Punch List Work delay or postpone the occurrence of the date of Substantial Completion or the Commencement Date. If the estimated date of Substantial Completion changes at any time after Landlord has given notice pursuant to this Paragraph, then Landlord shall give at least five (5) Business Days advance notice of the new estimated date of Substantial Completion.

If Substantial Completion has not occurred on or before October 1, 2000 (the "First Deadline Date"), Tenant shall have the right, as its sole remedy, to one (1) day of Base Rent abatement, commencing upon the Commencement Date, for each day that the date of Substantial Completion extends beyond the First Deadline Date; provided however, that, notwithstanding anything to the contrary contained in this Lease, in no event shall Tenant receive more than sixty (60) days of Base Rent abatement pursuant to this Section 2.5, and the initial Lease Term shall be extended one (1) day for each day of Base Rent abatement that Tenant receives pursuant to this Section 2.5. Notwithstanding anything to the contrary contained in this Lease, the First Deadline Date shall be extended for any delays in Substantial Completion caused by any acts or omissions of Tenant or Tenant's Agents, force majeure event (as set forth in Section 6.8 below) or governmental delay.

If Substantial Completion has not occurred on or before December 31, 2000 (the "Second Deadline Date"), Tenant shall have the right, as its sole remedy, to terminate this Lease by notifying Landlord in writing of such election within five (5) Business Days after the Second Deadline Date, but prior to Substantial Completion. In the event of any such termination, neither Landlord nor Tenant shall have any rights, liabilities or obligations accruing under the Lease after the effective date of termination, except for such rights and liabilities which, by the terms of this Lease or at law, are obligations of the Tenant or Landlord which expressly survive the expiration of the Lease, and any prepaid amount that has not been properly applied by Landlord shall be promptly returned to Tenant. Notwithstanding anything to the contrary contained in this Lease, the Second Deadline Date shall be extended for any delays in Substantial Completion caused by any acts or omissions of Tenant or Tenant's Agents, force majeure event (as set forth in Section 6.8 below) or governmental delay; provided however, that the Second Deadline Date shall not be extended as a result of any failure to enter into the Edison Lease, as set forth in the immediately following paragraph.

Landlord hereby represents and warrants to Tenant that the failure of Landlord to enter into either the Edison Lease or the side yard agreement to be executed in connection with the Edison Lease (the "Yard Agreement") shall not in and of itself preclude the issuance of the certificate of occupancy, or the equivalent sign-off by the appropriate building inspector, with respect to the Premises. In the event that after

Substantial Completion, any failure to enter into either the Edison Lease or the Yard Agreement unconditionally in and of itself precludes the issuance of the certificate of occupancy, or the equivalent sign-off by the appropriate building inspector, with respect to the Premises (the "Edison Completion Failure"), then Tenant may terminate this Lease within ten (10) Business Days after either Landlord or Tenant notifies the other of the Edison Completion Failure.

- 2.6 TENANT'S CONTRIBUTION TO TENANT IMPROVEMENT COSTS. If the cost of the Tenant Improvements exceeds the Tenant Improvement Allowance and Excess Allowance, if any, Tenant shall pay to Landlord such excess in accordance with the terms of the Work Letter Agreement attached hereto as EXHIBIT C. All Tenant Improvements, regardless of which party constructed them, shall become the property of Landlord and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease; PROVIDED THAT, at Landlord's election and upon notice to Tenant, Tenant shall be required to remove all or any portion of the Tenant Improvements upon the expiration or earlier termination of this Lease.
- 2.7 CONDITION OF PREMISES "AS-IS". Subject to the performance by Landlord of its obligations to perform (or cause to be performed) the Shell Work in accordance with the Work Letter Agreement, Tenant hereby agrees that the Premises shall be taken "as is", "with all faults", without any representations or warranties, and Tenant hereby agrees and warrants that it has investigated and inspected the condition of the Premises and the suitability of same for Tenant's purposes, and Tenant does hereby waive and disclaim any objection to, cause of action based upon, or claim that its obligations hereunder should be reduced or limited because of the condition of the Premises or the Base Building or the suitability of same for Tenant's purposes. Tenant acknowledges that neither Landlord nor any agent nor any employee of Landlord has made any representations or warranty with respect to the Premises or the Base Building or with respect to the suitability of either for the conduct of Tenant's business, and Tenant expressly warrants and represents that Tenant has relied solely on its own investigation and inspection of the Premises and the Base Building in its decision to enter into this Lease and let the Premises in an "as is" condition. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Base Building were at such time in satisfactory condition.
- 2.8 MEMORANDUM OF COMMENCEMENT DATE. At Landlord's election and request, Tenant shall execute a Memorandum of Commencement Date in the form attached as EXHIBIT D. In no event shall Tenant record this Lease or the Memorandum of Commencement Date; provided however, that Tenant may record, at its sole cost and expense, a short form Memorandum of this Lease, provided that Tenant shall simultaneously deliver to Landlord a termination of such Memorandum, in recordable form, executed by Tenant, in form and content satisfactory to Landlord, which termination shall be held in trust by Landlord and may be recorded by Landlord, at Tenant's expense, on or after the expiration or earlier termination of the Lease.
- 2.9 USE AND CONDUCT OF BUSINESS. The Premises are to be used only for the Permitted Uses, and for no other business or purpose without the prior consent of Landlord. Landlord makes no representation or warranty as to the suitability of the Premises for Tenant's intended use. Tenant shall, at its own cost and expense, obtain and maintain any and all licenses, permits, and approvals necessary or appropriate for its use, occupation and operation of the Premises. Tenant's inability to obtain or maintain any such license, permit or approval necessary or appropriate for its use, occupation or

operation of the Premises shall not relieve it of its obligations under this Lease, including the obligation to pay Base Rent and Additional Rent. No act shall be done in or about the Premises or Project that is unlawful or that will increase the existing rate of insurance on any or all of the Land or Building or Project. Tenant shall not commit or allow to be committed or exist: (a) any waste upon the Premises, (b) any public or private nuisance, or (c) any act or condition which may disturb the quiet enjoyment of any other tenant in the Building, or in any other building located within the Project, violate any of Landlord's contracts affecting any or all of the Land or Building or Project (provided that such contracts do not materially and unreasonably interfere with Tenant's Permitted Use), create or contribute to any work stoppage, strike, picketing, labor disruption or dispute, interfere in any way with the business of Landlord or any other tenant in the Project or with the rights or privileges of any contractors, subcontractors, licensees, agents, concessionaires, subtenants, servants, employees, customers, guests, invitees or visitors or any other persons lawfully in and upon the Land or Building or Project, or causes any impairment or reduction of the good will or reputation of the Land or Building or Project. Tenant shall not, without the prior consent of Landlord, use any apparatus, machinery, device or equipment in or about the Premises which will cause any substantial noise or vibration or any increase in the normal consumption level of electric power. If any of Tenant's apparatus, machinery, equipment or devices should disturb the quiet enjoyment of any other tenant in the Building or Project, then Tenant shall provide, at its sole cost and expense, adequate insulation or take other such reasonable action, including removing such apparatus, machinery, equipment or devices, as may be necessary to eliminate the disturbance.

2.10 COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS AND RULES AND REGULATIONS. Tenant shall comply with all Governmental Requirements relating to the Premises (including, without limitation, Tenant's use, occupancy and operation thereof) and all other covenants, conditions and restrictions and other matters of record, and Tenant shall observe such reasonable rules and regulations as may be adopted and delivered to Tenant by Landlord from time to time for the safety, care and cleanliness of the Building or Project, and for the preservation of good order in the Building and Project, including the Rules and Regulations attached to this Lease as EXHIBIT E.

2.11 OPTION TO RENEW.

2.11.1 RENEWAL OPTIONS. Provided Tenant is not in material default under this Lease beyond applicable notice and cure periods, and subject to the terms and conditions of this section 2.11, Tenant shall have (a) one (1) option to renew (the "FIRST OPTION TO RENEW") the term of the Lease with respect to the entire Premises for a period of thirty-three (33) months (the "FIRST OPTION TERM"), and (b) one (1) option to renew (the "SECOND OPTION TO RENEW") the term of the Lease with respect to the entire Premises for an additional period of sixty (60) months (the "SECOND OPTION TERM"). If Tenant does not timely and properly exercise the First Option to Renew, then the Second Option to Renew shall immediately become null and void with no further force and effect. Except as set forth in this section 2.11, all terms and conditions shall remain the same during the Option Term. Monthly Base Rent during the First Option Term shall be as follows:

First Option Term Months	Monthly Base Rent
-----	-----

1-29	\$89,645.18
------	-------------

Monthly Base Rent during the Second Option Term, if any, shall be the greater of (i) the then Fair Market Rental Rate, and (ii) the Monthly Base Rent for the last month of the immediately preceding First Option Term. The Annual Base Rent for each Option Term shall be equal to twelve (12) times the adjusted Monthly Base Rent. "Fair Market Rental Rate" shall mean the net effective market rental then being offered and accepted for comparable space and location in the city of Ontario, California, in first class industrial buildings comparable in location and condition to the Building, all as reasonably determined by Landlord, computed as described in the remainder of this paragraph. The net effective market rental shall equal the arithmetic average of the rental rate over the term of such comparable lease less any customary concessions (including tenant improvement allowances), provided that the value of the then existing Tenant Improvements shall be taken into account.

2.11.2 NOTICE OF EXERCISE. Tenant shall give Landlord written notice of its unconditional exercise an Option to Renew at least two hundred seventy (270) days but not more than three hundred sixty (360) days prior to the expiration of the immediately preceding term of the Lease. If Tenant fails to notify Landlord in writing of its unconditional exercise its Option to Renew as set forth in the preceding paragraph, the Option to Renew shall terminate, and Landlord shall be free to enter into a lease with a third party. Within twenty (20) days after Landlord receives the notice described in the previous sentence with respect to the Second Option Term, Landlord will provide Tenant with Landlord's determination of the Fair Market Rental Rate for the Second Option Term. If such determination is based upon the Fair Market Rental Rate, Tenant shall have thirty (30) days from Landlord's notification of the proposed Base Rent to accept Landlord's determination of Base Rent for the Second Option Term or provide its own determination of Fair Market Rental Rate for Landlord's consideration accompanied by market information on which Tenant based its determination.

2.11.3 DISPUTE REGARDING FAIR MARKET RENTAL RATE. If Landlord and Tenant are unable to agree on the Fair Market Rental Rate for the Second Option Term using their best good faith efforts within thirty (30) days from Landlord's notification of the proposed Base Rent, Landlord shall, no more than ten (10) days thereafter, select an independent M.A.I. (certified in the State of California) real estate appraiser, or real estate broker with at least seven (7) years experience in the metropolitan area of the Ontario, California industrial real estate market, who shall prepare a written appraisal or market report of the Fair Market Rental Rate using the assumptions described in paragraph 2.11.1. The report shall be completed and delivered to Tenant and Landlord within thirty (30) days from the date Landlord selects the appraiser or real estate broker. Such appraiser's/broker's determination of Fair Market Rental Rate for the Second Option Term shall be determinative unless Tenant disputes it as provided in the next sentence. If Tenant disputes such report Tenant shall within five (5) days following delivery of the report, deliver to Landlord notice (a) that Tenant disputes such report, and (b) of the identity of another appraiser or real estate broker selected by Tenant meeting the qualifications set forth in this paragraph. The appraiser/broker selected by Tenant shall submit his report of the Fair Market Rental Rate for the Second Option Term using the assumptions described in paragraph 2.11.1 within twenty (20) days following the delivery of Tenant's notice to Landlord disputing the initial report. If the two reports are within two

and one-half percent (2.5%) of each other, the Fair Market Rental Rate for the Second Option Term shall be that set forth in the report of Landlord's appraiser/broker. If not, then within five (5) days after the delivery of the second report, the two appraisers/brokers shall appoint a third appraiser/broker meeting the qualifications set forth in this paragraph, and the third appraiser/broker shall deliver his decision within ten (10) days following his selection and acceptance of the appraisal assignment. The third appraiser/broker shall be limited in authority to selecting, in his opinion, which of the two earlier reports determinations best reflects the Fair Market Rental Rate under the assumptions set forth in this paragraph. The third appraiser/broker must choose one of the two earlier reports, and, upon doing so, the third appraiser's/broker's determination shall be the controlling determination of the Fair Market Rental Rate for the Second Option Term. Each party shall pay the costs and fees of the appraiser/broker it selected; if a third appraiser/broker is selected, the party whose report is not selected to be the Fair Market Rental Rate by said third appraiser/broker shall pay all of said third appraiser's/broker's costs and fees.

2.11.4 CONDITIONS. The rights contained in this section may be exercised only if the originally named Tenant (and not any assignee, sublessee, or other transferee of Tenant's interest in this Lease) occupies more than fifty percent (50%) of the Premises throughout the Lease, and more than sixty percent (60%) of the Premises as of the date it exercises the Option to Renew in accordance with the terms of this section.

SECTION 3: BASE RENT, ADDITIONAL RENT AND OTHER SUMS PAYABLE UNDER LEASE

3.1 PAYMENT OF RENTAL. Tenant agrees to pay Base Rent, Additional Rent and any other sum due under this Lease to Landlord without demand, deduction, credit, adjustment or offset of any kind or nature, in lawful money of the United States when due under this Lease, at the offices of Manager at Manager's Address, or to such other party or at such other place as Landlord may from time to time designate in writing.

3.2 BASE RENT. (a) On execution of this Lease, Tenant shall pay to Landlord the amount specified in the definition of Prepaid Rent for the month specified in the definition of that term. Tenant agrees to pay Base Rent to Landlord without demand, in advance on or before the first day of each calendar month of the Lease Term. Base Rent for any partial month at the beginning or end of the Lease Term shall be prorated. Base Rent for any partial month at the beginning of the Lease Term shall be paid by Tenant on the Commencement Date.

(b) Provided Tenant is not in default under any of the terms, covenants and conditions of the Lease, Tenant shall be credited with the payment of Monthly Base Rent with respect to the Premises for the second (2nd), third (3rd) and fourth (4th) months of the Lease Term. No such Base Rent credit shall reduce the amount of Additional Rent and other charges which is otherwise payable by Tenant under this Lease. Tenant understands and agrees that the foregoing rental credit is conditioned upon Tenant's not having wrongfully terminated this Lease or Landlord not having terminated this Lease by reason of Tenant's default under this Lease (each such termination, a "Trigger Event"). Accordingly, (i) upon the occurrence of any Trigger Event during any portion of the rental credit period, the foregoing rental credit shall be null and void, and all of the Base Rent which, in the absence of such rental credit, would have been payable during such period up to the date of the Trigger Event shall become immediately due and payable by Tenant

and Tenant shall pay Base Rent during the remainder of such rental credit period as such Base Rent would have become due and payable in the absence of such rental credit provision, and (ii) upon the occurrence of any Trigger Event after the rental credit period, all Base Rent which would have been payable during such rental credit period in the absence of such rental credit shall become immediately due and payable by Tenant.

3.3 SECURITY DEPOSIT. On execution of this Lease, Tenant shall pay to Landlord the sum specified in the definition of the term Security Deposit, as security for the full and faithful payment of all sums due under this Lease and the full and faithful performance of every covenant and condition of this Lease to be performed by Tenant. If Tenant shall breach or default with respect to any payment obligation or other covenant or condition of this Lease, Landlord may apply all or any part of the Security Deposit to the payment of any sum in default or any damage suffered by Landlord as a result of such breach or default, and in such event, Tenant shall, upon demand by Landlord, deposit with Landlord the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Lease Term. In the event Tenant defaults, beyond applicable notice and cure periods, on its obligations to pay Base Rent, Additional Rent or any other sum under this Lease on more than two occasions during any twelve (12) month period, Landlord may, at any time thereafter require an increase in the Security Deposit by an amount equal to one hundred percent (100%) of the amount specified in the definition of the term Security Deposit and Tenant shall immediately deposit such additional amount with Landlord upon Landlord's demand. Following such increase, the definition of the term Security Deposit shall refer to the amount of the Security Deposit prior to the increase plus the increased amount. The remedy of increasing the Security Deposits for Tenant's multiple defaults shall be in addition to and not a substitute for any of Landlord's other rights and remedies under this Lease or applicable law. Additionally, Landlord's use or application of all or any portion of the Security Deposit shall not impair any other rights or remedies provided under this Lease or under applicable law and shall not be construed as a payment of liquidated damages. If Tenant shall have fully complied with all of the covenants and conditions of this Lease, the remaining Security Deposit shall be repaid to Tenant, without interest, within thirty (30) Business Days after the expiration of this Lease. Tenant may not mortgage, assign, transfer or encumber the Security Deposit and any such act on the part of Tenant shall be without force or effect. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Base Rent, Additional Rent and all other sums payable under this Lease to Landlord for all periods prior to the institution of such proceedings and the balance, if any, may be retained by Landlord and applied against Landlord's damages. In the event of a sale or transfer of Landlord's estate or interest in the Land and Building, Landlord shall have the right to transfer the Security Deposit to the vendee or the transferee, and Landlord shall be considered released by Tenant from all liability for the return of the Security Deposit. Tenant shall look solely to the transferee for the return of the Security Deposit, and it is agreed that all of the foregoing shall apply to every transfer or assignment made of the Security Deposit to a new transferee. No mortgagee or purchaser of any or all of the Building at any foreclosure proceeding brought under the provisions of any mortgage shall (regardless of whether the Lease is at the time in question subordinated to the lien of any mortgage) be liable to Tenant or any other person for any or all of such sum (or any other or additional security deposit or other payment made by Tenant under the provisions of this Lease), unless Landlord has

actually delivered it in cash to such mortgagee or purchaser, as the case may be. In the event of any rightful and permitted assignment of Tenant's interest in this Lease, the Security Deposit shall be deemed to be held by Landlord as a deposit made by the assignee, and Landlord shall have no further liability to the assignor with respect to the return or the Security Deposit.

No right or remedy available to Landlord in this Lease shall preclude or extinguish any other right to which Landlord may be entitled. It is understood that if Tenant fails to perform its obligations and to take possession of the Premises as provided in this Lease, the Prepaid Rent and the Security Deposit shall not be deemed liquidated damages. Landlord may apply such sums to reduce Landlord's damages and such application of funds shall not preclude Landlord from recovering from Tenant all additional damages incurred by Landlord.

3.4 ADDITIONAL RENT. Definitions of certain terms used in this paragraph are set forth in subparagraph 3.4.5. Tenant agrees to pay to Landlord, as additional rent as computed in this paragraph (individually and collectively the "Additional Rent"), all Operating Costs Allocable to the Premises. Tenant acknowledges that this is intended to be a triple net lease.

3.4.1 RENTAL ADJUSTMENT FOR ESTIMATED OPERATING COSTS. Landlord shall furnish Tenant a written statement of Estimated Operating Costs Allocable to the Premises for each Year and the amount payable monthly by Tenant for such costs shall be computed as follows: one-twelfth (1/12) of the amount of Estimated Operating Costs Allocable to the Premises shall be Additional Rent and shall be paid monthly by Tenant for each month during such Year after the Commencement Date. If such written statement is furnished after the commencement of the Year (or as to the first Year during the Lease Term, after the Commencement Date), Tenant shall also make a retroactive lump-sum payment to Landlord equal to the monthly payment amount multiplied by the number of months during the Year (or as to the first Year during the Lease Term, after the Commencement Date) for which no payment was paid. Notwithstanding the foregoing, Landlord reserves the right, from time to time during each Year, to revise the Estimated Operating Costs Allocable to the Premises and upon advance written notice to Tenant of such revision, Tenant shall adjust its payment to Landlord under this subparagraph 3.4.1 accordingly.

3.4.2 ACTUAL COSTS. After the close of each Year, Landlord shall deliver to Tenant a written statement setting forth the Operating Costs Allocable to the Premises during the preceding Year. If such Operating Costs Allocable to the Premises for any Year exceed the Estimated Operating Costs Allocable to the Premises paid by Tenant to Landlord pursuant to subparagraph 3.4.1 for such Year, Tenant shall pay the amount of such excess to Landlord within twenty (20) Business Days after receipt of such statement by Tenant. If such statement shows the Operating Costs Allocable to the Premises to be less than the Estimated Operating Costs Allocable to the Premises paid by Tenant to Landlord pursuant to subparagraph 3.4.1, then the amount of such overpayment shall be paid by Landlord to Tenant within twenty (20) Business Days following the date of such statement or, at Landlord's option, shall be credited towards the installment(s) of Additional Rent next coming due from Tenant.

- 3.4.3 DETERMINATION OF OPERATING COSTS. The determination of Operating Costs Allocable to the Premises shall be reasonably made by Landlord.
- 3.4.4 END OF TERM. If this Lease shall terminate on a day other than the last day of a Year, (a) Landlord shall estimate the Operating Costs Allocable to the Premises for such Year predicated on the most recent reliable information available to Landlord; (b) the amount determined under clause (a) of this sentence shall be prorated by multiplying such amount by a fraction, the numerator of which is the number of days within the Lease Term in such Year and the denominator of which is 360; (c) if the clause (b) amount exceeds the Estimated Operating Costs Allocable to the Premises paid by Tenant for the last Year in the Lease Term, then Tenant shall pay the excess to Landlord within ten (10) Business Days after Landlord's delivery to Tenant of a statement for such excess; and (d) if the Estimated Operating Costs Allocable to the Premises paid by Tenant for the last Year in the Lease Term exceeds the clause (b) amount, then Landlord shall refund to Tenant the excess within the ten (10) Business Day period described in clause (c) if Tenant is not then in default of any of its obligations under this Lease. Landlord's and Tenant's obligations under this paragraph shall survive the expiration or other termination of this Lease.
- 3.4.5 DEFINITIONS. Each underlined term in this subparagraph shall have the meaning set forth next to that underlined term:
- (a) ESTIMATED OPERATING COSTS ALLOCABLE TO THE PREMISES. Landlord's estimate of Operating Costs Allocable to the Premises for a Year to be given by Landlord to Tenant pursuant to subparagraph 3.4.1.
- (b) OPERATING COSTS. All commercially reasonable expenses paid or incurred by Landlord in connection with the ownership, operation, maintenance and/or repair of: (i) the Building; (ii) the Project, provided that for purposes of this Lease, such expenses shall be limited to that amount of operating costs for the entire Project which is fairly and equitably allocated by Landlord, in its absolute discretion, to the Building; and (iii) the personal property used in conjunction with such maintenance, operation, ownership and repair, including, without limitation, all expenses paid or incurred by Landlord for: (a) utilities, including electricity, water, gas, sewers, fire sprinkler charges, refuse collection, telephone charges, cable television or other electronic or microwave signal reception, steam, heat, cooling or any other service which is now or in the future considered a utility and which are not payable directly by tenants in the Building; (b) supplies; (c) cleaning and janitorial services (including window washing) landscaping and landscaping maintenance (including irrigating, trimming, mowing, fertilizing, seeding and replacing plants), snow removal and other services; (d) security services, if any; (e) insurance; (f) management fees; (g) Property Taxes, tax consultant fees and expenses, and costs of appeals of any Property Taxes; (h) services of independent contractors; (i) compensation (including employment taxes and fringe benefits) of all persons who perform duties in connection with any service, repair, maintenance, replacement or improvement or other work included in this subparagraph; (j) license, permit and inspection fees; (k) assessments and special assessments due to deed restrictions, declarations or owners associations or other means of allocating costs of a larger tract of which the Land is a part; (l) rental of any machinery or equipment; (m) audit fees and accounting services related to the Building, and

charges for the computation of the rents and charges payable by tenants in the Building (but only to the extent the cost of such fees and services are in addition to the cost of the management fee); (n) the cost of improvements, repairs or replacements; (o) maintenance and service contracts; (p) legal fees and other expenses of legal or other dispute resolution proceedings; (q) maintenance and repair of the roof and roof membranes, (r) costs incurred by Landlord for compliance with Access Laws, as set forth in the paragraph entitled "Access Laws"; (s) elevator service and repair, if any; (t) business taxes and license fees; (u) maintenance and repair of the HVAC system in the Building and Project; (v) ground rent payable to Edison (defined below) or its successors pursuant to the Edison Lease (defined below); and (w) any other expense or charge which in accordance with generally accepted accounting and management principles would be considered an expense of maintaining, operating, owning or repairing the Building and the Project. Without limiting the foregoing, Operating Costs shall include replacement of roofs and roof membranes; exterior painting; parking area resurfacing, resealing and restriping parking areas and driveways; upgrading of the HVAC systems in the Building, and other capital improvements to the Building or to the Project if such costs set forth earlier in this sentence are to be equitably allocated as provided above in this subparagraph; PROVIDED THAT, such capital improvements, whether installed before or after the Commencement Date, shall be amortized with market interest over their estimated useful lives as determined by Landlord and only the amortization installments and interest attributable to the Lease Term shall be an Operating Cost under this Lease.

Operating Costs shall not include any of the following: interest and amortization of funds borrowed by Landlord for items other than capital improvements; leasing commissions and advertising, promotional and space planning expenses incurred in procuring tenants; salaries, wages, or other compensation paid to officers or executives of Landlord in their capacities as officers and executives; any cost or expense related to the testing for, removal, transportation, or storage of Hazardous Substances from the Building, except to the extent caused by or required as a result of the acts or omissions of Tenant or Tenant's Agents; alterations, additions or improvements made to comply with any Governmental Requirements in effect as of the date of this Lease, other than those required as a result of the acts or omissions of Tenant or Tenant's Agents or triggered by the Tenant Improvements or Tenant's particular use of the Premises; any and all costs of any kind or character for any injuries, damage and repairs necessitated by the negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents; depreciation of the Building and other improvements located on the Project; and interest, penalties or other costs arising out of Landlord's failure to make timely payment of its obligations.

(c) OPERATING COSTS ALLOCABLE TO THE PREMISES. The product of Tenant's Pro Rata Share times Operating Costs.

3.4.6 JANITORIAL SERVICES. Notwithstanding anything to the contrary contained in this Lease, Tenant shall contract directly with a janitorial service and shall pay for all janitorial services used on or for the Premises.

- 3.4.7 ADDITIONAL RENT. Any sums payable under this Lease pursuant to this paragraph or otherwise shall be Additional Rent and, in the event of nonpayment of such sums, Landlord shall have the same rights and remedies with respect to such nonpayment as it has with respect to nonpayment of the Base Rent due under this Lease.
- 3.4.8 OPERATING COST AUDIT. Landlord shall maintain records concerning estimated and actual Operating Costs Allocable to the Premises for no less than twelve (12) months following the period covered by the statement or statements furnished Tenant, after which time Landlord may dispose of such records. Provided that Tenant is not then in default of its obligation to pay Base Rent, Additional Rent or other payments required to be made by it under this Lease and provided that Tenant is not otherwise in default under this Lease, Tenant may, at Tenant's sole cost and expense, cause a Qualified Person (as defined below) to inspect Landlord's records. Such inspection, if any, shall be conducted no more than once each Year, during Landlord's normal business hours within sixty (60) Business Days after receipt of Landlord's written statement of Operating Costs Allocable to the Premises for the previous year, and upon Tenant first furnishing Landlord written notice of the inspection, if any, at least fifteen (15) Business Days in advance of such inspection. Any errors disclosed by the review shall be promptly corrected by Landlord; provided, however, that if Landlord disagrees with any such claimed errors, Landlord shall have the right to cause another review to be made by an auditor of Landlord's choice. In the event the results of the review of records (taking into account, if applicable, the results of any additional review caused by Landlord) reveal that Tenant has overpaid obligations for a preceding period, the amount of such overpayment shall be credited against Tenant's subsequent installment of Base Rent, Additional Rent or other payments due to Landlord under the Lease. In the event that such results show that Tenant has underpaid its obligations for a preceding period, the amount of such underpayment shall be paid by Tenant to Landlord with the next succeeding installment obligation of estimated Operating Costs Allocable to the Premises. If the actual Operating Costs Allocable to the Premises for any given Year were improperly computed and if the actual Operating Costs Allocable to the Premises are overstated by more than 5%, Landlord shall reimburse Tenant for the cost of its audit. A "QUALIFIED PERSON" means an internal auditor of Tenant or an accountant or other person experienced in accounting for income and expenses of industrial projects.
- 3.5 UTILITIES. Landlord shall have the right from time to time to select the company or companies providing electricity, gas, fuel, local telephone, telecommunication and any other utility services to the Building. Tenant shall contract directly and pay for all water, gas, heat, light, power, telephone, telecommunications, sewer, fire sprinkler charges and other utilities used on or from the Premises together with any taxes, penalties, surcharges or similar charges relating to such utilities. If any such service is not separately metered to the Premises, the cost therefor shall be an Operating Cost under this Lease. If Tenant desires to use the services of a provider of local telephone or telecommunication services whose equipment is not then servicing the Building, no such provider shall be permitted to install its lines or other equipment within the Building without the prior written consent of Landlord.

- 3.6 **HOLDOVER.** If Landlord agrees in writing that Tenant may hold over after the expiration or earlier termination of this Lease, unless the parties hereto otherwise agree in writing as to the terms of such holding over, the holdover tenancy shall be subject to termination by Landlord or Tenant at any time upon not less than thirty (30) days' prior written notice. If Tenant holds over without the consent of Landlord, the same shall be a tenancy at will terminable at any time, and Tenant shall be liable to Landlord for, and Tenant shall indemnify, protect, defend and hold Landlord harmless from and against, any damages, liabilities, losses, costs, expenses or claims suffered or caused by such holdover, including damages and costs related to any successor tenant of the Premises to whom Landlord could not deliver possession of the Premises when promised. During the first two (2) months of any holdover tenancy, whether with or without consent, Tenant shall pay to Landlord from time to time upon demand, an amount equal to one hundred twenty five percent (125%) of the then applicable Base Rent, plus all Additional Rent and other sums payable under this Lease, and be bound by all the terms, covenants and conditions specified in this Lease, as so far applicable. During all subsequent months of any holdover tenancy, whether with or without consent, Tenant shall pay to Landlord from time to time upon demand, an amount equal to one hundred fifty percent (150%) of the then applicable Base Rent, plus all Additional Rent and other sums payable under this Lease, and be bound by all the terms, covenants and conditions specified in this Lease, as so far applicable. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease. The preceding provisions of this Paragraph 3.6 shall not be construed as Landlord's consent to any holding over by Tenant.
- 3.7 **LATE CHARGE.** If Tenant fails to make any payment of Base Rent, Additional Rent or other amount within five (5) days from when due under this Lease, a late charge is immediately due and payable by Tenant equal to five percent (5%) of the amount of any such payment. Landlord and Tenant agree that this charge compensates Landlord for the administrative costs caused by the delinquency. The parties agree that Landlord's damage would be difficult to compute and the amount stated in this paragraph represents a reasonable estimate of such damage. Assessment or payment of the late charge contemplated in this paragraph shall not excuse or cure any Event of Default or breach by Tenant under this Lease or impair any other right or remedy provided under this Lease or under law.
- 3.8 **DEFAULT RATE.** Any Base Rent, Additional Rent or other sum payable under this Lease which is not paid when due shall bear interest at a rate equal to the lesser of: (a) the published prime rate of Riggs Bank N.A., or such other national banking institution designated by Landlord if such bank ceases to publish a prime rate (the "PRIME RATE"), then in effect, plus two (2) percentage points, or (b) the maximum rate of interest per annum permitted by applicable law (the "DEFAULT RATE"), but the payment of such interest shall not excuse or cure any Event of Default or breach by Tenant under this Lease or impair any other right or remedy provided under this Lease or under law.

SECTION 4: GENERAL PROVISIONS

- 4.1 **MAINTENANCE AND REPAIR BY LANDLORD.** Subject to the paragraphs captioned "DAMAGE OR DESTRUCTION" and "CONDEMNATION", Landlord shall maintain the public and common areas of the Project in reasonably good order and condition, except ordinary wear and tear, and except for damage occasioned by the act or omission of Tenant or Tenant's

- Agents which shall be paid for entirely by Tenant upon written demand by Landlord. In the event any or all of the Project becomes in need of maintenance or repair which Landlord is required to make under this Lease, and Landlord does not otherwise have notice of same, then Tenant shall immediately give written notice to Landlord, and Landlord shall commence such maintenance or repairs within a commercially reasonable time after Landlord's receipt of such notice. Tenant hereby waives the benefit of Sections 1941 and 1942 of the California Civil Code and any other statute providing a right to make repairs and deduct the cost thereof from the Rent. Tenant waives any right to terminate this Lease or offset or abate Rent by reason of any failure of Landlord to make repairs to the Premises.
- 4.2 MAINTENANCE AND REPAIR BY TENANT. Except as is expressly set forth as Landlord's responsibility pursuant to the paragraph captioned "MAINTENANCE AND REPAIR BY LANDLORD," Tenant shall at Tenant's sole cost and expense keep and maintain all portions of the Premises in good condition and repair, including, without limitation, the structure of the Premises, painting, cleaning of all exterior glass, plumbing and utility fixtures and installations, carpets and floor coverings, all wall surfaces and coverings including tile and paneling, replacement of all broken windows (including without limitation any exterior windows), exterior and interior doors, roof penetrations and membranes in connection with any Tenant installations on the roof in accordance with Section 4.4 below, including satellite dishes, light bulb replacement and interior preventative maintenance. If Tenant fails to maintain or repair the Premises in accordance with this paragraph, and there is an imminent threat of damage to person or property (as reasonably determined by Landlord), then Landlord may, but shall not be required to, enter the Premises to perform such maintenance or repair at Tenant's sole cost and expense. Tenant shall pay to Landlord the cost of such maintenance or repair plus a ten percent (10%) administration fee, within twenty (20) Business Days of written demand from Landlord. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems and equipment located within or dedicated solely to the Premises. The maintenance contractor and the contract must be reasonably approved in advance by Landlord. The service contracts shall include all services recommended by the equipment manufacturer within the operation/maintenance manual and shall become effective (and a copy thereof delivered to Landlord) within forty-five (45) days following the date Tenant takes possession of the Premises.
- 4.3 COMMON AREAS/SECURITY. The common areas of the Project shall be subject to Landlord's sole management and control. Without limiting the generality of the immediately preceding sentence, Landlord reserves the exclusive right as it deems necessary or desirable to install, construct, remove, maintain and operate lighting systems, facilities, improvements, equipment and signs on, in or to all parts of the common areas; change the number, size, height, layout, or locations of walks, driveways and truckways or parking areas now or later forming a part of the Land or Project; make alterations or additions to the Building or Project or common area; close temporarily all or any portion of the common areas to make repairs, changes or to avoid public dedication; grant easements to which the Land will be subject, replat, subdivide, or make other changes to the Land; place, relocate and operate utility lines through, over or under the Land and Building and Project; and use or permit the use of all or any portion of the roofs of the Building; provided, however, that access to the Premises and Tenant's ability to use the Premises for its normal business purposes shall not be materially and adversely

affected thereby. Landlord has no duty or obligation to provide any security services in, on or around the Premises, Land or Project, and under no circumstances shall Landlord be responsible for, and Tenant waives any rights with respect to, Landlord providing security or other protection for Tenant or Tenant's Agents or property in, on or about the Premises, Land or Project. Subject to Section 4.4 below, Tenant may, at its sole cost and expense, install, establish and maintain security services within the Premises; PROVIDED THAT such security services, including, without limitation, any apparatus, facilities, equipment or people utilized in connection with the provision of such security services, comply with the Governmental Requirements and shall not cause the Building or the Project to be out of compliance with the Governmental Requirements. Notwithstanding the foregoing, any such security services installed, established or maintained by Tenant must not affect or impact any portion of the Building, Land or the Project other than the Premises and shall not in any way limit or interfere with Landlord's ability to exercise its rights as provided in the paragraph captioned "ACCESS". Tenant's rights under this subparagraph are subject to all the obligations, limitations and requirements as set forth in the paragraphs captioned "TENANT ALTERATIONS" and "TENANT'S WORK PERFORMANCE". Landlord reserves the right to relocate parking areas and driveways and to build additional improvements in the common areas so long as Tenant's Parking Rights are maintained, and Tenant's access to the Building are not materially and adversely affected thereby.

4.4 TENANT ALTERATIONS. Tenant shall not make any alterations, additions or improvements in or to the Premises, or make changes to locks on doors, or add, disturb or in any way change any floor covering, wall covering, fixtures, plumbing or wiring (individually and collectively "TENANT ALTERATIONS"), without first obtaining the consent of Landlord which may not be unreasonably withheld or delayed, except that Landlord may withhold its approval in its sole and absolute discretion if the Tenant Alterations will affect, as determined by Landlord, the structure or exterior of the Building, or the Building systems. Tenant shall deliver to Landlord full and complete plans and specifications for any proposed Tenant Alterations and, if consent by Landlord is given, all such work shall be performed at Tenant's expense by Tenant. Tenant shall pay to Landlord all costs incurred by Landlord for any architectural, engineering, supervisory and/or legal services in connection with any Tenant Alterations including, without limitation, Landlord's review of the plans and specifications for any Tenant Alterations. Without limiting the generality of the foregoing, Landlord may require Tenant, at Tenant's sole cost and expense, to obtain and provide Landlord with proof of insurance coverage and a payment and performance bond, in forms, amounts and by companies acceptable to Landlord. Should Tenant make any Tenant Alterations without Landlord's prior written consent, or without satisfaction of any conditions established by Landlord, Landlord shall have the right, in addition to and without limitation of any right or remedy Landlord may have under this Lease, at law or in equity, to require Tenant to remove some or all of the Tenant Alterations at Tenant's sole cost and expense and restore the Premises to the same condition existing prior to undertaking the Tenant Alterations. All Tenant Alterations to the Premises, other than trade fixtures (such as computer systems, telephone and communication systems, storage systems, specialized HVAC equipment installed by Tenant at its sole expense and servicing only its computer room, cubicles and those trade fixtures set forth on Exhibit "F" attached hereto), shall become the property of Landlord and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease; provided, however, at Landlord's sole

election, Tenant shall be obligated, at its sole cost and expense, to remove all (or such portion as Landlord shall designate) of the Tenant Alterations and repair any damage resulting from such removal and return the Premises to the same condition existing prior to the undertaking upon the expiration or earlier termination of this Lease. Tenant shall have the right, at the time it requests Landlord's consent and delivers all plans and specifications to any Tenant Alteration (other than with respect to trade fixtures, such as computer systems, telephone and communication systems, storage systems, specialized HVAC equipment installed by Tenant at its sole expense and servicing only its computer room, and cubicles, which Landlord acknowledges remain Tenant's property to be removed upon the expiration or earlier termination of the Lease) to make a written request that Landlord notify Tenant whether Tenant shall be obligated to remove the applicable Tenant Alteration at the end of the Lease Term, in which event Tenant shall only be obligated to remove (i) those Tenant Alterations that Landlord notified Tenant it must remove at the end of the Lease Term at the same time of and in connection with Tenant's requested approval of the Tenant Alterations, and (ii) those Tenant Alterations that Tenant did not seek or did not obtain Landlord's written consent to leave in place at the end of the Lease Term, and that Landlord requires Tenant to remove. If Tenant fails to remove any such Tenant Alterations as required by Landlord's consent, Landlord may do so and Tenant shall pay the entire cost thereof to Landlord within ten (10) Business Days after Tenant's receipt of Landlord's written demand therefor. Tenant shall reimburse Landlord, upon receipt of demand therefor, for all out of pocket costs and expenses incurred by Landlord during its review of Tenant's plans and specifications (regardless of whether Landlord approves Tenant's request) and Tenant's construction. Nothing contained in this paragraph or the paragraph captioned "TENANT'S WORK PERFORMANCE" shall be deemed a waiver of the provisions of the paragraph captioned "MECHANIC'S LIENS."

4.5 TENANT'S WORK PERFORMANCE. Any Tenant Alterations, and the Tenant Improvements, to be performed by Tenant under this Lease shall be performed by contractors employed by Tenant under one or more construction contracts, in form and content approved in advance in writing by Landlord (which approval shall be subject to Landlord's discretion and may include a requirement by Landlord that the prime contractor and the respective subcontractors of any tier: (a) be parties to, and bound by, a collective bargaining agreement with a labor organization affiliated with the Building and Construction Trades Council of the AFL CIO and (b) employ only members of such labor organizations to perform work within their respective jurisdictions). Tenant's contractors, workers and suppliers shall work in harmony with and not interfere with workers or contractors of Landlord or other tenants of Landlord. If Tenant's contractors, workers or suppliers do, in the opinion of Landlord, cause such disharmony or interference, Landlord's consent to the continuation of such work may be withdrawn upon written notice to Tenant. All Tenant Alterations shall be (1) completed in accordance with the plans and specifications approved by Landlord; (2) completed in accordance with all Governmental Requirements; (3) carried out promptly in a good and workmanlike manner; (4) of all new materials; and (5) free of defect in materials and workmanship. Tenant shall pay for all damage to the Premises, Building Land and Project caused by Tenant or Tenant's Agents. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from any Claims arising as a result of the Tenant Alterations or any defect in design, material or workmanship of any Tenant Alterations.

- 4.6 SURRENDER OF POSSESSION. Tenant shall, at the expiration or earlier termination of this Lease, surrender and deliver the Premises to Landlord in as good condition as when received by Tenant from Landlord or as later improved, reasonable use and wear excepted, and free from all tenancies or occupancies by any person.
- 4.7 REMOVAL OF PROPERTY. Upon expiration or earlier termination of this Lease, Tenant may remove its personal property, office supplies and office furniture and equipment if (a) such items are readily moveable and are not attached to the Premises; (b) such removal is completed prior to the expiration or earlier termination of this Lease; (c) Tenant is not in material default of any covenant or condition of this Lease at the time of such removal; and (d) Tenant immediately repairs all damage caused by or resulting from such removal. All other property in the Premises and any Tenant Alterations (including, wall-to-wall carpeting, paneling, wall covering or lighting fixtures and apparatus) or any other article affixed to the floor, walls, ceiling or any other part of the Premises, shall become the property of Landlord and shall remain upon and be surrendered with the Premises; provided, however, at Landlord's sole election, Tenant shall be obligated, at its sole cost and expense, to remove all (or such portion as Landlord shall designate) of the Tenant Alterations and all (or such portion as Landlord shall designate) of the Tenant Improvements constructed in the Premises, and repair any damage resulting from such removal. Except as Landlord and Tenant may otherwise expressly agree, Tenant waives all rights to any payment or compensation for such Tenant Alterations. If Tenant shall fail to remove any of its property of any nature from the Premises or Land at the expiration or earlier termination of this Lease or when Landlord has the right of re-entry, Landlord may, at its option, remove and store such property without liability for loss of or damage to such property, such storage to be for the account and at the expense of Tenant. If Tenant fails to pay the cost of storing any such property, Landlord may, at its option, after it has been stored for a period of twenty (20) Business Days or more, sell or permit to be sold, any or all such property at public or private sale (and Landlord may become a purchaser at such sale), in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant, and Landlord shall apply the proceeds of such sale: FIRST, to the cost and expense of such sale, including reasonable attorney's fees actually incurred; SECOND, to the payment of the costs or charges for storing any such property; THIRD, to the payment of any other sums of money which may then be or later become due Landlord from Tenant under this Lease; and, FOURTH, the balance, if any, to Tenant.
- 4.8 ACCESS. Tenant shall permit Landlord and Landlord's Agents to enter into the Premises at any time on at least one (1) Business Day's notice (except in case of emergency, in which case no notice shall be required), for the purpose of inspecting the same or for the purpose of repairing, altering or improving the Premises or the Project. Nothing contained in this paragraph shall be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. When reasonably necessary, Landlord may temporarily close Building or Land entrances (but not all entrances, unless required by Governmental Requirements, or in the event of emergency), Building doors or other facilities, without liability to Tenant by reason of such closure and without such action by Landlord being construed as an eviction of Tenant or as relieving Tenant from the duty of observing or performing any of the provisions of this Lease; provided however, that if any such closure by Landlord unreasonably prevents Tenant from using or gaining access to the

Premises, then Base Rent and Additional Rent due under this Lease during the period that Tenant is unreasonably prevented from using or gaining access to the Premises shall be abated (to the extent of Landlord's rental loss insurance proceeds) in proportion to the portion of the Premises for which Tenant is unreasonably denied use or access, unless such closure arises out of the acts or omissions of Tenant or Tenant's Agents, in which event there shall be no such abatement. During the last six (6) months of the Lease Term, Landlord shall have the right to enter the Premises at any time during the Lease Term for the purpose of showing the Premises to prospective tenants and to erect near (but not on) the Premises a suitable sign indicating the Premises are available. Tenant shall give written notice to Landlord at least twenty (20) Business Days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating. In the event of Tenant's failure to give such notice or arrange such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall be deemed correct, unless better evidence exists, for purposes of determining Tenant's responsibility for repairs and restoration. Except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable for the consequences of admitting by passkey, or refusing to admit to the Premises, Tenant or any of Tenant's Agents, or other persons claiming the right of admittance.

4.9 DAMAGE OR DESTRUCTION.

4.9.1 RESTORATION OF PREMISES. If the Premises are damaged by fire, earthquake or other casualty, Tenant shall give immediate written notice thereof to Landlord. If Landlord estimates that the damage can be repaired in accordance with the then established Governmental Requirements within two hundred seventy (270) days after Landlord is notified by Tenant of such damage (which estimate shall be delivered to Tenant by Landlord within forty-five (45) days after Landlord has knowledge of the damage) and if there are sufficient insurance proceeds available to repair such damage, then Landlord shall proceed with reasonable diligence to restore the Building to substantially the condition which existed prior to the damage and this Lease shall not terminate. If, in Landlord's estimation, the damage cannot be repaired within such 270 day period or if there are insufficient insurance proceeds available to repair such damage, Landlord may elect in its absolute discretion to either: (a) terminate this Lease or (b) restore the Building to substantially the condition which existed prior to the damage and this Lease will continue. If Landlord restores the Building under this paragraph, then (1) the Lease Term shall be extended for the time required to complete such restoration, (2) Tenant shall pay to Landlord, upon demand, Tenant's Pro Rata Share of any applicable deductible amount specified under Landlord's insurance and (3) Landlord shall not be required to repair or restore Tenant Improvements, Tenant Alterations, or any or all furniture, fixtures, equipment, inventory, improvements or other property which was in or about the Premises at the time of the damage and was not owned by Landlord. Base Rent, Additional Rent and any other sum due under this Lease during any reconstruction period shall be abated in proportion to the portion of the Premises rendered untenable by the damage.

4.9.2 DAMAGE IN EXCESS OF FIFTY PERCENT. If the Project is damaged by fire, earthquake or other casualty and more than fifty percent (50%) of the Project is rendered untenable, Landlord may, in its absolute discretion and without limiting any other options available to Landlord under this Lease or otherwise, elect to terminate this Lease by notice in writing to Tenant within thirty (30) Business Days after Landlord has knowledge of such damage. Such notice

shall be effective twenty (20) Business Days after receipt by Tenant, unless a later date is set forth in Landlord's notice.

- 4.9.3 TERMINATION OF LEASE BY MORTGAGE HOLDER'S ELECTION. Notwithstanding anything contained in this Lease to the contrary, if there is damage to the Premises, or Building and the holder of any indebtedness secured by a mortgage or deed of trust covering any such property requires that the insurance proceeds be applied to such indebtedness or the insurance proceeds are otherwise inadequate to complete the repair of the damages to the Premises, the Building or both, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) Business Days after such requirement is made by such holder.
- 4.9.4 DESTRUCTION NEAR END OF TERM. Notwithstanding the foregoing, if the Premises or the Project are wholly or partially damaged or destroyed within the final twelve (12) months of the Lease Term, Landlord and Tenant may each, at its option, elect to terminate this Lease upon written notice given to the other within thirty (30) days following such damage or destruction.
- 4.9.5 WAIVER. Tenant waives the provisions of any statutes presently existing or hereafter enacted (including, without limitation, California Civil Code sections 1932 and 1933) which relate to termination of leases when the thing leased is destroyed and agrees that such event will be governed by the terms of this Lease.
- 4.9.6. TERMINATION BY TENANT. Notwithstanding anything to the contrary set forth in this Section 4.9 above, within forty-five (45) days after the date of any such damage or destruction, Landlord shall notify Tenant of the estimated time to complete the repairs and restoration of the Premises and Project, as estimated by an independent contractor approved by Landlord (the "Landlord Response Notice"). Notwithstanding anything to the contrary set forth in the proceeding paragraph, if Landlord notifies Tenant that the estimated time to complete the repairs or restoration will exceed two hundred ten (210) days from the date of such damage or destruction, Tenant may terminate this Lease effective as of the date of such damage or destruction by delivering written notice thereof to Landlord within thirty (30) days after receipt of Landlord's Response Notice. If the Lease is not terminated as provided above, and the repairs and restoration are not completed within two hundred ten (210) days after the damage or destruction, Tenant may deliver written notice to Landlord stating that if the repairs and restoration are not completed within forty-five (45) days thereafter, Tenant will terminate the Lease. If the repairs and restoration are not completed within forty-five (45) days after Tenant delivers such notice to Landlord, Tenant may terminate the Lease effective as of the date of such damage or destruction by delivering written notice thereof to Landlord.
- 4.10 CONDEMNATION. If all of the Premises, or such portions of the Building as may be required for the Tenant's Permitted Use, are taken by eminent domain or by conveyance in lieu thereof, this Lease shall automatically terminate as of the date the physical taking occurs, and all Base Rent, Additional Rent and other sums payable under this Lease shall be paid to that date. In case of taking of a part of the Premises or a portion of the Building not required for the Tenant's Permitted Use, then this Lease shall continue in full force and effect and the Base Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced, such reduction in Base Rent to be

effective as of the date the physical taking occurs. Additional Rent and all other sums payable under this Lease shall not be abated but Tenant's Pro Rata Share shall be reduced as equitable under the circumstances. Landlord reserves all rights to damages or awards for any taking by eminent domain relating to the Premises, Building, Land and the unexpired term of this Lease. Tenant assigns to Landlord any right Tenant may have to such damages or award and Tenant shall make no claim against Landlord for damages for termination of its leasehold interest or interference with Tenant's business. Tenant shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be entitled for Tenant's moving expenses or other relocation costs; PROVIDED THAT, such expenses or costs may be claimed only if they are awarded separately in the eminent domain proceedings and not as a part of the damages recoverable by Landlord. Tenant waives all rights it may have under California Code of Civil Procedure section 1265.130, or otherwise, to terminate this Lease based on a partial condemnation. Landlord acknowledges that nothing contained herein shall prevent Tenant from recovering damages from a Governmental Authority in connection with an inverse condemnation claim, or similar claim, instituted by Tenant as a result of any failure to enter into the Edison Lease.

4.11 PARKING. Tenant shall have the nonexclusive privilege to use parking spaces within the Project in common with other tenants of Landlord, but only in areas reasonably designated by Landlord. Tenant's parking privileges shall be subject to the rules and regulations relating to parking adopted by Landlord from time to time. In no event shall the number of parking stalls used by Tenant and Tenant's Agents exceed the number of stalls allocated to Tenant in the definition of the Parking Rights. Landlord shall have no obligation whatsoever to monitor, secure or police the use of the parking or other common areas. Tenant shall pay, upon fifteen (15) days notice from Landlord, Landlord's then standard charge for the parking spaces.

4.12 INDEMNIFICATION. Tenant shall indemnify and defend (except for Claims arising solely as a direct result of the negligence or willful misconduct of Landlord or its authorized agents, contractors, employees, members, trustees, officers or partners) and hold harmless (except for Claims arising solely as a direct result of the gross negligence or willful misconduct of Landlord or its authorized agents, contractors, employees, members, trustees, officers or partners) Landlord and Landlord's Agents from and against any and all Claims, arising in whole or in part out of (a) the possession, use or occupancy of the Premises or the business conducted in the Premises, (b) any act, omission or negligence of Tenant or Tenant's Agents, or (c) any breach or default under this Lease by Tenant. Neither Landlord nor Landlord's Agents shall, to the extent permitted by law, have any liability to Tenant, or to Tenant's Agents, for any Claims arising out of any cause whatsoever, including repair to any portion of the Premises; interruption in the use of the Premises or any equipment therein; any accident or damage resulting from any use or operation by Landlord, Tenant or any person or entity of heating, cooling, electrical, sewerage or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises or Project; fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; actions of any other tenant of the Project or of any other person or entity; inability to furnish any service required of Landlord as specified in this Lease; or leakage in any part of the Premises or the Project from rain, ice or snow, or from drains, pipes or plumbing fixtures in the Premises or the Project; except for Claims to the extent arising as a direct result of the gross negligence or willful misconduct of Landlord or its authorized agents, contractors, employees, members,

trustees, officers or partners; Landlord shall indemnify, protect, defend and hold Tenant harmless from and against all Claims directly arising solely out of the gross negligence or willful misconduct of Landlord or its authorized agents, contractors, employees, members, trustees, officers and partners; PROVIDED THAT, in no event shall Landlord be responsible for any interruption to Tenant's business or for any indirect or consequential losses suffered by Tenant or Tenant's Agents. The obligations of this paragraph shall be subject to the paragraph entitled "WAIVER OF SUBROGATION".

4.13 TENANT INSURANCE.

4.13.1 FORM OF POLICIES. Tenant shall, throughout the Lease Term, at its own expense, keep and maintain in full force and effect the following policies, each of which shall be endorsed as needed to provide that the insurance afforded by these policies is primary and that all insurance carried by Landlord is strictly excess and secondary and shall not contribute with Tenant's liability insurance:

- (a) A policy of commercial general liability insurance, including a contractual liability endorsement covering Tenant's obligations under the paragraph captioned "INDEMNIFICATION", insuring against claims of bodily injury and death or property damage or loss with a combined single limit at the Commencement Date of this Lease of not less than Two Million Dollars (\$2,000,000.00) per occurrence, which limit shall be reasonably increased during the Lease Term at Landlord's reasonable request to reflect both increases in liability exposure arising from inflation as well as from changing use of the Premises or changing legal liability standards, which policy shall be payable on an "occurrence" rather than a "claims made" basis, and which policy identifies Landlord and Manager and, at Landlord's request, Landlord's mortgage lender(s) or investment advisors, as additional named insureds;
- (b) A policy of extended property insurance (what is commonly called "all risk") covering Tenant's Improvements and Tenant's Alterations, furniture, fixtures, equipment, inventory, and other personal property located on the Premises for one hundred percent (100%) of the current replacement value of such property;
- (c) Business interruption insurance in an amount sufficient to cover costs, damages, lost income, expenses, Base Rent, Additional Rent and all other sums payable under this Lease, should any or all of the Premises not be usable for a period of up to twelve (12) months;
- (d) A policy of worker's compensation insurance as required by law and employer's liability insurance with limits of no less than One Million Dollars (\$1,000,000); and
- (e) A policy of comprehensive automobile liability insurance, including loading and unloading, and covering owned, non-owned and hired vehicles, with limits of no less than One Million Dollars (\$1,000,000) per occurrence.

4.13.2 APPROVAL OF INSURER. All insurance policies required under this paragraph shall be with companies with a Best rating of AXII or better and each policy shall provide that it is not subject to cancellation or reduction in coverage except after thirty (30) days' written notice to Landlord. Tenant shall deliver to Landlord and, at Landlord's request Landlord's mortgage lender(s), prior to the Commencement Date and from time to time thereafter, certificates evidencing the existence and amounts of all such policies.

- 4.13.3 LANDLORD OBTAINED INSURANCE. If Tenant fails to timely acquire or maintain any insurance or provide any certificate required by this paragraph, Landlord may, after thirty (30) days' prior written notice to Tenant (except in the event of emergency, as reasonably determined by Landlord, in which event only reasonable notice under the circumstances shall be required) but shall not be required to, obtain such insurance or certificates and the reasonable costs associated with obtaining such insurance or certificates shall be payable by Tenant to Landlord within five (5) days after demand.
- 4.14 LANDLORD'S INSURANCE. Landlord shall, commencing with Tenant's early entry period set forth in Section 2.3 above, and continuing throughout the Lease Term, keep and maintain in full force and effect:
- (a) A policy of commercial general liability insurance, insuring against claims of bodily injury and death or property damage or loss with a combined single limit at the Commencement Date of not less than Five Million Dollars (\$5,000,000.00), which policy shall be payable on an "occurrence" rather than a "claims made" basis; and
 - (b) A policy of extended property insurance (what is commonly called "all risk") covering the Building and Landlord's personal property, if any, located at the Building in the amount of one hundred percent (100%) of the then current replacement value of such property (specifically excluding Tenant Improvements, Tenant Alterations, or any or all furniture, fixtures, equipment, inventory, improvements or other property which was in or about the Premises at the time of the damage and was not owned by Landlord).
 - (c) Landlord may, but shall not be required to, maintain other types of insurance as Landlord deems appropriate, including, but not limited to, property insurance coverage for earthquakes and floods in such amounts as Landlord deems appropriate. Such policies may be "blanket" policies which cover other properties owned by Landlord.
- 4.15 WAIVER OF SUBROGATION. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby each waive and release the other from any and all Claims or any loss or damage that may occur to the Land, Premises, Project or personal property located therein, by reason of fire or other casualty regardless of cause or origin, including the negligence or misconduct of Landlord, Tenant, Landlord's Agents or Tenant's Agents, but only to the extent of the insurance proceeds paid to such releasor under its policies of insurance or, if it fails to maintain the required policies, the insurance proceeds that would have been paid to such releasor if it had maintained such policies. Each party to this Lease shall promptly give to its insurance company written notice of the mutual waivers contained in this subparagraph, and shall cause its insurance policies to be properly endorsed, if necessary, to prevent the invalidation of any insurance coverages by reason of the mutual waivers contained in this subparagraph.
- 4.16 ASSIGNMENT AND SUBLETTING BY TENANT.
- 4.16.1 RESTRICTIONS ON TRANSFER. Tenant shall not have the right to assign, transfer, mortgage or encumber this Lease in whole or in part, nor sublet the whole or any part of the Premises, nor allow the occupancy of all or any part of the Premises by another, without first obtaining Landlord's consent, which consent may not be unreasonably withheld or delayed. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of all sums payable under this

Lease and for compliance with all of its other obligations as tenant under this Lease. Upon the occurrence of an Event of Default, if the Premises or any part of the Premises are then subject to an assignment or subletting, Landlord, in addition to any other remedies provided in this Lease or by law, may at its option collect directly from such assignee or subtenant all rents becoming due to Tenant under such assignment or sublease and apply such rents against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease. Tenant makes an absolute assignment to Landlord of such assignments and subleases and any rent, security deposits and other sums payable under such assignments and subleases as collateral to secure the performance of the obligations of Tenant under this Lease; provided however, that, until an Event of Default occurs, Tenant shall, subject to Section 4.16.6 below, be entitled to collect the rent, security deposits and other sums payable under such assignments and subleases.

- 4.16.2 LANDLORD CONSENT, PROCEDURE. In the event Tenant desires to assign this Lease or to sublet all or any portion of the Premises, Tenant shall give written notice of such desire to Landlord setting forth the name of the proposed subtenant or assignee, the proposed term, the nature of the proposed subtenant's or assignee's business to be conducted on the Premises, the rental rate, and any other particulars of the proposed subletting or assignment that Landlord may reasonably request. Without limiting the preceding sentence, Tenant shall also provide Landlord with: (a) such financial information as Landlord may reasonably request; and (b) a copy of the proposed sublease or assignment or letter of intent. Tenant shall pay to Landlord, upon Landlord's demand therefor, Landlord's reasonable attorneys' fees incurred in the review of such documentation and in documenting Landlord's consent, plus an administrative fee of \$1,000.00 for processing such proposed assignment or sublease. Receipt of such fees shall not obligate Landlord to approve the proposed assignment or sublease.
- 4.16.3 LANDLORD CONSENT, RELEVANT FACTORS. In determining whether to grant or withhold consent to a proposed assignment or sublease, Landlord may consider, and weigh, any factor it deems relevant in its reasonable discretion. Without limiting what may be construed as a factor considered by Landlord, Tenant agrees that any one or more of the following will be proper grounds for Landlord's disapproval of a proposed assignment or sublease:
- (a) The proposed assignee or subtenant does not, in Landlord's good faith judgment, have financial worth or creditworthiness equal to or greater than that of Tenant as of the execution date of this Lease or sufficient financial worth to insure full and timely performance under this Lease;
 - (b) Landlord has received insufficient evidence of the financial worth or creditworthiness of the proposed assignee or subtenant to make the determination set forth in clause (b);
 - (c) The proposed assignee or subtenant has a reputation for disputes in contractual relations, failure to observe and perform its contractual obligations in a timely and complete manner or for negative business

relations in the business community for or otherwise as a tenant of property or otherwise;

- (d) Intentionally Omitted;
- (e) Intentionally Omitted;
- (f) The use of the Premises by the proposed assignee or subtenant will not be identical with the Permitted Uses;
- (g) In Landlord's judgment, the proposed assignee or subtenant is engaged in a business, or the Premises or any part of the Premises will be used in a manner, that is not in keeping with the then standards of the Project, or that is not compatible with the businesses of other tenants in the Project, or that is inappropriate for the Project, or that will violate any negative covenant as to use contained in any other lease of space in the Project;
- (h) The use of the Premises by the proposed assignee or subtenant will violate any Governmental Requirement or create a violation of Access Laws;
- (i) Tenant is in default of any obligation of Tenant under this Lease, or Tenant has defaulted under this Lease on three (3) or more occasions during the twenty-four (24) months preceding the date that Tenant shall request such consent;
- (j) Landlord does not approve of any of the tenant improvements required for the proposed assignee or subtenant; or
- (k) Landlord has had contact with the proposed assignee or subtenant, in the six (6) months preceding Tenant's request, regarding the leasing of space by such proposed assignee or subtenant in the Project or any other buildings owned by Landlord in the metropolitan area in which the Land is located.

4.16.4 NOTICE REGARDING LANDLORD'S CONSENT. Within ten (10) Business Days after Landlord's receipt of all required information to be supplied by Tenant pursuant to this paragraph, Landlord shall notify Tenant of Landlord's approval, disapproval or conditional approval of any proposed assignment or subletting or of Landlord's election to require recapture as described below. Landlord shall have no obligation to respond unless and until all required information has been submitted. In the event Landlord approves of any proposed assignment or subletting, Tenant and the proposed assignee or sublessee shall execute and deliver to Landlord an assignment (or subletting) and assumption agreement in form and content satisfactory to Landlord in its sole discretion.

4.16.5 AFFILIATE TRANSFER. Provided that the tangible net worth of the proposed transferee is reasonably satisfactory to Landlord, and provided that same is not intended as a subterfuge denying Landlord the benefits of this paragraph, a transfer to (1) any entity controlling, controlled by or under common control with Tenant (a "Corporate Affiliate"); (2) any entity with which Tenant has merged or consolidated, or (3) any entity which acquires all or substantially all of the shares of stock or assets of Tenant, and which continues to operate substantially the same business at the Premises as had been maintained by Tenant, shall be a permitted transfer which shall not require Landlord's consent hereunder (provided that Tenant shall provide Landlord with notice thereof). For purposes of determining whether an entity is a "Corporate Affiliate," the term "CONTROL" shall mean the ownership of substantially all of the outstanding

voting stock of the corporation, or the possession of power to direct or control the direction of management and policy of such corporation.

- 4.16.6 EXCESS RENT. If Landlord consents to any assignment or sublease and Tenant receives rent or any other consideration, either initially or over the term of the assignment or sublease, in excess of the Base Rent, Additional Rent and other regularly recurring charges under the Lease (or, in the case of a sublease of a portion of the Premises, in excess of the Base Rent, Additional Rent and other regularly recurring charges under the Lease paid by Tenant on a square footage basis under this Lease), Tenant shall pay to Landlord fifty percent (50%) of such excess, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises paid for by Tenant in connection with the assignment or sublease, (ii) any other out-of-pocket monetary concessions provided by Tenant to the transferee, (iii) any brokerage commissions paid for by Tenant in connection with the assignment or sublease, and (iv) any other normal and customary commercially reasonable out-of-pocket expenses that Tenant incurs directly in connection with the assignment or sublease.
- 4.16.7 RECAPTURE. Landlord shall have the right to recapture the Premises or the applicable portion thereof (a "RECAPTURE") by giving written notice of such Recapture to Tenant within fifteen (15) Business Days after receipt of Tenant's written request for Landlord's consent to such proposed assignment or subletting. Notwithstanding the foregoing, Landlord shall not have such right of recapture during the first three (3) years of the initial Lease Term. Tenant shall have no right to retract its request for Landlord's consent to assign or sublease once such request has been made. Such Recapture shall terminate this Lease as to the applicable space effective on the prospective effective date of assignment or subletting, which shall be the last day of a calendar month and shall not be earlier than forty-five (45) Business Days after receipt of Tenant's request hereunder. If less than the entire Premises are recaptured, Landlord and Tenant agree that this Lease shall remain in full force and effect with respect to that remaining area not recaptured by Landlord. Tenant agrees to surrender that portion of the Premises recaptured by Landlord in accordance with the terms and conditions of this Lease. Notwithstanding the first sentence of this subparagraph, Landlord shall have no right to Recapture the Premises or applicable portion thereof if Tenant's proposed assignment or sublet is to an affiliate, wholly-owned subsidiary or successor entity.
- 4.16.8 EARLY TRANSFER REQUEST. Notwithstanding the foregoing provisions of this Section 4.16, in the event that Tenant requests Landlord's consent to a proposed sublease during the first three (3) years of the Lease Term, and such sublease (a) is for less than one hundred twenty-one thousand (121,000) rentable square feet (and when combined with other subleases is for less than 121,000 rentable square feet in the aggregate), (b) unconditionally expires within the first four (4) years of the initial Lease Term, and (c) is not a subterfuge by Tenant to avoid Tenant's obligations under this Lease, then the following provisions shall apply: (i) Landlord shall approve or disapprove of such proposed sublease within ten (10) Business Days after receipt of Tenant's request thereto along with all information required to be provided by Tenant pursuant to this Section 4.16; failure to timely approve or disapprove shall

constitute Landlord's approval thereto; (ii) Landlord shall not unreasonably withhold its consent to such proposed sublease, and may only withhold its consent for the following reasons:

- (A) The proposed subtenant does not, in Landlord's reasonable, good faith judgment, have sufficient financial worth to insure full and timely performance under this Lease, or Landlord has received insufficient evidence to make such determination;
- (B) The proposed subtenant is engaged in a business, or the Premises or any part of the Premises will be used in a manner, that is not in keeping with the Permitted Use or the then standards of the Project, or that is not reasonably compatible with the businesses of other tenants in the Project, or that will violate any negative covenant as to use contained in any other lease of space in the Project;
- (C) The use of the Premises by the proposed subtenant will violate any Governmental Requirement or create a violation of Access Laws;
- (D) Landlord does not reasonably approve of any of the tenant improvements required for the proposed subtenant; or
- (E) Landlord has had contact with the proposed subtenant, in the six (6) months preceding Tenant's request, regarding the leasing of space by such proposed subtenant in the Project, and Landlord has space available in the Project that could reasonably be leased to such proposed subtenant on similar terms and conditions as are being offered by Tenant.

4.17 ASSIGNMENT BY LANDLORD. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations under this Lease and in any and all of the Land or Building or Project. If Landlord sells or transfers any or all of the Project or Building, including the Premises, Landlord and Landlord's Agents shall, upon consummation of such sale or transfer, be released automatically from any liability relating to obligations or covenants under this Lease to be performed or observed after the date of such transfer, and in such event, provided that the transferee assumes Landlord's obligations hereunder in writing, Tenant agrees to look solely to Landlord's successor-in-interest with respect to such liability; PROVIDED THAT, as to the Security Deposit and Prepaid Rent, Landlord shall not be released from liability therefor unless Landlord has delivered (by direct transfer or credit against the purchase price) the Security Deposit or Prepaid Rent to its successor-in-interest.

4.18 ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS. Tenant shall, from time to time, upon the written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement stating: (a) the date this Lease was executed and the date it expires; (b) the date Tenant entered into occupancy of the Premises; (c) the amount of monthly Base Rent and Additional Rent and the date to which such Base Rent and Additional Rent have been paid; and (d) certifying that (1) this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date of the agreement so affecting this Lease); (2) Landlord is not in breach of this Lease (or, if so, a description of each such breach) and that no event, omission or condition has occurred which would result, with the giving of notice or the passage of time or both, in a breach of this Lease by Landlord; (3) this Lease represents the entire agreement between the parties with respect to the Premises; (4) all required contributions by Landlord to Tenant on account of Tenant Improvements have been received; (5) on the date of execution, there exist no defenses or offsets which the

Tenant has against the enforcement of this Lease by the Landlord; (6) no Base Rent, Additional Rent or other sums payable under this Lease have been paid in advance except for Base Rent and Additional Rent for the then current month or any prepaid rent as specified on the Estoppel Certificate; (7) no security has been deposited with Landlord (or, if so, the amount of such security); (8) it is intended that any Tenant's statement may be relied upon by a prospective purchaser or mortgagee of Landlord's interest or an assignee of any such mortgagee; and (9) such other information as may be reasonably requested by Landlord. If Tenant fails to respond within fifteen (15) days of its receipt of a written request by Landlord as provided in this paragraph, such shall be a breach of this Lease after an additional five (5) days notice from Landlord. In addition, Tenant shall, from time to time, upon the written request of Landlord, deliver to or cause to be delivered to Landlord or its designee then current financial statements (including a statement of operations and balance sheet) certified as accurate by a certified public accountant or financial officer of Tenant and prepared in conformance with generally accepted accounting principles for Tenant.

4.19 MODIFICATION FOR LENDER. If, in connection with obtaining construction, interim or permanent financing for the Building or Land, Landlord's lender, if any, shall demand commercially reasonable modifications to this Lease as an express condition to such financing, Tenant will not unreasonably withhold or delay its consent to such modifications; PROVIDED THAT, such modifications do not adversely affect the obligations of Tenant under this Lease or adversely affect Tenant's rights under this Lease.

4.20 HAZARDOUS SUBSTANCES.

4.20.1 Tenant agrees that neither Tenant, any of Tenant's Agents nor any other person will store, place, generate, manufacture, refine, handle, or locate on, in, under or around the Land or Building or Project any Hazardous Substance, except for storage, handling and use of reasonable quantities and types of cleaning fluids and office supplies in the Premises in the ordinary course and the prudent conduct of Tenant's business in the Premises, PROVIDED THAT, (a) the storage, handling and use of such permitted Hazardous Substances must at all times conform to all Governmental Requirements and to applicable fire, safety and insurance requirements; (b) the types and quantities of permitted Hazardous Substances which are stored in the Premises must be reasonable and appropriate to the nature and size of Tenant's operation in the Premises and reasonable and appropriate for a first-class building of the same or similar use and in the same market area as the Building; (c) no Hazardous Substance shall be spilled or disposed of on, in, under or around the Land or Building or Project or otherwise discharged from the Premises or any area adjacent to the Land or Building; and (d) in no event will Tenant be permitted to store, handle or use on, in, under or around the Premises any Hazardous Substance which will increase the rate of fire or extended coverage insurance on the Land or Building or Project, unless: (1) such Hazardous Substance and the expected rate increase have been specifically disclosed in writing to Landlord; (2) Tenant has agreed in writing to pay any rate increase related to each such Hazardous Substance; and (3) Landlord has approved in writing each such Hazardous Substance, which approval shall be subject to Landlord's discretion.

4.20.2 Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from and against any and all Claims arising out of any breach of any provision of this paragraph, which expenses shall also include laboratory

testing fees, personal injury claims, clean-up costs and environmental consultants' fees. Tenant agrees that Landlord may be irreparably harmed by Tenant's breach of this paragraph and that a specific performance action may appropriately be brought by Landlord; PROVIDED THAT, Landlord's election to bring or not bring any such specific performance action shall in no way limit, waive, impair or hinder Landlord's other remedies against Tenant.

4.20.3 As of the execution date of this Lease, Tenant represents and warrants to Landlord that, except as otherwise disclosed by Tenant to Landlord, Tenant has no intent to bring any Hazardous Substances on, in or under the Premises except for the type and quantities authorized in the first paragraph of the paragraph captioned "HAZARDOUS SUBSTANCES".

To Landlord's actual knowledge as of the date of the execution of this Lease, and without independent investigation and inquiry, (a) no Landlord's Hazardous Materials (defined below) have been handled in or about the Premises or Building by Landlord, except in compliance with all applicable laws, and (b) Landlord has not received any written notice of the presence of Hazardous Materials at the Premises or Building in violation of applicable laws. The term "Landlord Hazardous Materials" shall mean Hazardous Materials which are present in, on, under or about the Building or Premises as of the date of this Lease and which are released or brought in, on, under or about the Building or Premises by Landlord or any agent of Landlord. Landlord's Hazardous Materials shall specifically not include any Hazardous Materials released, disturbed, transported, stored, generated or used by Tenant or Tenant's Agents.

In the event of a breach of this Section during the Lease Term, then Landlord's sole obligation and responsibility to Tenant shall be (a) the commencement, within ninety (90) days after Landlord receives notice of such breach or discovery and verifies the accuracy of such claim, of a removal, encapsulation or other containment program reasonably elected by Landlord which is required by and complies with applicable laws, and (b) the diligent prosecution of such program to completion, at no cost to Tenant, in such a manner as will make the Premises or Building, as the case may be, in compliance with applicable laws.

4.21 ACCESS LAWS.

4.21.1 NOTICE TO LANDLORD OF VIOLATION. Tenant agrees to notify Landlord immediately if Tenant receives notification or otherwise becomes aware of: (a) any condition or situation on, in, under or around the Land or Building which may constitute a violation of any Access Laws or (b) any threatened or actual lien, action or notice that the Land or Building is not in compliance with any Access Laws. If Tenant is responsible for such condition, situation, lien, action or notice under this paragraph, Tenant's notice to Landlord shall include a statement as to the actions Tenant proposes to take in response to such condition, situation, lien, action or notice.

4.21.2 PROHIBITED ACTS. Tenant shall not alter or permit any assignee or subtenant or any other person to alter the Premises in any manner which would violate any Access Laws or increase Landlord's responsibilities for compliance with Access Laws, without the prior approval of the Landlord. In connection with any such approval, Landlord may require a certificate of compliance with Access Laws

from an architect, engineer or other person acceptable to Landlord. Tenant agrees to pay the reasonable fees incurred by such architect, engineer or other third party in connection with the issuance of such certificate of compliance. Landlord's consent to any proposed Tenant Alteration shall (a) not relieve Tenant of its obligations or indemnities contained in this paragraph or this Lease or (b) be construed as a warranty that such proposed alternation complies with any Access Law.

- 4.21.3 TENANT RESPONSIBILITY. Tenant shall be solely responsible for all costs and expenses relating to or incurred in connection with: (a) failure of the Premises to comply with the Access Laws; and (b) bringing the Building into compliance with Access Laws, if and to the extent such noncompliance arises out of or relates to: (1) Tenant's use of the Premises, including the hiring of employees; (2) any Tenant Alterations to the Premises; or (3) any Tenant Improvements constructed in the Premises by or at the request of Tenant, regardless of whether such improvements are constructed prior to or after the Commencement Date.
- 4.21.4 LANDLORD RESPONSIBILITY. Landlord shall be responsible for all costs and expenses relating to or incurred in connection with bringing the common areas of the Building into compliance with Access Laws, unless such costs and expenses are Tenant's responsibility as provided in the preceding subparagraph. Any cost or expense paid or incurred by Landlord to bring the Premises or common areas of the Building into compliance with Access Laws which is not Tenant's responsibility under the preceding subparagraphs shall be amortized over the useful economic life of the improvements (not to exceed ten (10) years) using an amortization rate of twelve percent (12%) per annum, and shall be an Operating Cost for purposes of this Lease.
- 4.22 QUIET ENJOYMENT. Landlord covenants that Tenant, upon paying Base Rent, Additional Rent and all other sums payable under this Lease and performing all covenants and conditions required of Tenant under this Lease shall and may peacefully have, hold and enjoy the Premises without hindrance or molestation by Landlord, subject to the terms of this Lease, any ground lease, mortgage or deed of trust and all matters of record now or hereafter encumbering the Premises or the Project.
- 4.23 SIGNS. Tenant shall not inscribe an inscription, or post, place, or in any manner display any sign, notice, picture, placard or poster, or any advertising matter whatsoever, anywhere in or about the Land or Building or Project at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Premises without first obtaining Landlord's consent, which consent shall not be unreasonably withheld. The exact size, appearance and location of such sign shall be subject to Landlord's prior written approval and shall be consistent with Landlord's existing sign criteria then in existence for the Building. Any and all costs in connection with the permitting, fabrication, installation, maintenance and removal of Tenant's sign (including the cost of removal of the sign and repair to the Building caused by such removal) shall be borne by Tenant. Tenant agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition at all times. Upon vacation of the Premises on the expiration or earlier termination of this Lease, Tenant shall be responsible, at its sole cost, for the removal of such sign or signs and the repair, painting and/or replacement of the structure to which the sign or signs were attached, including discoloration caused by such installation or

removal. If Tenant fails to perform such work, Landlord may cause the same to be performed, and the cost thereof shall be Additional Rent immediately due and payable upon rendition of a bill therefor.

4.24 SUBORDINATION. Provided Tenant is given written assurance in the applicable lender's standard subordination, non-disturbance and attornment form ("SNDA"), Tenant subordinates this Lease and all rights of Tenant under this Lease to any mortgage, deed of trust, ground lease or vendor's lien, or similar instrument which may from time to time be placed upon the Premises (and all renewals, modifications, replacements and extensions of such encumbrances), and each such mortgage, deed of trust, ground lease or lien or other instrument shall be superior to and prior to this Lease. At the request of Landlord, the holder of such mortgage or deed of trust or any ground Lessor, Tenant shall execute, acknowledge and deliver promptly in recordable form any instrument or subordination agreement that Landlord or such holder may request; provided, however, such instrument shall include a nondisturbance provision on the standard form of the applicable lender or ground lessor. Notwithstanding the foregoing, the holder or beneficiary of such mortgage, deed of trust, ground lease, vendor's lien or similar instrument shall have the right to subordinate or cause to be subordinated any such mortgage, deed of trust, ground lease, vendor's lien or similar instrument to this Lease. Tenant further covenants and agrees that if the lender or ground lessor acquires the Premises as a purchaser at any foreclosure sale or otherwise, and provided that Tenant is given an SNDA, Tenant shall recognize and attorn to such party as landlord under this Lease, and shall make all payments required hereunder to such new landlord without deduction or set-off and, upon the request of such purchaser or other successor, execute, deliver and acknowledge documents confirming such attornment. Tenant waives the provisions of any law or regulation, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure or termination or other proceeding is prosecuted or completed.

4.25 INTENTIONALLY OMITTED.

4.26 BROKERS. As between Landlord and Tenant, Landlord will be responsible to pay the commissions due and owing to the above Brokers set forth in Section 1.6 above according to the terms and conditions of a separate agreement between Landlord and such Brokers. Each party to this Lease shall indemnify, defend and hold harmless the other party from and against any and all Claims asserted against such other party by any real estate broker, finder or intermediary relating to any act of the indemnifying party in connection with this Lease.

4.27 EXCULPATION AND LIMITATION OF LIABILITY. Landlord has executed this Lease by its trustee signing solely in a representative capacity. Notwithstanding anything contained in this Lease to the contrary, Tenant confirms that the covenants of Landlord are made and intended, not as personal covenants of the trustee, or for the purpose of binding the trustee personally, but solely in the exercise of the representative powers conferred upon the trustee by its principal. Liability with respect to the entry and performance of this Lease by or on behalf of Landlord, however it may arise, shall be asserted and enforced only against the lesser of (i) Landlord's estate and equity interest in the Building, or (ii) the equity interest that Landlord would have in and to the Building if the Building were encumbered by debt in an amount equal to eighty percent (80%) of the value of the Building. None of Landlord's Agents shall have any personal liability in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of

Landlord and Tenant or Tenant's use of the Premises. None of Tenant's Agents shall have any personal liability in the event of any claim against Tenant arising out of or in connection with this Lease or the relationship of Landlord and Tenant. Further, in no event whatsoever shall any Landlord's Agent have any liability or responsibility whatsoever arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises. Any and all personal liability, if any, beyond that which may be asserted under this paragraph, is expressly waived and released by Tenant and by all persons claiming by, through or under Tenant.

4.28 INTENTIONALLY OMITTED.

4.29 MECHANIC'S LIENS AND TENANT'S PERSONAL PROPERTY TAXES.

4.29.1 MECHANIC'S LIENS. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable under this Lease for any Claims in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant shall pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises and Tenant shall indemnify, defend and hold harmless Landlord from any and all Claims arising out of any such asserted Claims. Tenant agrees to give Landlord immediate written notice of any such Claim. Tenant shall notify Landlord in writing at least ten (10) Business Days in advance of any work to be done on, in, or about the Premises. In the event of such scheduled work, whether Landlord received notice from Tenant or not, Landlord shall have the right, at any time and from time to time, to enter the Premises to post notices of non-responsibility in such locations as Landlord deems appropriate. Landlord shall provide reasonable notice to Tenant in advance of entering the Premises for the purpose of posting the notices of non-responsibility.

4.29.2 PERSONAL PROPERTY TAXES. Tenant shall be liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay them or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, Tenant shall reimburse Landlord for the sums so paid by Landlord, upon demand by Landlord.

SECTION 5: DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT.

5.1.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant ("Event of Default"):
(a) abandonment (as defined in the California Civil Code) of all or any portion of the Premises;

- (b) failure by Tenant to make any payment of Base Rent, Additional Rent or any other sum payable by Tenant under this Lease within ten (10) days after written notice from Landlord that same is due;
- (c) failure by Tenant to observe or perform any covenant or condition of this Lease, other than the making of payments, where such failure shall continue for a period of twenty (20) Business Days after written notice from Landlord;
- (d) (1) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (2) the filing by or against Tenant of a petition in bankruptcy, including reorganization or arrangement, unless, in the case of a petition filed against Tenant, unless the same is dismissed within thirty (30) days; (3) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease; (4) any execution, levy, attachment or other process of law against any property of Tenant or Tenant's interest in this Lease, unless the same is dismissed within thirty (30) days; (5) adjudication that Tenant is bankrupt; (6) the making by Tenant of a transfer in fraud of creditors; or (7) the failure of Tenant to generally pay its debts as they become due;
- (e) any information furnished by or on behalf of Tenant to Landlord in connection with the entry of this Lease is determined to have been materially false, misleading or incomplete when made, and Tenant had notice that such information was false, misleading or incomplete; or
- (f) any assignment, subletting or other transfer for which the prior consent of Landlord is required under this Lease and has not been obtained, after Tenant has notice and a reasonable opportunity to cure (but in no event longer than 10 days to cure).

5.1.2 NOTICE OF DEFAULT. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by paragraph 6.1 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure section 1162 or any similar or successor statute.

5.1.3 INTENTIONALLY OMITTED.

5.1.4 TREATMENT AS UNEXPIRED LEASE. If a petition in bankruptcy is filed by or against Tenant, and if this Lease is treated as an "unexpired lease" under applicable bankruptcy law in such proceeding, then Tenant agrees that Tenant shall not attempt nor cause any trustee to attempt to extend the applicable time period within which this Lease must be assumed or rejected.

5.2 REMEDIES. If any Event of Default occurs, Landlord may at any time after such occurrence, with or without notice or demand except as stated in this paragraph, and without limiting Landlord in the exercise of any right or remedy at law which Landlord may have by reason of such Event of Default, exercise the rights and remedies, either singularly or in combination, as are specified or described in the subparagraphs of this paragraph. Landlord's duty to mitigate damages shall be as set forth in applicable California law, and shall not be expanded in any manner by any provision of this Lease.

- 5.2.1 REMEDIES; TERMINATION AND RECOVERY OF POSSESSION. Landlord may terminate this Lease and recover possession of the Premises, in which case Tenant shall immediately surrender possession of the Premises to Landlord and, in addition to any other rights and remedies Landlord may have at law and in equity, Landlord shall have the following rights:
- (a) To re-enter the Premises (after notice required by applicable law) then or at any time thereafter and remove all persons and property and possess the Premises, without prejudice to any other remedies Landlord may have by reason of Tenant's default or of such termination, and Tenant shall have no further claim hereunder.
 - (b) To recover all damages incurred by Landlord by reason of the default, including without limitation (i) the worth at the time of the award of the payments, including interest, owed by Tenant to Landlord under this Lease that were earned or accrued but unpaid at the time of termination; (ii) the worth at the time of the award of the amount by which the payments owed by Tenant to Landlord under the Lease that would have been earned or accrued after the date of termination until the time of the award exceeds the amount of the loss of payments owed by Tenant to Landlord under this Lease for the same period that Tenant affirmatively proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the payments owed by Tenant to Landlord for the balance of the Lease Term after the time of the award exceeds the amount of the loss of payments owed by Tenant for the same period that Tenant proves could have been reasonably avoided; (iv) all costs incurred by Landlord in retaking possession of the Premises and restoring them to good order and condition; (v) all costs, including without limitation brokerage commissions, advertising costs and restoration and remodeling costs, incurred by Landlord in reletting the Premises; plus (vi) any other amount, including without limitation attorneys' fees and audit expenses, necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award," as used in clauses (i) and (ii) of this paragraph, is to be determined by computing interest as to each unpaid payment owed by Tenant to Landlord under the Lease, at the highest interest rate permitted by law. "The worth at the time of the award," as referred to in clause (iii) of this paragraph, is to be determined by discounting such amount, as of the time of award, by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).
 - (c) To remove (subject to applicable law), at Tenant's sole risk, any and all personal property in the Premises and place such in a public or private warehouse or elsewhere at the sole cost and expense and in the name of Tenant. Any such warehouse shall have all of the rights and remedies provided by law against Tenant as owner of such property. If Tenant shall not pay the cost of such storage within thirty (30) days following Landlord's demand, Landlord may, subject to the provisions of applicable law, sell any or all such property at a public or private sale in such manner

and at such times and places as Landlord deems proper, without notice to or demand upon Tenant. Tenant waives all claims for damages caused by Landlord's removal, storage or sale of the property and shall indemnify and hold Landlord free and harmless from and against any and all loss, cost and damage, including without limitation court costs and attorneys' fees. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, with all rights and powers necessary to effectuate the provisions of this subparagraph 5.2.

- 5.2.2 REMEDIES; RECOVER RENT AS IT BECOMES DUE. Landlord may elect, in its absolute discretion, to maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due hereunder, and, at Landlord's election, to re-enter and relet the Premises on such terms and conditions as Landlord deems appropriate. Without limiting the generality of the foregoing, Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Landlord may execute any lease made pursuant hereto in its own name, and Tenant shall have no right to collect any such rent or other proceeds. Landlord's re-entry and/or reletting of the Premises, or any other acts, shall not be deemed an acceptance of surrender of the Premises or Tenant's interest therein, a termination of this Lease or a waiver or release of Tenant's obligations hereunder. Landlord shall have the same rights with respect to Tenant's improvements and personal property as under Section 5.2.1 above, even though such re-entry and/or reletting do not constitute acceptance of surrender of the Premises or termination of this Lease.
- 5.2.3 SUCCESSION TO TENANT RIGHTS. Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, Landlord may:
- (a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises.
 - (b) Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.
- 5.2.4 RIGHTS AND REMEDIES CUMULATIVE. None of the foregoing remedial actions, singly or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated: an act by Landlord to maintain or preserve the Premises; any efforts by Landlord to relet the Premises; any repairs or alterations made by Landlord to the Premises; re-entry, repossession or reletting of the Premises by Landlord pursuant to this paragraph; or the appointment of a receiver, upon the initiative of Landlord, to protect Landlord's interest under this Lease. If Landlord takes any of the foregoing remedial action without terminating this Lease, Landlord may nevertheless at any time

after taking any such remedial action terminate this Lease by written notice to Tenant.

- 5.2.5 MONEY DAMAGES UPON RELETTING. If Landlord relets the Premises, Landlord shall apply the revenue from such reletting as follows: FIRST, to the payment of any indebtedness other than Base Rent, Additional Rent or any other sums payable under this Lease by Tenant to Landlord; SECOND, to the payment of any cost of reletting (including finders' fees and leasing commissions); THIRD, to the payment of the cost of any alterations, improvements, maintenance and repairs to the Premises; and FOURTH, to the payment of Base Rent, Additional Rent and other sums due and payable and unpaid under this Lease. Landlord shall hold and apply the residue, if any, to payment of future Base Rent, Additional Rent and other sums payable under this Lease as the same become due, and shall deliver the eventual balance, if any, to Tenant. Should revenue from letting during any month, after application pursuant to the foregoing provisions, be less than the sum of the Base Rent, Additional Rent and other sums payable under this Lease and Landlord's expenditures for the Premises during such month. Tenant shall be obligated to pay such deficiency to Landlord as and when such deficiency arises.
- 5.2.6 REMEDIES NONEXCLUSIVE. Pursuit of any of the foregoing remedies shall not preclude Landlord's pursuit of any of the other remedies provided in this Lease or by law (all such remedies being cumulative), nor shall pursuit by Landlord of any remedy provided in this Lease constitute a forfeiture or waiver of any Base Rent, Additional Rent or other sum payable under this Lease or of any damages accruing to Landlord by reason of the violation of any of the covenants or conditions contained in this Lease.
- 5.3 RIGHT TO PERFORM. If Tenant shall fail to pay any sum of money, other than Base Rent or Additional Rent, required to be paid by it under this Lease or shall fail to perform any other act on its part to be performed under this Lease, and such failure shall continue for ten (10) Business Days after notice of such failure by Landlord, or such shorter time if reasonable under the circumstances, Landlord may, but shall not be obligated to, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform such other act on Tenant's part to be made or performed as provided in this Lease. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment of sums due under this paragraph as in the case of default by Tenant in the payment of Base Rent.
- 5.4 LANDLORD'S DEFAULT. Landlord shall not be in default under this Lease unless Landlord fails to perform obligations required of Landlord within twenty (20) Business Days after written notice is delivered by Tenant to Landlord and to the holder of any mortgages or deeds of trust (collectively, "LENDER") covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying the obligation which Landlord has failed to perform; provided, however, that if the nature of Landlord's obligation is such that more than twenty (20) Business Days are required for performance, then Landlord shall not be in default if Landlord or Lender commences performance within such twenty (20) Business Day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord hereunder shall be construed as covenants, not conditions. In the event of any default, breach or violation of Tenant's rights under this Lease by Landlord, Tenant's exclusive remedies shall be an action for specific performance or an action for actual damages. Tenant hereby waives

the benefit of any laws granting it the right to perform Landlord's obligation, a lien upon the property of Landlord and/or upon rent due Landlord, or the right to terminate this Lease or withhold rent or any other amounts due hereunder on account of any Landlord default.

- 5.5 ACCEPTANCE OF RENT WITHOUT WAIVING RIGHTS. Under the paragraph captioned "NO WAIVER OF REMEDIES," Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts partial payments which cumulatively are less than the sum owed after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default without giving Tenant any further notice or demand.

SECTION 6: MISCELLANEOUS PROVISIONS

- 6.1 NOTICES. Any notice, approval, consent, request or written communication required or permitted to be delivered under this Lease shall be: (a) in writing; (b) transmitted by personal delivery, express or courier service, United States Postal Service in the manner described below; and (c) deemed to be delivered on the earlier of the date received or four (4) Business Days after having been deposited in the United States Postal Service, postage prepaid. Such writings shall be addressed to Landlord or Tenant, as the case may be, at the respective designated addresses set forth opposite their signatures, or at such other address(es) as they may, after the execution date of this Lease, specify by written notice delivered in accordance with this paragraph, with copies to the persons at the addresses, if any, designated opposite each party's signature. Those notices which contain a notice of breach or default or a demand for performance may be sent by any of the methods described in clause (b) above, but if transmitted by personal delivery or electronic means, shall also be sent concurrently by certified or registered mail, return receipt requested.
- 6.2 ATTORNEY'S FEES AND EXPENSES. In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease, or in the event suit is brought for the recovery of Base Rent, Additional Rent or any other sums payable under this Lease or for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to Landlord or the eviction of Tenant during the Lease Term or after the expiration or earlier termination of this Lease, the prevailing party shall be entitled to a reasonable sum for attorney's and paralegal's fees incurred at the trial or appellate levels and for all costs and expenses associated with such levels. The prevailing party shall be determined under Civil Code section 1717(b)(1) or any successor statute.
- 6.3 NO ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of an amount less than the Base Rent or Additional Rent or any other sum due and payable under this Lease shall be deemed to be other than a payment on account of the Base Rent, Additional Rent or other such sum, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, nor preclude Landlord's right to recover the balance of any amount payable or Landlord's right to pursue any other remedy provided in this Lease or at law.
- 6.4 SUCCESSORS; JOINT AND SEVERAL LIABILITY. Except as provided in the paragraph captioned "EXCULPATION AND LIMITATION OF LIABILITY" and subject to the paragraph captioned "ASSIGNMENT AND SUBLETTING BY LANDLORD", all of the covenants and conditions

contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. In the event that more than one person, partnership, company, corporation or other entity is included in the term "Tenant", then each such person, partnership, company, corporation or other entity shall be jointly and severally liable for all obligations of Tenant under this Lease.

- 6.5 CHOICE OF LAW. This Lease shall be construed and governed by the laws of the state of California.
- 6.6 NO WAIVER OF REMEDIES. The waiver by Landlord of any covenant or condition contained in this Lease shall not be deemed to be a waiver of any subsequent breach of such covenant or condition nor shall any custom or practice which may develop between the parties in the administration of this Lease be construed to waive or lessen the rights of Landlord to insist on the strict performance by Tenant of all of the covenants and conditions of this Lease. No act or thing done by Landlord or Landlord's Agents during the Lease Term shall be deemed an acceptance or a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord. The mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy it might have, either under this Lease or at law, nor shall the waiver of or redress for any violation of any covenant or condition in this Lease or in any of the rules or regulations attached to this Lease or later adopted by Landlord, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Base Rent, Additional Rent or any other sum payable under this Lease with knowledge of a breach of any covenant or condition in this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the rules and regulations attached to this Lease or later adopted, against Tenant or any other tenant in the Project, shall not be deemed a waiver. Any waiver by Landlord must be in writing and signed by Landlord to be effective.
- 6.7 OFFER TO LEASE. The submission of this Lease to Tenant or its broker or other agent does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force or effect until: (a) it is executed and delivered by Tenant to Landlord; and (b) it is executed and delivered by Landlord to Tenant.
- 6.8 FORCE MAJEURE. In the event that Landlord shall be delayed, hindered in or prevented from the performance of any act or obligation required under this Lease by reason of acts of God, strikes, lockouts, labor troubles or disputes, inability to procure or shortage of materials or labor, failure of power or utilities, delay in transportation, fire, vandalism, accident, flood, severe weather, other casualty, Governmental Requirements (including mandated changes in the Shell Specifications or the Shell Work resulting from changes in pertinent Governmental Requirements or interpretations thereof), riot, insurrection, civil commotion, sabotage, explosion, war, natural or local emergency, acts or omissions of others, including Tenant, or other reasons of a similar or dissimilar nature not solely the fault of, or under the exclusive control of, Landlord, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for the period equivalent to the period of such delay.
- 6.9 LANDLORD'S CONSENT. Unless otherwise provided in this Lease (including where expressly provided in this Lease that Landlord may not unreasonably withhold its consent), whenever Landlord's consent, approval or other action is required under the terms of this Lease, such consent, approval or action shall be in writing and shall be subject to Landlord's good faith business judgment or discretion.

- 6.10 SEVERABILITY; CAPTIONS. If any clause or provision of this Lease is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Lease shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. Headings or captions in this Lease are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Lease.
- 6.11 INTERPRETATION. Whenever a provision of this Lease uses the term (a) "include" or "including", that term shall not be limiting but shall be construed as illustrative, (b) "covenant", that term shall include any covenant, agreement, term or provision, and (c) "at law", that term shall mean at law or in equity, or both. This Lease shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel.
- 6.12 INCORPORATION OF PRIOR AGREEMENT; AMENDMENTS. This Lease contains all of the agreements of the parties to this Lease with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties to this Lease or their respective successors in interest.
- 6.13 AUTHORITY. If Tenant is a partnership, company, corporation or other entity, each individual executing this Lease on behalf of Tenant represents and warrants to Landlord on behalf of Tenant that he or she is duly authorized to so execute and deliver this Lease and that all partnership, company, corporation or other entity actions and consents required for execution of this Lease on behalf of Tenant have been given, granted or obtained. Landlord represents and warrants to Tenant that it is duly authorized to execute and deliver this Lease and that all partnership, company, corporation or other entity actions and consents required for execution of this Lease have been given, granted or obtained. If Tenant is a partnership, company, corporation or other business organization, it shall, within ten (10) Business Days after demand by Landlord, deliver to Landlord satisfactory evidence of the due authorization of this Lease and the authority of the person executing this Lease on its behalf.
- 6.14 TIME OF ESSENCE. Time is of the essence with respect to the performance of every covenant and condition of this Lease.
- 6.15 SURVIVAL OF OBLIGATIONS. Notwithstanding anything contained in this Lease to the contrary or the expiration or earlier termination of this Lease, any and all obligations of either party accruing prior to the expiration or termination of this Lease shall survive the expiration or earlier termination of this Lease, and either party shall promptly perform all such obligations whether or not this Lease has expired or terminated. Such obligations shall include any and all indemnity obligations set forth in this Lease.
- 6.16 INTENTIONALLY OMITTED.
- 6.17 LANDLORD'S AUTHORIZED AGENTS. Notwithstanding anything contained in the Lease to the contrary, including without limitation, the definition of Landlord's Agents, only officers of Riggs Bank N.A., are authorized to amend, renew or terminate this Lease, or to compromise any of Landlord's claims under this Lease or to bind Landlord in any manner. Without limiting the effect of the previous sentence, no property manager or broker shall be considered an authorized agent of Landlord to amend, renew or

terminate this Lease or to compromise any of Landlord's claims under this Lease or to bind Landlord in any manner.

6.18 EDISON LEASE. Notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges that pursuant to that certain license agreement (the Edison Lease") to be entered into by and between Southern California Edison ("Edison") and Landlord affecting the Project (a preliminary draft of which Tenant acknowledges as having been received by Tenant), certain lease payments shall be required to be made by the Project owner to Edison in consideration of the Project owner's right to build along Edison's right of way at the Project. Tenant hereby agrees to comply with the terms and conditions of the Edison Lease to the extent they apply to areas covered by the terms of this Lease. Tenant further agrees that, notwithstanding anything to the contrary contained in this Lease, all payments and other charges under the Edison Lease shall be included as part of Operating Costs for the Building.

6.19 WAIVER OF JURY TRIAL. LANDLORD AND TENANT BY PLACING THEIR INITIALS AT THE END OF THIS PARAGRAPH HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT, OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR HEARING BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR RELATING IN ANY WAY TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE OR ORDINANCE.

[Landlord's Initials]: /s/ MAM [Tenant's Initials]: /s/ M.C.

IN WITNESS WHEREOF, this Lease has been executed the day and year first above set forth.

DESIGNATED ADDRESS FOR LANDLORD

Haven Gateway LLC
c/o Riggs & Company,
a Division of Riggs Bank, N.A.
808 17th Street N.W.
Washington D.C. 20006
Attn: Senior Asset Manager/Mary Anne
Martins
Voice: 202-835-4997
Facsimile: 202-835-6887

LANDLORD

Haven Gateway LLC, a Delaware limited
liability company

By: Riggs & Company, a division of
Riggs Bank N.A., as Trustee of
the Multi-Employer Property
Trust, Its Sole Member

By: /s/ Mary Anne Martins

Name: Mary Anne Martins

Its: Managing Director

WITH COPY TO MANAGER:

Investment Development Services, Inc.
Attn: Dean Nucich
888 West Sixth Street, 9th Floor
Los Angeles, California 90017
Voice: 213-362-9300
Facsimile: 213-627-9937

Designated Address for Tenant:

915 Secaucus Road
Secaucus, New Jersey 07094

Facsimile: (201) 558-2840

TENANT:

The Children's Place Retail Stores,
Inc., a Delaware corporation

By: /s/ Mario Ciampi

Name: Mario Ciampi

Its: Senior Vice-President

By: /s/ Steven Balasiano

Name: Steven Balasiano

Its: Vice President and General Counsel

LANDLORD ACKNOWLEDGMENT

DISTRICT OF COLUMBIA)
) SS.
)

On this ____ day of _____, 2000, before me personally appeared _____, to me known to be a _____ of Riggs & Company, a division of Riggs Bank N.A., the Trustee of the Multi-Employer Property Trust, the national banking association that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said national banking association as trustee, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NAME: _____
NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA,
RESIDING AT _____. MY APPOINTMENT
EXPIRES: _____.

TENANT ACKNOWLEDGMENT (CORPORATION)

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUDSON)

On this _____ day of AUGUST, 2000, before me, a Notary Public in and for the of _____, personally appeared MARIO CIAMPI, the SENIOR VICE PRESIDENT of THE CHILDREN'S PLACE, the DELAWARE corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he/they was/were authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as above written.

Name: LAUREL ANDERSEN
NOTARY PUBLIC in and for the District of Columbia,
residing at _____. My appointment
expires: 7/9/05.

[NOTARIAL SEAL]

EXHIBIT A to Lease
LEGAL DESCRIPTION OF LAND

EXHIBIT B to Lease

DRAWING SHOWING LOCATION OF THE PREMISES

EXHIBIT C to Lease
WORK LETTER AND CONSTRUCTION AGREEMENT
(Tenant to Construct Improvements)

This Work Letter and Construction Agreement (this "Tenant Work Letter") shall set forth the terms and conditions relating to the construction of the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portions of the Lease to which this Tenant Work Letter is attached as Exhibit C, and all references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portions of this Tenant Work Letter. All general contractors and all subcontractors in connection with the Tenant Improvements shall satisfy those union labor requirements set forth in the Lease in the paragraph captioned "Tenant's Work Performance"; provided however, that with respect to the installation in the Premises of the trade fixtures set forth on Exhibit "F" attached hereto, if union labor is not available to properly perform the installation of such trade fixtures, Tenant may utilize the services of any other qualified sub-contractors which normally and regularly perform similar work in similar industrial buildings and who are reasonably approved by Landlord in writing in accordance with Section 4.1.2 below. The Tenant Improvement Allowance may only be used for items of general construction to be permanently affixed to the Premises, but not personal property or trade fixtures (including the trade fixtures referenced in the immediately preceding sentence).

SECTION 1

DELIVERY OF THE BASE BUILDING

Landlord shall, at its sole cost and expense, perform the following work in connection with this Lease (collectively, the "Shell Work"): design and construct the shell of the Building (the "Base Building"), using Landlord's standard guidelines, materials, specifications and procedures, substantially in accordance with the specifications set forth on Schedule "1" attached hereto (the "Shell Specifications"). Additionally, Landlord shall assign to Tenant on a non-exclusive basis, to the extent assignable, all warranties and guaranties relating to the Base Building. Tenant shall look to such warranties and guaranties in the event of defects in the design and/or construction of the Base Building, Landlord shall have no responsibility in connection therewith, and Landlord shall have no liability whatsoever in connection with the design and construction of the Base Building. Landlord shall, at no cost or expense to Landlord, use commercially reasonable efforts to assist Tenant in the enforcement of such warranties and guaranties. Upon the date of Substantial Completion, Landlord shall deliver the Base Building to Tenant, and upon such delivery, Tenant shall accept the same from Landlord in its then-existing "as-is" condition.

SECTION 2

TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance.

2.1.1 Tenant shall be entitled to a one-time tenant improvement allowance ("Tenant Improvement Allowance") in the amount of Four Hundred Thirty Five Thousand Two Hundred Ninety One and 50/100 Dollars (\$435,291.50) for the cost relating to the initial design and the actual cost of constructing the Tenant Improvements. Except as expressly set forth below in Section 2.1.2, in no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Tenant Improvement Allowance.

2.1.2 If the cost of the Tenant Improvements is budgeted to exceed the Tenant Improvement Allowance, Tenant may request in writing, within thirty (30) days after the date of the Lease, that Landlord pay up to an additional Three Hundred Sixty Three Thousand Eight Hundred Fifty Three and 69/100 Dollars (\$363,853.69) (the "Excess Allowance") to be utilized solely for the construction of the Tenant Improvements. Tenant shall repay the Excess Allowance to Landlord as follows: concurrently with its payments to Landlord of monthly Base Rent, Tenant shall pay the amounts necessary to fully amortize the Excess Allowance over the initial Lease Term, together with interest at the rate of eleven percent (11%) per annum, with such amortized payments being due and payable by Tenant monthly (together with Base Rent) commencing on the Commencement Date and continuing through the expiration of the initial Lease Term. If the Lease is canceled or terminated for any reason prior to the expiration of the full initial Lease Term, then the unamortized Excess Allowance shall become immediately due and payable to Landlord. If Tenant timely requests the Excess Allowance, then the Excess Allowance shall be deemed part of the Tenant Improvement Allowance for purposes of this Work Letter Agreement, subject to Tenant's repayment obligations set forth in this Section 2.1.2 above. Upon Landlord's demand, Tenant shall execute an amendment to the Lease, on Landlord's form, to reflect the additional rent.

2.2 Disbursement of the Tenant Improvement Allowance

2.2.1 Tenant Improvement Allowance Items. Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively the "Tenant Improvement Allowance Items"):

2.2.1.1 Notwithstanding anything to the contrary set forth herein, costs for the payment of the fees of the "Architect" and the "Engineers", as those terms are defined in Section 3.1 of this Tenant Work Letter, shall not exceed an aggregate amount equal to \$3.50 for each usable square foot of space in the Premises;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 The cost of construction of the Tenant Improvements, including, without limitation, testing and inspection costs and trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the Base Building when such changes are required by the Construction Drawings (including if such changes are due to the fact that such work is prepared on an unoccupied basis), such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 The cost of any changes to the Construction Drawings or Tenant Improvements required by Code;

2.2.1.6 Sales and use taxes and Title 24 fees; and

2.2.1.7 Payment to Landlord of a construction supervisor fee equal to four percent (4%) of the construction costs of the Tenant Improvements covered by the Tenant Improvement Allowance (which fee shall be inclusive of the out-of-pocket costs incurred by Landlord in connection with the supervision of the Tenant Improvements, but shall not include all other amounts due to Landlord under this Work Letter and the Lease).

2.2.1.8 All other costs to be expended by Tenant and reasonably approved Landlord in connection with the construction of the Tenant Improvements.

2.2.2 Disbursement of Tenant Improvement Allowance. During the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows:

2.2.2.1 Disbursements. On or before each of (a) the thirtieth (30th) day following Substantial Completion, and (b) the sixtieth (60th) day following Substantial Completion, Tenant shall deliver to Landlord: (i) a request for payment of the "Contractor", as that term is defined in Section 4.1 of this Tenant Work Letter, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of "Tenant's Agents", as that term is defined in Section 4.1.2 of this Tenant Work Letter, for labor rendered and materials delivered to the Premises; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. On or before the last day of the month following each date in (a) and (b) above, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "Final Retention"), and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on a non-compliance of any work with the "Approved Working Drawings", as that term is defined in Section 3.4 below, or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.2.2 Final Retention. Subject to the provisions of this Tenant Work Letter, a check for the Final Retention payable to Tenant shall be delivered by Landlord to Tenant following the completion of construction of the Premises, provided that (i) Tenant delivers to Landlord a waiver and release in accordance with the terms of California Civil Code Section 3262(d)(2) and a waiver and release in accordance with either California Civil Code

Section 3262(d)(3) or Section 3262(d)(4), (ii) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Project, the curtain wall of the Project, the structure or exterior appearance of the Project, or any other tenant's use of such other tenant's leased premises in the Project and (iii) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been substantially completed.

2.2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items. All Tenant Improvement Allowance Items for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of this Lease.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain an architect reasonably approved by Landlord (the "Architect") to prepare the Construction Drawings. Landlord shall either approve or disapprove of Tenant's proposed Architect within three (3) Business Days after Tenant submits the name of, and reasonable information with respect to, its proposed architect to Landlord; failure by Landlord to approve or disapprove within such three (3) Business Day period shall constitute Landlord's approval of Tenant's proposed architect. Tenant shall retain the engineering consultants designated by Landlord (the "Engineers") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life-safety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "Construction Drawings". All Construction Drawings shall comply with the drawing format and specifications acceptable to Landlord. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 Approved Working Drawings. Landlord shall approve (or disapprove) working drawings prepared by Architect within five (5) days after Landlord receives the final Working Drawings (the "Approved Working Drawings"). Tenant shall submit the same to the City of Ontario and diligently pursue its receipt of all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building

permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld.

SECTION 4

CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 Tenant's Selection of Contractors.

4.1.1 The Contractor. A general contractor shall be retained by Tenant to construct the Tenant Improvements and Tenant shall contract directly with such "Contractor". Landlord shall file a Notice of Non-Responsibility regarding payments under Tenant's contract with the Contractor. Such general contractor ("Contractor") must be approved in writing by Landlord, which approval shall not be unreasonably withheld. Landlord shall either approve or disapprove of Tenant's proposed general contractor within three (3) Business Days after Tenant submits the name of, and reasonable information with respect to, its proposed general contractor; failure to approve or disapprove within such three (3) Business Day period shall constitute Landlord's approval of Tenant's proposed general contractor.

4.1.2 Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "Tenant's Agents") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall either approve or disapprove of Tenant's proposed subcontractors, laborers, materialmen or suppliers within three (3) Business Days after Tenant submits the names of, and reasonable information with respect to, the same to Landlord; failure to approve or disapprove within such three (3) Business Day period shall constitute Landlord's approval of the proposed subcontractors, laborers, materialmen or suppliers. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

4.2 Construction of Tenant Improvements by Tenant's Agency.

4.2.1 Construction Contract; Cost Budget. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "Contract"), Tenant shall submit the Contract to Landlord for its approval with regard to proper insurance and licensing requirements and any other areas which may adversely affect Landlord's interest in the Project, and which approval shall not be unreasonably withheld or delayed by more than five (5) business days after Landlord's receipt of the Contract. Prior to the commencement of the construction of the Tenant Improvements, and after Tenant has accepted all bids for the Tenant Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred in connection with the design and construction of the Tenant Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "Final Costs"). Prior to the

commencement of construction of the Tenant Improvements, Tenant shall supply Landlord with cash in an amount (the "Over-Allowance Amount") equal to the difference between the amount of the Final Costs and the amount of the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Tenant Improvements). The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any of the then remaining portion of the Tenant Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Tenant Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Tenant Improvements shall change, any additional costs necessary to such design and construction in excess of the Final Costs, shall be paid by Tenant to Landlord immediately as an addition to the Over-Allowance Amount or at Landlord's option, Tenant shall make payments for such additional costs out of its own funds, but Tenant shall continue to provide Landlord with the documents described in Section 2.2.2.1 (i), (ii), (iii) and (iv) of this Tenant Work Letter, above, for Landlord's approval, prior to Tenant paying such costs.

4.2.2 Tenant's Agents.

4.2.2.1 Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Tenant's and Tenant's Agent's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Project manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Tenant Improvements.

4.2.2.2 Indemnity. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any Project permit or certificate of occupancy for the Premises.

4.2.2.3 Requirements of Tenant's Agents. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or

subcontractors and (ii) the Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Project and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which maybe necessary to effect such right of direct enforcement.

4.2.2.3.1 Lien-Free Basis. Tenant's Contractor and agents shall perform all work on a lien-free basis. If a lien is filed or recorded against the Project due to, or in any way associated with, the construction of the Tenant Improvements, Tenant agrees to have such lien released of record (in a manner and form approved by Landlord) within five (5) days of Landlord's written notice to Tenant regarding same. If Tenant fails to cause the release of such lien within such five (5) day period to Landlord's satisfaction, Landlord may cause the removal of such lien, and Tenant agrees to repay Landlord for all costs and expenses incurred by Landlord to release the lien (including, but not limited to, the payment of the amount stated in the lien, any filing, processing, recording and attorneys' fees) within ten (10) days of Landlord's written request therefor, and such amount shall be considered Additional Rent due under the Lease. If Tenant fails to pay Landlord as aforesaid, such failure shall be deemed an uncured noticed material default under the Lease, and Landlord may pursue any remedy provided for under the Lease, at law or in equity.

4.2.2.4 Insurance Requirements

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operating Coverage insurance, each in amounts not less than \$500,000 for each incident, \$1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the

effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Tenant Work Letter.

4.2.3 Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) Project material manufacturer's specifications.

4.2.4 Inspection by Landlord. Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Project, the structure or exterior appearance of the Project or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 Meetings. Commencing upon the execution of this Lease, Tenant and Landlord shall hold meetings as required at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements, which meetings shall be held at a location designated by the partners, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents

shall attend such meetings. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of "As Built" Plans. Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the County of Los Angeles in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such as-built drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

SECTION 5

MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Bill Bergovoy as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Brooke Rege with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if an event of default as described in the Lease or this Tenant Work Letter has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of this Lease (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such inaction by Landlord).

5.5 Additional Services. If the construction of the Tenant Improvements shall require that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning services, trash removal, field supervision, or ordering of materials) be provided by Landlord, then Tenant shall pay Landlord for such items at Landlord's cost or at a reasonable charge if the item involves time of Landlord's personnel only.

5.6 Construction Defects. Landlord shall have no responsibility for the Tenant Improvements and Tenant will remedy, at Tenant's own expense, and be responsible for any and all defects in the Tenant Improvements that may appear during or after the completion thereof whether the same shall affect the Tenant Improvements in particular or any parts of the Premises in general. Tenant shall indemnify, hold harmless and reimburse Landlord for any costs or expenses incurred by Landlord by reason of any defect in any portion of the Tenant Improvements constructed by Tenant or Tenant's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Tenant Improvements.

5.7 Coordination of Labor. All of Tenant's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by Landlord, or Landlord's contractors or by any other tenant or its contractors with respect to any portion of the Project.

5.8 Work in Adjacent Areas. Any work to be performed in areas adjacent to the Premises shall be performed only after obtaining Landlord's express written permission, which shall not be unreasonably withheld, conditioned or delayed, and shall be done only if an agent or employee of Landlord is present; Tenant will reimburse Landlord for the expense of any such employee or agent.

5.9 HVAC Systems. Tenant agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Tenant and/or maintenance of the electrical or plumbing work installed by Tenant and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Tenant.

5.10 Approval of Plans. Landlord will not check Tenant drawings for building code compliance. Approval of the Construction Drawings by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Construction Drawings does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be solely responsible for such matters.

5.11 Books and Records. At its option, Landlord, at any time within two (2) years after final disbursement of the Tenant Improvement Allowance to Tenant, and upon at least ten (10) days prior written notice to Tenant, may cause an audit to be made of Tenant's books and records relating to Tenant's expenditures in connection with the construction of the Tenant Improvements. Tenant shall maintain complete and accurate books and records in accordance with generally accepted accounting principles of these expenditures for at least two (2) years. Tenant shall make available to Landlord's auditor at the Premises within ten (10) business days following Landlord's notice requiring the audit, all books and records maintained by Tenant

pertaining to the construction and completion of the Tenant Improvements. In addition to all other remedies which Landlord may have pursuant to the Lease, Landlord may recover from Tenant the reasonable cost of its audit if the audit discloses that Tenant falsely reported to Landlord expenditures which were not in fact made or falsely reported a material amount of any expenditure or the aggregate expenditures.

EXHIBIT D TO LEASE

FORM OF MEMORANDUM OF COMMENCEMENT DATE

_____, as Landlord, and _____ as Tenant, executed that certain Lease dated as of _____, 2000 (the "Lease").

The Lease contemplates that upon satisfaction of certain conditions Landlord and Tenant will agree and stipulate as to certain provisions of the Lease. All such conditions precedent to that stipulation have been satisfied.

Landlord and Tenant agree as follows:

1. The Commencement Date of the Lease is _____.
2. The Termination Date of the Lease is _____.
3. The Premises consist of _____ rentable square feet.
4. Base Rent is as follows:

_____	THROUGH	_____	;	\$ _____	PER MONTH
_____	THROUGH	_____	;	\$ _____	PER MONTH
_____	THROUGH	_____	;	\$ _____	PER MONTH
_____	THROUGH	_____	;	\$ _____	PER MONTH
5. Tenant's Pro Rata Share is _____ percent (_____%).

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of _____, 2000.

LANDLORD:
- - - - -

TENANT:
- - - - -

BY:
NAME:
ITS:

BY:
NAME:
ITS:

EXHIBIT E TO LEASE

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building or Land without the prior written consent of the Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person chosen by Landlord.

2. If Landlord objects in writing to any curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises.

3. Tenant shall not obstruct any sidewalk, halls, passages, exits, entrances, elevators, escalators, or stairways of the Building. The halls, passages, exits, entrances, elevators, escalators and stairways are not open to the general public. Landlord shall in all cases retain the right to control and prevent access to such areas of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Land, Building and the Project's tenants; provided that, nothing in this Lease contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Building.

4. The directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom.

5. All cleaning and janitorial services for the Premises shall be provided exclusively by Tenant, at Tenant's sole cost. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any Tenant's property by the janitor or any other person.

6. Landlord will furnish Tenant, free of charge, two (2) keys to each door lock in the Premises. Landlord may make a reasonable charge for any additional keys. Tenant shall not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

7. If Tenant requires telegraphic, telephonic, computer circuits, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions for their installation, and shall pay the entire cost of such installation(s).

8. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by Governmental

Requirements. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space in the Building or to any other tenant in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause (except the gross negligence or willful misconduct of Landlord), and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

9. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities permitted by the Lease. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors or vibrations nor shall Tenant bring into or keep in or about the Premises any birds or animals, except seeing eye-dogs for the blind.

10. Tenant agrees to cooperate fully to assure the most effective operation of the heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice.

11. Landlord reserves the right to change the name and street address of the Building and/or Project.

12. Landlord reserves the right to exclude from the Building and/or Project between the hours of 6 p.m. and 7 a.m. the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building and/or Project of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

13. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building and/or Project or by Landlord for noncompliance with this rule.

14. Tenant shall not obtain for use on the Premises ice, drinking water, food, beverage, towel or other similar services, except at such hours and under such regulations as may be fixed by Landlord.

15. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be deposited in them. The expenses of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant if it or its employees or invitees shall have caused it.

16. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the Building or Project. Tenant shall not use the Premises for any business or activity other than that specifically provided for in the Lease.

17. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

18. Tenant shall not mark, drive nails, screws or drill into the partitions, woodwork or plaster or in any way deface the Premises. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.

19. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord.

20. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Project or Land are prohibited, and Tenant shall cooperate to prevent the same.

21. Landlord reserves the right to exclude or expel from the Building, Project and Land any person who, in Landlord's judgment, is intoxicated, under the influence of liquor or drugs or in violation of any of these Rules and Regulations.

22. Tenant shall store all of its trash and garbage within the Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord.

23. The Premises shall not be used for lodging or any improper or immoral or objectionable purpose. No cooking shall be done or permitted by Tenant, except that use by Tenant of Underwriters' Laboratory approved equipment for microwave cooking, brewing coffee, tea, hot chocolate and similar beverages shall be permitted; provided that, such equipment and its use is in accordance with all Governmental Requirements.

24. Tenant shall not use in the Premises or in the public halls of the Building or Project any hand truck except those equipped with rubber tires and side guards or such other material-

handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.

25. Without the prior written consent of Landlord, Tenant shall not use the name of the Building or Project in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

26. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

27. Tenant assumes any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

28. The requirements of Tenant will be attended to only upon appropriate application to the Manager of the Building by an authorized individual. Employees of Landlord are not required to perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee of Landlord is required to admit Tenant to any space other than the Premises without specific instructions from Landlord.

29. Tenant shall not park its vehicles in any parking areas designated by Landlord as areas for parking by visitors to the Building or Project or Land. Tenant shall not leave vehicles in the parking areas overnight nor park any vehicles in the Building or Project parking areas other than automobiles, motorcycles, motor driven or nonmotor driven bicycles or four-wheeled trucks.

30. Landlord shall enforce the Rules and Regulations in a non-discriminatory manner throughout the Project. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other person, nor prevent Landlord from thereafter revoking such waiver and enforcing any such Rules and Regulations against any or all of the tenants of the Project.

31. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the covenants and conditions of any lease of premises in the Project. If any provision of these Rules and Regulations conflicts with any provision of the Lease, the terms of the Lease shall prevail.

32. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, the care and cleanliness of the Building, Project and Land and the preservation of good order in the Building and Project. Tenant agrees to abide by all the Rules and Regulations stated in this exhibit and any additional rules and regulations which are so made by Landlord.

33. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant and Tenant's Agents.

EXHIBIT 10.4

LEASE AGREEMENT BETWEEN THE COMPANY
AND HARTZ MOUNTAIN ASSOCIATES

DATED AS OF OCTOBER 31, 2000

EXHIBITS

Exhibit A - Demised Premises

Exhibit B - Description of Land

Exhibit C - [Intentionally Omitted]

Exhibit D - Rules and Regulations

Exhibit E - Letter of Credit

Exhibit F - Parking Plan

LEASE, dated October 31, 2000, between HARTZ MOUNTAIN ASSOCIATES, a New Jersey partnership, having an office at 400 Plaza Drive, Secaucus, New Jersey 07094-3688 ("Landlord"), and THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware corporation having an office at 915 Secaucus Road, Secaucus, New Jersey 07094 ("Tenant").

ARTICLE 1 - DEFINITIONS

1.01. As used in this Lease (including in all Exhibits and any Riders attached hereto, all of which shall be deemed to be part of this Lease) the following words and phrases shall have the meanings indicated:

A. Advance Rent: \$39,288.71

B. Additional Charges: All amounts that become payable by Tenant to Landlord hereunder other than the Fixed Rent.

C. Architect: Kenneth Carl Bonte, or as Landlord may designate.

D. Broker: Resource Realty.

E. Building: The building or buildings now or hereafter located on the Land and known or to be known as 900 Secaucus Road, Secaucus, New Jersey.

F. Building Fraction: The fraction, the numerator of which is the Floor Space of the Building (approximately 163,612 square feet) and the denominator of which is the aggregate Floor Space of the buildings in the Development (approximately 10,337,983 square feet). If the aggregate Floor Space of the buildings in the Development shall be changed due to any construction or alteration, the denominator of the Building Fraction shall be increased (but not decreased, except in the event of a reduction in size of the Development and concomitant exclusion of those Operating Expenses relating to those areas removed from the Development) to reflect such change.

F1. Business Days: All days except Saturdays, Sundays, days observed by the federal or state government as legal holidays.

F2. Business Hours: Generally customary daytime business hours, but not before 9:00 A.M. or after 6:00 P.M.

G. Calendar Year: Any twelve-month period commencing on a January 1.

H. Commencement Date: February 1, 2001.

I. Common Areas: All areas, spaces and improvements in the Building and on the Land which Landlord makes available from time to time for the common use and benefit of the tenants and occupants of the Building and which are not exclusively available for use by a single tenant or occupant, including, without limitation, parking areas, roads, walkways, sidewalks, landscaped and

planted areas, community rooms, if any, the managing agent's office, if any, and public rest rooms, if any.

J. Demised Premises: The space that is outlined in red on the floor plan attached hereto as Exhibit A. The Demised Premises contains or will contain approximately 72,533 square feet of Floor Space subject to adjustment upon verification by the Architect.

K. Development: All land and improvements owned by Landlord or its parents, subsidiaries, or affiliates, now existing or hereafter constructed, located south of Route 3, east of the Hackensack River, west of County Avenue and north of Castle Road.

L. Development Common Areas: The roads and bridges that from time to time service and provide access to the Development for the common use of the tenants, invitees, occupants of the Development, that are maintained by Landlord or its related entities.

M. Expiration Date: January 31, 2007. However, if the Term is extended by Tenant's effective exercise of Tenant's right, if any, to extend the Term, the "Expiration Date" shall be changed to the last day of the latest extended period as to which Tenant shall have effectively exercised its right to extend the Term. For the purposes of this definition, the earlier termination of this Lease shall not affect the "Expiration Date."

N. Fixed Rent: Commencing on the Commencement Date through January 31, 2006, an amount at the annual rate of \$6.50 multiplied by the Floor Space of the Demised Premises; from February 1, 2006 through January 31, 2007, an amount at the annual rate of \$7.25 multiplied by the Floor Space of the Demised Premises. It is intended that the Fixed Rent shall be an absolutely net return to Landlord throughout the Term, free of any expense, charge or other deduction whatsoever, with respect to the Demised Premises, the Building, the Land and/or the ownership, leasing, operation, management, maintenance, repair, rebuilding, use or occupation thereof, or any portion thereof, with respect to any interest of Landlord therein, except as may otherwise expressly be provided in this Lease.

M. Floor Space: Any reference to Floor Space of a demised premises shall mean the floor area stated in square feet bounded by the exterior faces of the exterior walls, or by the exterior or Common Areas face of any wall between the premises in question and any portion of the Common Areas, or by the center line of any wall between the premises in question and space leased or available to be leased to a tenant or occupant, plus a pro rata portion of the floor area of the Common Areas in the Building; and any reference to Floor Space of the Building shall mean the aggregate Floor Space of the demised premises leased or which Landlord has available to be leased in the Building. There will be no reduction of Floor Space measurements for setbacks for store fronts or service entrances, and Floor Space of any premises with a setback for a store front shall be measured to the line of such premises as if such premises had no setback. Any reference to the Floor Space is intended to refer to the Floor Space of the entire area in question irrespective of the Person(s) who may be the owner(s) of all or any part thereof.

P. Guarantor: NONE.

Q. Insurance Requirements: Rules, regulations, orders and other requirements of the applicable board of underwriters and/or the applicable fire insurance rating organization and/or any

other similar body performing the same or similar functions and having jurisdiction or cognizance over the Land and Building, whether now or hereafter in force.

R. Land: The Land upon which the Building and Common Areas are located. The Land is described on Exhibit B.

S. Landlord's Work: All mechanicals, lights and loading docks to be delivered in good working order; otherwise, Tenant is leasing Demised Premises in its "as is" condition.

T. Legal Requirements: Laws and ordinances of all federal, state, city, town, county, borough and village governments, and rules, regulations, orders and directives of all departments, subdivisions, bureaus, agencies or offices thereof, and of any other governmental, public or quasi-public authorities having jurisdiction over the Land and Building, whether now or hereafter in force, including, but not limited to, those pertaining to environmental matters.

U. Mortgage: A mortgage and/or a deed of trust.

V. Mortgagee: A holder of a mortgage or a beneficiary of a deed of trust.

W. Operating Expenses: The sum of the following: (1) the cost and expense (whether or not within the contemplation of the parties) for the repair, replacement, maintenance, policing, insurance and operation of the Building and Land, and (2) the Building Fraction of the sum of (a) the cost and expense for the repair, replacement, maintenance, policing, insurance and operation of the Development Common Areas; and (b) the Real Estate Taxes, if any, attributable to the Development Common Areas. The "Operating Expenses" shall, include, without limitation, the following: (i) the cost for rent, casualty, liability, boiler and fidelity insurance, (ii) if an independent managing agent is employed by Landlord, the fees payable to such agent (provided the same are competitive with the fees payable to independent managing agents of comparable facilities), (iii) costs and expenses incurred for legal, accounting and other professional services (including, but not limited to, costs and expenses for in-house or staff legal counsel or outside counsel at rates not to exceed the reasonable and customary charges for any such services as would be imposed in an arms length third party agreement for such services, plus (iv) if Landlord (or its affiliate) is itself managing the Building and has not employed an independent third party for such management, an amount equal to three percent (3%) of the Fixed Rent for Landlord's home office administration and overhead cost and expense. All items included in Operating Expenses shall be determined in accordance with generally accepted accounting principles consistently applied.

X. [Intentionally Omitted].

Y. Permitted Uses: Warehousing and distribution of non-hazardous materials and ancillary offices.

Z. Person: A natural person or persons, a partnership, a corporation, or any other form of business or legal association or entity.

AA. [Intentionally Omitted].

BB. Real Estate Taxes: The real estate taxes, assessments and special assessments imposed upon the Building and Land by any federal, state, municipal or other governments or

governmental bodies or authorities, and any expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Building and Land, which expenses shall be allocated to the period of time to which such expenses relate. If at any time during the Term the methods of taxation prevailing on the date hereof shall be altered so that in lieu of, or as an addition to or as a substitute for, the whole or any part of such real estate taxes, assessments and special assessments now imposed on real estate there shall be levied, assessed or imposed (a) a tax, assessment, levy, imposition, license fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (b) any other such additional or substitute tax, assessment, levy, imposition or charge, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be deemed to be included within the term "Real Estate Taxes" for the purposes hereof. Except as otherwise provided in the second sentence of this Section 1.01BB, Real Estate Taxes shall not include the following: (i) gross receipts, excess profits, revenue, payroll, and stamp taxes; or (ii) inheritance, gift, estate, succession, sales, transfer, corporate, franchise, excise, capital levies, capital stock and personal property.

CC. Rent: The Fixed Rent and the Additional Charges.

DD. Rules and Regulations: The reasonable rules and regulations that may be promulgated by Landlord from time to time, which may be reasonably changed by Landlord from time to time. The Rules and Regulations now in effect are attached hereto as Exhibit D.

EE. Security Deposit: Such amount as Tenant has deposited or hereinafter deposits with Landlord as security under this Lease. Tenant shall deliver to Landlord, upon execution hereof, a clean irrevocable letter of credit in the amount of \$78,577 as security hereunder as of the date hereof, in accordance with the provisions of Article 8 of this Lease.

FF. Successor Landlord: As defined in Section 9.03.

GG. Superior Lease: Any lease to which this Lease is, at the time referred to, subject and subordinate.

HH. Superior Lessor: The lessor of a Superior Lease or its successor in interest, at the time referred to.

II. Superior Mortgage: Any Mortgage to which this Lease is, at the time referred to, subject and subordinate.

JJ. Superior Mortgagee: The Mortgagee of a Superior Mortgage at the time referred to.

KK. Tenant's Fraction: The Tenant's Fraction shall mean the fraction, the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of the Building (44.1%). If the size of the Demised Premises or the Building shall be changed from the initial size thereof, due to any taking, any construction or alteration work or otherwise, the Tenant's Fraction shall be changed to the fraction, the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of the Building. In the event Landlord determines that Tenant's utilization of any item of Operating Expenses exceeds the fraction referred to above, Tenant's Fraction with respect to such item shall,

at Landlord's option, mean the percentage of any such item (but not less than the fraction referred to above) which Landlord reasonably estimates as Tenant's proportionate share thereof.

LL. Tenant's Property: As defined in Section 16.02.

MM. Tenant's Work: The facilities, materials and work which may be undertaken by or for the account of Tenant (other than the Landlord's Work) to equip, decorate and furnish the Demised Premises for Tenant's occupancy.

NN. Term: The period commencing on the Commencement Date and ending at 11:59 p.m. of the Expiration Date, but in any event the Term shall end on the date when this Lease is earlier terminated.

OO. Unavoidable Delays: A delay arising from or as a result of a strike, lockout, or labor difficulty, explosion, sabotage, accident, riot or civil commotion, act of war, fire or other catastrophe, Legal Requirement or an act of the other party and any cause beyond the reasonable control of that party, provided that the party asserting such Unavoidable Delay has exercised its best efforts to minimize such delay.

ARTICLE 2 - DEMISE AND TERM

2.01. Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Demised Premises, for the Term. This Lease is subject to (a) any and all existing encumbrances, conditions, rights, covenants, easements, restrictions and rights of way, of record, and other matters of record, applicable zoning and building laws, regulations and codes, and such matters as may be disclosed by an inspection or survey, and (b) easements now or hereafter created by Landlord in, under, over, across and upon the Land for sewer, water, electric, gas and other utility lines and services now or hereafter installed; provided, however, Landlord represents covenants and warrants to Tenant that the Demised Premises may be used and occupied for the purposes set forth herein; and that the foregoing shall in no manner interfere with Tenant's use and quiet enjoyment of the Demised Premises. Promptly following the Commencement Date, the parties hereto shall enter into an agreement in form and substance satisfactory to Landlord setting forth the Commencement Date.

ARTICLE 3 - RENT

3.01. Tenant shall pay the Fixed Rent in equal monthly installments in advance on the first day of each and every calendar month during the Term (except that Tenant shall pay, upon the execution and delivery of this Lease by Tenant, the Advance Rent, to be applied against the first installment or installments of Fixed Rent becoming due under this Lease). If the Commencement Date occurs on a day other than the first day of a calendar month, the Fixed Rent for the partial calendar month at the commencement of the Term shall be prorated.

3.02. The Rent shall be paid in lawful money of the United States to Landlord at its office, or such other place, or Landlord's agent, as Landlord shall designate by notice to Tenant. Tenant shall pay the Rent promptly when due without notice or demand therefor and without any abatement, deduction or setoff for any reason whatsoever, except as may be expressly provided in this Lease. If Tenant makes any payment to Landlord by check, same shall be by check of Tenant and Landlord shall not be required to accept the check of any other Person, and any check received by Landlord shall be deemed received subject to collection. If any check is mailed by

Tenant, Tenant shall post such check in sufficient time prior to the date when payment is due so that such check will be received by Landlord on or before the date when payment is due. Tenant shall assume the risk of lateness or failure of delivery of the mails, and no lateness or failure of the mails will excuse Tenant from its obligation to have made the payment in question when required under this Lease.

3.03. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law provided.

3.04. If Tenant is in arrears in payment of Rent, Tenant waives Tenant's right, if any, to designate the items to which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to such items as Landlord sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items to which any such payments shall be credited.

3.05. In the event that any installment of Rent due hereunder shall be overdue for five (5) days or more, a "Late Charge" equal to four percent (4%) or the maximum rate permitted by law, whichever is less ("Late Payment Rate") for Rent so overdue may be charged by Landlord for each month or part thereof that the same remains overdue (so that, for example, in the case of a payment of Fixed Rent which has not been paid within the applicable grace period, the Late Charge shall be deemed imposed as of the first day of the month to which such payment relates). In the event that any check tendered by Tenant to Landlord is returned for insufficient funds, Tenant shall pay to Landlord, in addition to the charge imposed by the preceding sentence, a fee of \$25.00. Any such Late Charges if not previously paid shall, at the option of the Landlord, be added to and become part of the next succeeding Rent payment to be made hereunder. Notwithstanding any of the foregoing to the contrary, as to the original named Tenant and any Permitted Assignee(s), the Late Charge shall be waived once per calendar year provided payment is received by Landlord within ten (10) days of its due date.

ARTICLE 4 - USE OF DEMISED PREMISES

4.01. Tenant shall use and occupy the Demised Premises for the Permitted Uses, and Tenant shall not use or permit or suffer the use of the Demised Premises or any part thereof for any other purpose.

4.02. If any governmental license or permit, including a certificate of occupancy or certificate of continued occupancy (a "Certificate of Occupancy") shall be required for the proper and lawful conduct of Tenant's business in the Demised Premises or any part thereof, Tenant shall duly procure and thereafter maintain such license or permit and submit the same to Landlord for inspection. Tenant shall at all times comply with the terms and conditions of each such license or permit. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy the Demised Premises, or do or permit anything to be done in the Demised Premises, in any manner which (a) violates the Certificate of Occupancy for the Demised Premises or for the Building; (b) causes or is liable to cause injury to the Building or any equipment, facilities or systems therein; (c) constitutes a violation of the Legal Requirements or Insurance Requirements; (d) impairs or tends

to impair the character, reputation or appearance of the Building; (e) impairs or tends to impair the proper and economic maintenance, operation and repair of the Building and/or its equipment, facilities or systems; or (f) annoys or inconveniences or tends to annoy or inconvenience other tenants or occupants of the Building.

4.03. Tenant shall not conduct any warehouse sale at the Demised Premises without Landlord's prior written consent. Provided Tenant is not in default of its obligations under this Lease, Landlord agrees not to unreasonably withhold its consent to not more than three (3) warehouse sales in any consecutive twelve (12) month period. Tenant shall pay to Landlord as an Additional Charge, an amount equal to five percent (5%) of Gross Receipts (as hereinafter defined) from any warehouse sale conducted at the Demised Premises, payable within fifteen (15) days after the warehouse sale. Tenant shall comply, at Tenant's sole cost and expense with all Legal Requirements with respect to any warehouse sale. Any warehouse sale conducted by Tenant shall be not more than four (4) consecutive days in duration. As used herein Gross Receipts shall mean the dollar aggregate of: (a) the actual sales price of all goods and merchandise sold, leased or licensed and the charges for all services performed by Tenant or otherwise in connection with all business conducted at such warehouse sale, whether made for cash, by check, credit or otherwise, without reserve or deduction for inability or failure to collect the same, including, without limitation, sales and services (i) where the orders therefor originate at or are accepted at or from the Demised Premises, whether delivery or performance thereof is made at or from the Demised Premises or any other place, it being understood that all sales made and orders received at or from the Demised Premises shall be deemed to have been made and completed therein even though the orders are fulfilled elsewhere or the payments of account are transferred to some other office for collection, and (ii) where the orders therefor result from solicitation off the Demised Premises but which are conducted by personnel operating from or reporting to or under the control or supervision of any person at the Demised Premises, and (b) all monies or other things of value received by Tenant from its operations at the Demised Premises (which are not excluded from Gross Receipts by the next succeeding sentence) including all finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers. Gross Receipts shall not include (x) the exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and neither for the purpose of depriving Landlord of the benefits of a sale which would otherwise be made at or from the Demised Premises nor for the purpose of consummating a sale which has been theretofore made at or from the Demised Premises, or (y) the amount of any city, county, state or federal sales tax, luxury tax or excise tax on sales if the tax is added to the selling price and separately stated and actually paid to the taxing authority by Tenant; provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or Gross Receipts shall be deducted from Gross Receipts in any event whatsoever. Cash or credit refunds made upon transactions included within the Gross Receipts, but not exceeding the selling price of merchandise returned by the purchaser and accepted by Tenant, shall be deducted from the Gross Receipts for the period when such refunds are made. Each charge or sale upon installment or credit or layaway, so called, shall be treated as a sale for the full price irrespective of the time when Tenant shall receive payment from its customer. For purposes of this paragraph the word "Tenant" shall include any of Tenant's subtenants, concessionaires and licensees.

ARTICLE 5 - PREPARATION OF DEMISED PREMISES

5.01.(a) Except as expressly provided to the contrary in this Lease, Tenant is leasing the Demised Premises "as is" on the date hereof, subject to reasonable wear and tear and the rights of

the present occupant(s) of the Demised Premises to remove its or their trade fixtures and other property from the Demised Premises. Tenant shall occupy the Demised Premises promptly after possession thereof is delivered to Tenant by Landlord giving to Tenant a notice of such effect. Except as expressly provided to the contrary in this Lease, the taking of possession by Tenant of the Demised Premises shall be conclusive evidence as against Tenant that the Demised Premises and the Building were in good and satisfactory condition at the time such possession was taken.

(b)(i) Landlord shall deliver the Demised Premises to Tenant in "as is" condition. Tenant shall be responsible for all construction and work to prepare the Demised Premises for Tenant's occupancy at Tenant's cost and expense. Such construction shall be in accordance with Section 36.09 of this Lease. Prior to performing any work in the Demised Premises, Tenant shall, within thirty (30) days of the date thereof submit to Landlord for approval final plans and specifications for all construction work in the Demised Premises including, but not limited to layout, mechanical, electrical and plumbing plans and finish schedules ("Plans and Specifications"). Tenant shall employ licensed architect(s) and/or engineer(s) for the preparation of the Plans and Specifications. Landlord shall notify Tenant of Landlord's approval or disapproval of such Plans and Specifications. Landlord shall notify Tenant of Landlord's approval or disapproval of such Plans and Specifications within fifteen (15) days after receipt thereof. If Landlord disapproves, Landlord shall specify the reasons for disapproval and Tenant shall, within fifteen (15) days of receipt of notice of Landlord's disapproval, resubmit revised Plans and Specifications that correct such items. Notwithstanding anything contained to the contrary herein, if Landlord has not responded to Tenant's submission of Plans and Specifications within twenty (20) Business Days after receipt thereof, Tenant's Plans and Specifications so submitted shall be deemed approved.

(ii) Tenant shall obtain and provide all design and architectural services necessary to perform Tenant's Work and shall be responsible for complying with all building codes and Legal Requirements in connection with Tenant's Work, prior to commencing any work in the Demised Premises. Tenant shall obtain a permanent certificate of occupancy of the Demised Premises for the Permitted Uses. The construction of the Demised Premises shall be performed in a first class workmanlike manner. At all times when construction of the Demised Premises is in progress and prior to the Commencement Date, Tenant shall maintain or cause to be maintained the insurance coverage required under Section 13.02.

(iii) Tenant shall be solely responsible for the structural integrity of the improvements and for the adequacy or sufficiency of the Plans and Specifications and all the improvements depicted thereon or covered thereby, and Landlord's consent thereto, approval thereof, or incorporation therein of any of its recommendations shall in no way diminish Tenant's responsibility therefor or reduce or mitigate Tenant's liability in connection therewith. Landlord shall have no obligations or liabilities by reason of this Lease in connections with the performance of construction or of the finish, decorating or installation work performed by Tenant, or on its behalf, or in connection with the contracts for the performance thereof entered into by Tenant. Any warranties extended or available to Tenant in connection with the aforesaid work shall be for the benefit also of Landlord. Tenant further agrees that once it commences construction, it shall diligently and continuously proceed with construction to completion.

(c) Landlord shall make available to Tenant (or enforce for Tenant's benefit) all extant third party warranties and guaranties available in connection with Landlord's Work or the existing mechanical systems.

(d) Tenant acknowledges and agrees that it shall be responsible for the issuance of any required continued or permanent occupancy certificate or certificate of occupancy.

(e) Tenant acknowledges and agrees that Tenant shall be responsible, at its cost and expense, for Americans With Disabilities Act compliance required with respect to the Demised Premises during the Term, excepting only that certain work being performed by Landlord as part of Landlord's Work.

5.02. If the substantial completion of the Landlord's Work shall be delayed due to (a) any act or omission of Tenant or any of its employees, agents or contractors (including, without limitation, [i] any delays due to changes in or additions to the Landlord's Work, or [ii] any delays by Tenant in the submission of plans, drawings, specifications or other information or in approving any working drawings or estimates or in giving any authorizations or approvals), or (b) any additional time needed for the completion of the Landlord's Work by the inclusion in the Landlord's Work of any items specified by Tenant that require long lead time for delivery or installation, then the Demised Premises shall be deemed ready for occupancy on the date when they would have been ready but for such delay(s). Not later than thirty (30) days from the Commencement Date, Tenant shall have the right to submit to Landlord a "punchlist" noting any incomplete or incorrect Landlord's Work in detail sufficient for Landlord to act thereon. Landlord shall use its reasonable efforts to timely perform and complete such punchlist items in such a manner so as to minimize the interference with Tenant's use of the Demised Premises as contemplated by this Lease and not unreasonably interfere with Tenant's means of ingress or egress to and from the Demised Premises (provided however that nothing contained herein shall obligate Landlord to perform work other than on Business Days during Business Hours).

5.03. If Landlord is unable to give possession of the Demised Premises on the Commencement Date because of the holding-over or retention of possession by any tenant, undertenant or occupant, Landlord shall not be subject to any liability for failure to give possession, the validity of this Lease shall not be impaired under such circumstances, and the Term shall not be extended, but the Rent shall be abated if Tenant is not responsible for the inability to obtain possession.

5.04. Landlord reserves the right, at any time and from time to time, to increase, reduce or change the number, type, size, location, elevation, nature and use of any of the Common Areas and the Building and any other buildings and other improvements on the Land, including, without limitation, the right to move and/or remove same, provided same shall not unreasonably block or interfere with Tenant's means of ingress or egress to and from the Demised Premises and/or the truck loading areas of the Demised Premises (provided however that nothing contained herein shall obligate Landlord to perform work other than on Business Days during Business Hours).

ARTICLE 6 - TAX AND OPERATING EXPENSE PAYMENTS

6.01. Tenant shall pay to Landlord, as hereinafter provided, Tenant's Fraction of the Real Estate Taxes. Tenant's Fraction of the Real Estate Taxes shall be the Real Estate Taxes in respect of the Building for the period in question, multiplied by the Tenant's Fraction, plus the Real Estate Taxes in respect of the Land for the period in question, multiplied by the Tenant's Fraction. If any portion of the Building shall be exempt from all or any part of the Real Estate Taxes, then for

the period of time when such exemption is in effect, the Floor Space on such exempt portion shall be excluded when making the above computations in respect of the part of the Real Estate Taxes for which such portion shall be exempt. Landlord shall estimate the annual amount of Tenant's Fraction of the Real Estate Taxes (which estimate may be changed by Landlord at any time and from time to time), and Tenant shall pay to Landlord 1/12th of the amount so estimated on the first day of each month in advance. Tenant shall also pay to Landlord on demand from time to time the amount which, together with said monthly installments, will be sufficient in Landlord's estimation to pay Tenant's Fraction of any Real Estate Taxes thirty (30) days prior to the date when such Real Estate Taxes shall first become due. When the amount of any item comprising Real Estate Taxes is finally determined for a real estate fiscal tax year, Landlord shall submit to Tenant a statement in reasonable detail of the same, and the figures used for computing Tenant's Fraction of the same, and if Tenant's Fraction so stated is more or less than the amount theretofore paid by Tenant for such item based on Landlord's estimate, Tenant shall pay to Landlord the deficiency within ten (10) days after submission of such statement, or Landlord shall, at its sole election, either refund to Tenant the excess or apply same to future installments of Real Estate Taxes due hereunder. Any Real Estate Taxes for a real estate fiscal tax year, a part of which is included within the Term and a part of which is not so included, shall be apportioned on the basis of the number of days in the real estate fiscal tax year included in the Term, and the real estate fiscal tax year for any improvement assessment will be deemed to be the one-year period commencing on the date when such assessment is due, except that if any improvement assessment is payable in installments, the real estate fiscal tax year for each installment will be deemed to be the one-year period commencing on the date when such installment is due. The above computations shall be made by Landlord in accordance with generally accepted accounting principles, and the Floor Space referred to will be based upon the average of the Floor Space in existence on the first day of each month during the period in question. In addition to the foregoing, Tenant shall be responsible for any increase in Real Estate Taxes attributable to assessments for improvements installed by or for the account of Tenant at the Demised Premises. If the Demised Premises are not separately assessed, the amount of any such increase shall be determined by reference to the records of the tax assessor.

6.02. Real Estate Taxes, whether or not a lien upon the Demised Premises shall be apportioned between Landlord and Tenant at the beginning and end of the Term; it being intended that Tenant shall pay only that portion of the Real Estate Taxes as is allocable to the Demised Premises for the Term.

6.03. Tenant shall pay to Landlord Tenant's Fraction of the Operating Expenses within ten (10) days after Landlord submits to Tenant an invoice and back-up documentation for the Operating Expenses.

6.04. Each such statement given by Landlord pursuant to Section 6.01 or Section 6.03 shall be conclusive and binding upon Tenant unless within 60 days after the receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the particular respects in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall, within ten (10) days after receipt of such statement, pay the Additional Charges in accordance with Landlord's statement, without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Landlord shall forthwith pay to Tenant the amount of Tenant's overpayment resulting from compliance with Landlord's statement and if said overpayment exceeded ten percent (10%) of the amount billed on such Landlord's statement, then such payment shall be accompanied by interest

on the amount of the overpayment at the prime rate of Chase Manhattan Bank, plus two percent (2%) per annum.

ARTICLE 7 - COMMON AREAS

7.01. Except as may be otherwise expressly provided in this Lease and so long as Tenant is not in default under this Lease, Landlord will operate, manage, equip, light, repair and maintain, or cause to be operated, managed, equipped, lighted, repaired and maintained, the Common Areas for their intended purposes. Landlord reserves the right, at any time and from time to time, to construct within the Common Areas kiosks, fountains, aquariums, planters, pools and sculptures, and to install vending machines, telephone booths, benches and the like, provided same shall not unreasonably block or interfere with Tenant's means of ingress or egress to and from the Demised Premises and/or the truck loading areas of the Demised Premises (provided however that nothing contained herein shall obligate Landlord to perform work other than on Business Days during Business Hours).

7.02. Tenant and its subtenants and concessionaires, and their respective officers, employees, agents, customers and invitees, shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has granted or may hereafter grant such right, but subject to the Rules and Regulations, to use the Common Areas. Landlord reserves the right, at any time and from time to time, to close temporarily all or any portions of the Common Areas when in Landlord's reasonable judgment any such closing is necessary or desirable (a) to make repairs or changes or to effect construction, (b) to prevent the acquisition of public rights in such areas, (c) to discourage unauthorized parking, or (d) to protect or preserve natural persons or property. Landlord may do such other acts in and to the Common Areas as in its judgment may be desirable to improve or maintain same. Landlord shall use reasonable efforts to minimize interference with Tenant's use of the Demised Premises or means of ingress or egress to and from the Demised Premises and/or the truck loading areas of the Demised Premises (provided however that nothing contained herein shall obligate Landlord to perform work other than on Business Days during Business Hours). Landlord shall endeavor to provide Tenant with reasonable prior notice of any such closing, which may be oral, except in the event of emergency.

7.03. Tenant agrees that it, any subtenant or licensee and their respective officers, employees, contractors and agents will park their automobiles and other vehicles only where and as permitted by Landlord. Tenant will, if and when so requested by Landlord, furnish Landlord with the license numbers of any vehicles of Tenant, any subtenant or licensee and their respective officers, employees and agents. Landlord shall provide to Tenant for use for parking the area shown outlined in blue on Exhibit F annexed hereto and made a part hereof.

ARTICLE 8 - SECURITY

8.01. (a) In the event Tenant deposits with Landlord any Security Deposit, the same shall be held as security for the full and faithful payment and performance by Tenant of Tenant's obligations under this Lease. If Tenant defaults in the full and prompt payment and performance of any of its obligations under this Lease, including, without limitation, the payment of Rent, Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any

of Tenant's obligations under this Lease, including, without limitation, any damages or deficiency in the reletting of the Demised Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the security, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied and retained, as security as aforesaid. If Tenant shall fully and faithfully pay and perform all of Tenant's obligations under this Lease, the Security Deposit or any balance thereof to which Tenant is entitled shall be returned or paid over to Tenant after the date on which this Lease shall expire or sooner end or terminate, and after delivery to Landlord of entire possession of the Demised Premises. In the event of any sale or leasing of the Land, Landlord shall have the right to transfer the security to which Tenant is entitled to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord for the return or payment of the same; and the provisions hereof shall apply to every transfer or assignment made of the same to a new landlord. Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

(b) In lieu of the cash security required by this Lease, Tenant shall provide to Landlord an irrevocable transferable Letter of Credit in the amount of the Security Deposit in form and substance satisfactory to Landlord and issued by a financial institution approved by Landlord. Landlord shall have the right, upon written notice to Tenant (except that for Tenant's non-payment of Rent or for Tenant's failure to comply with Article 8.03, no such notice shall be required) and regardless of the exercise of any other remedy the Landlord may have by reason of a default, to draw upon said Letter of Credit to cure any default of Tenant or for any purpose authorized by section 8.01(a) of this Lease and if Landlord does so, Tenant shall, upon demand, additionally fund the Letter of Credit with the amount so drawn so that Landlord shall have the full deposit on hand at all times during the Term of the Lease and for a period of thirty (30) days' thereafter. In the event of a sale of the Building or a lease of the Building subject to this Lease, Landlord shall have the right to transfer the security to the vendee or lessee.

8.02. The Letter of Credit shall expire not earlier than thirty (30) days after the Expiration Date of this Lease. Upon Landlord's prior consent, the Letter of Credit may be of the type which is automatically renewed on an annual basis (Annual Renewal Date), provided however, in such event Tenant shall maintain the Letter of Credit and its renewals in full force and effect during the entire Term of this Lease (including any renewals or extensions) and for a period of thirty (30) days thereafter. The Letter of Credit will contain a provision requiring the issuer thereof to give the beneficiary (Landlord) sixty (60) days' advance written notice of its intention not to renew the Letter of Credit on the next Annual Renewal Date.

8.03. In the event Tenant shall fail to deliver to Landlord a substitute irrevocable Letter of Credit, in the amount stated above, on or before thirty (30) days prior to the next Annual Renewal Date, said failure shall be deemed a default under this Lease. Landlord may, in its discretion treat this the same as a default in the payment of Rent or any other default and pursue the appropriate remedy. In addition, and not in limitation, Landlord shall be permitted to draw upon the Letter of Credit as in the case of any other default by Tenant under the Lease.

ARTICLE 9 - SUBORDINATION

9.01. (a) This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to all ground leases and underlying leases of the Land and/or the Building now or hereafter existing and to all Mortgages which may now or hereafter affect the Land and/or building and/or any of such leases, whether or not such Mortgages or leases shall also cover other lands and/or buildings, to each and every advance made or hereafter to be made under such Mortgages, and to all renewals, modifications, replacements and extensions of such leases and such Mortgages and spreaders and consolidations of such Mortgages. The provisions of this Section 9.01 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord, the lessor under any such lease or the Mortgagee of any such Mortgage or any of their respective successors in interest may reasonably request to evidence such subordination.

(b) Notwithstanding anything contained herein to the contrary, Landlord shall use its reasonable efforts to cause each existing Mortgagee of the Demised Premises to enter into their standard form of non-disturbance, attornment and subordination agreement with Tenant, provided that Tenant shall execute such document(s). Notwithstanding anything contained herein to the contrary, subordination of this Lease pursuant to this Section 9.01 with respect to any Mortgage entered into after the date of this Lease shall be conditioned upon the Mortgagee thereunder entering into a non-disturbance, attornment and subordination agreement with Tenant in such form as shall be reasonably acceptable to such Mortgagee, Landlord and Tenant.

9.02. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (a) until it has given written notice of such act or omission to Landlord and each Superior Mortgagee and each Superior Lessor whose name and address shall previously have been furnished to Tenant, and (b) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Superior Mortgagee or Superior Lessor shall have become entitled under such Superior Mortgage or Superior Lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such Superior Mortgagee or Superior Lessor shall with due diligence give Tenant notice of intention to, and commence and continue to, remedy such act or omission.

9.03. If any Superior Lessor or Superior Mortgagee shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights ("Successor Landlord") and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment provided such Successor Landlord recognizes this Lease this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease except that the Successor Landlord shall not (a) be liable for any previous act or omission of Landlord under this Lease; (b) be subject to any offset, not expressly provided for in this Lease, which theretofore shall have accrued to Tenant against Landlord; (c) be liable for the return of any Security Deposit, in whole or in part, to the extent that same is not paid over to the Successor Landlord; or (d) be bound by any previous modification of this Lease or by any previous

prepayment of more than one month's Fixed Rent or Additional Charges, unless such modification or prepayment shall have been expressly approved in writing by the Superior Lessor of the Superior Lease or the Mortgagee of the Superior Mortgage through or by reason of which the Successor Landlord shall have succeeded to the rights of Landlord under this Lease.

9.04. If any then present or prospective Superior Mortgagee shall require any modification(s) of this Lease, Tenant shall promptly execute and deliver to Landlord such instruments effecting such modification(s) as Landlord shall request, provided that such modification(s) do not adversely affect in any material respect any of Tenant's rights under this Lease.

ARTICLE 10 - QUIET ENJOYMENT

10.01. So long as Tenant pays all of the Rent and performs all of Tenant's other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises without hindrance, ejection or molestation by Landlord, or any person lawfully claiming through or under Landlord, subject, nevertheless, to the provisions of this Lease and to Superior Leases and Superior Mortgages.

ARTICLE 11 - ASSIGNMENT, SUBLETTING AND MORTGAGING

11.01. Tenant shall not, whether voluntarily, involuntarily, or by operation of law or otherwise, (a) assign or otherwise transfer this Lease, or offer or advertise to do so, (b) sublet the Demised Premises or any part thereof, or offer or advertise to do so, or allow the same to be used, occupied or utilized by anyone other than Tenant, or (c) mortgage, pledge, encumber or otherwise hypothecate this Lease in any manner whatsoever, without in each instance obtaining the prior written consent of Landlord.

Landlord agrees not to unreasonably withhold its consent to the subletting of the Demised Premises or an assignment of this Lease. In determining reasonableness, Landlord may take into consideration all relevant factors surrounding the proposed sublease and assignment, including, without limitation, the following: (i) The business reputation of the proposed assignee or subtenant and its officers or directors in relation to the other tenants or occupants of the Building or Development; (ii) the nature of the business and the proposed use of the Demised Premises by the proposed assignee or subtenant in relation to the other tenants or occupants of the Building or Development; (iii) whether the proposed assignee or subtenant is then a tenant (or subsidiary, affiliate or parent of a tenant) of other space in the Building or Development, or any other property owned or managed by Landlord or its affiliates; (iv) the financial condition of the proposed assignee or subtenant; (v) restrictions, if any, contained in leases or other agreements affecting the Building and the Development; (vi) the effect that the proposed assignee's or subtenant's occupancy or use of the Demised Premises would have upon the operation and maintenance of the Building and the Development; (vii) the extent to which the proposed assignee or subtenant and Tenant provide Landlord with assurances reasonably satisfactory to Landlord as to the satisfaction of Tenant's obligations hereunder. In any event, at no time shall there be more than two (2) subtenants of the Demised Premises permitted.

In the event the Demised Premises are sublet or this Lease is assigned (except pursuant to Section R4 hereof), Tenant shall pay to Landlord as an Additional Charge the following amounts less the actual reasonable expense incurred by Tenant in connection with such assignment or subletting, as substantiated by Tenant, in writing, to Landlord's reasonable satisfaction, including, without limitation, a reasonable brokerage fee and reasonable legal fees, as the case may be: (i) in

the case of an assignment, an amount equal to fifty percent (50%) of all sums and other consideration paid to Tenant by the assignee for or by reason of such assignment, and (ii) in the case of a sublease, fifty percent (50%) of any rents, additional charge or other consideration payable under the sublease to Tenant by the subtenant which is in excess of the Fixed Rent and Additional Charges accruing during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder) pursuant to the terms hereof.

11.02. If at any time (a) the original Tenant named herein, (b) the then Tenant, (c) any Guarantor, or (d) any Person owning a majority of the voting stock of, or directly or indirectly controlling, the then Tenant shall be a corporation or partnership, any transfer of voting stock or partnership interest resulting in the person(s) who shall have owned a majority of such corporation's shares of voting stock or the general partners' interest in such partnership, as the case may be, immediately before such transfer, ceasing to own a majority of such shares of voting stock or general partner's interest, as the case may be, except as the result of transfers by inheritance, shall be deemed to be an assignment of this Lease as to which Landlord's consent shall have been required, and in any such event Tenant shall notify Landlord. The provisions of this Section 11.02 shall not be applicable to any corporation all the outstanding voting stock of which is listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended) or is traded in the over-the-counter market with quotations reported by the National Association of Securities Dealers through its automated system for reporting quotations and shall not apply to transactions with a corporation into or with which the then Tenant is merged or consolidated or to which substantially all of the then Tenant's assets are transferred or to any corporation which controls or is controlled by the then Tenant or is under common control with the then Tenant, provided that in any of such events (i) the successor to Tenant has a net worth computed in accordance with generally accepted accounting principles at least equal to the greater of (1) the net worth of Tenant immediately prior to such merger, consolidation or transfer, or (2) the net worth of the original Tenant on the date of this Lease, and (ii) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least 10 days prior to the effective date of any such transaction. For the purposes of this Section, the words "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation. Landlord shall have the right at any time and from time to time during the Term to inspect the stock record books of the corporation to which the provisions of this Section 11.02 apply, and Tenant will produce the same on request of Landlord.

11.03 If this Lease is assigned, whether or not in violation of this Lease, Landlord may collect rent from the assignee. If the Demised Premises or any part thereof are sublet or used or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected to the Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 11.01 or Section 11.02, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance by Tenant of Tenant's obligations under this Lease. The consent by Landlord to any assignment, mortgaging, subletting or use or occupancy by others shall not in any way be considered to relieve Tenant from obtaining the express written consent of Landlord to any other or further assignment, mortgaging or subletting or use or occupancy by others not expressly permitted by this Article 11. References in this Lease to use or occupancy by others (that is, anyone other than Tenant) shall not be construed as limited to subtenants and those claiming under or through subtenants but shall be construed as including also licensees and others claiming under or through Tenant, immediately or remotely.

11.04. Any permitted assignment or transfer, whether made with Landlord's consent pursuant to Section 11.01 or without Landlord's consent if permitted by Section 11.02, shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee shall assume Tenant's obligations under this Lease and whereby the assignee shall agree that all of the provisions in this Article 11 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect to all future assignments and transfers. Notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Rent by Landlord from an assignee, transferee, or any other party, the original Tenant and any other person(s) who at any time was or were Tenant shall remain fully liable for the payment of the Rent and for Tenant's other obligations under this Lease.

11.05. The liability of the original named Tenant and any other Person(s) (including but not limited to any Guarantor) who at any time are or become responsible for Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord extending the time of, or modifying any of the terms or obligations under this Lease, or by any waiver or failure of Landlord to enforce, any of this Lease.

11.06. The listing of any name other than that of Tenant, whether on the doors of the Demised Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Demised Premises, nor shall it be deemed to be the consent of Landlord to any assignment or transfer of this Lease or to any sublease of the Demised Premises or to the use or occupancy thereof by others. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the absolute right to withhold its consent to an assignment or subletting to a Person who is otherwise a tenant or occupant or prospective tenant or occupant of the Building, or of a building in the Development owned or managed by Landlord or its affiliated entities and there is then available space within the Development.

11.07. Without limiting any of the provisions of Article 27, if pursuant to the Federal Bankruptcy Code (or any similar law hereafter enacted having the same general purpose), Tenant is permitted to assign this Lease notwithstanding the restrictions contained in this Lease, adequate assurance of future performance by an assignee expressly permitted under such Code shall be deemed to mean the deposit of cash security in an amount equal to the sum of one (1) year's Fixed Rent plus an amount equal to the Additional Charges for the Calendar Year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord for the balance of the Term, without interest, as security for the full performance of all of Tenant's obligations under this Lease, to be held and applied in the manner specified for security in Article 8.

11.08. If Tenant shall propose to assign or in any manner transfer this Lease or any interest therein, or sublet the entire Demised Premises, or grant any concession or license or otherwise permit occupancy of all of the Demised Premises by any person, Tenant shall give notice thereof to Landlord, together with a copy of the proposed instrument that is to accomplish same and such financial and other information pertaining to the proposed assignee, transferee, subtenant, concessionaire or licensee as Landlord shall reasonably require, and Landlord may, in addition to Landlord's right to give or withhold consent, terminate this Lease by notice given to Tenant within thirty (30) days after receipt of said proposed instrument and financial and other information, and upon the date specified in such notice, which date shall be not less than 30 days

and not more than 60 days after the giving of said notice, this Lease shall terminate. If Landlord does not so terminate this Lease, and (if Landlord consents to the subject transaction or if Landlord's consent is not required to same) if Tenant does not consummate the subject transaction within 60 days after the last day on which Landlord might have so terminated this Lease as a result of such transaction, Tenant shall again be required to comply with the provisions of this Section 11.08 in connection with any such transaction as if the notice by Tenant referred to above in this Section 11.08 had not been given. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be obligated to entertain or consider any request by Tenant to consent to any proposed assignment of this Lease or sublet of all or any part of the Demised Premises unless each request by Tenant is accompanied by a non-refundable (except in the event of a recapture) fee payable to Landlord in the amount of One Thousand Dollars (\$1,000.00) to cover Landlord's administrative, legal, and other costs and expenses incurred in processing each of Tenant's requests. Neither Tenant's payment nor Landlord's acceptance of the foregoing fee shall be construed to impose any obligation whatsoever upon Landlord to consent to Tenant's request.

ARTICLE 12 - COMPLIANCE WITH LAWS

12.01. Tenant shall comply with all Legal Requirements which shall, in respect of the Demised Premises or the use and occupation thereof, or the abatement of any nuisance in, on or about the Demised Premises, impose any violation, order or duty on Landlord or Tenant; and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord or any Superior Lessor by reason of or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this Section 12.01. However, Tenant need not comply with any such law or requirement of any public authority so long as Tenant shall be contesting the validity thereof, or the applicability thereof to the Demised Premises, in accordance with Section 12.02. Landlord represents to Tenant that it has received no written notice of any violation of applicable Legal Requirements, and that to the best of Landlord's knowledge, exclusive of compliance matters addressed by Landlord's Work or Tenant's Work, the Demised Premises are presently in substantial compliance with all Legal Requirements.

12.02. Tenant may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Demised Premises, of any Legal Requirement, provided that (a) Landlord shall not be subject to criminal penalty or to prosecution for a crime, and neither the Demised Premises nor any part thereof shall be subject to being condemned or vacated, by reason of non-compliance or otherwise by reason of such contest; (b) before the commencement of such contest, Tenant shall furnish to Landlord either (i) the bond of a surety company satisfactory to Landlord, which bond shall be, as to its provisions and form, satisfactory to Landlord, and shall be in an amount at least equal to 125% of the cost of such compliance (as estimated by a reputable contractor designated by Landlord) and shall indemnify Landlord against the cost thereof and against all liability for damages, interest, penalties and expenses (including reasonable attorneys' fees and expenses), resulting from or incurred in connection with such contest or non-compliance, or (ii) other security in place of such bond satisfactory to Landlord; (c) such non-compliance or contest shall not constitute or result in any violation of any Superior Lease or Superior Mortgage, or if any such Superior Lease and/or Superior Mortgage shall permit such non-compliance or contest on condition of the taking of action or furnishing of security by Landlord, such action shall be taken and such security shall be furnished at the expense of Tenant; and (d) Tenant shall keep Landlord advised as to the status of such proceedings. Without limiting the application of the above, Landlord shall be deemed subject to prosecution for a crime if Landlord, or its managing agent, or any officer, director, partner, shareholder or employee of Landlord or its managing agent, as an individual, is charged with a crime of any kind or degree whatsoever,

whether by service of a summons or otherwise, unless such charge is withdrawn before Landlord or its managing agent, or such officer, director, partner, shareholder or employee of Landlord or its managing agent (as the case may be) is required to plead or answer thereto. Notwithstanding anything contained in this Lease to the contrary, Tenant shall not file any Real Estate Tax Appeal with respect to the Land, Building or the Demised Premises.

ARTICLE 13 - INSURANCE AND INDEMNITY

13.01. Landlord shall maintain or cause to be maintained All Risk insurance in respect of the Building and other improvements on the Land normally covered by such insurance (except for the property Tenant is required to cover with insurance under Section 13.02 and similar property of other tenants and occupants of the Building or buildings and other improvements which are on land neither owned by nor leased to Landlord) for the benefit of Landlord, any Superior Lessors, any Superior Mortgagees and any other parties Landlord may at any time and from time to time designate, as their interests may appear, but not for the benefit of Tenant, and shall maintain rent insurance as required by any Superior Lessor or any Superior Mortgagee. The All Risk insurance will be in the amounts required by any Superior Lessor or any Superior Mortgagee but not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies. Landlord may also maintain any other forms and types of insurance which Landlord shall deem reasonable in respect of the Building and Land. Landlord shall have the right to provide any insurance maintained or caused to be maintained by it under blanket policies.

13.02. Tenant shall maintain the following insurance: (a) comprehensive general public liability insurance in respect of the Demised Premises and the conduct and operation of business therein, having not less than a \$5,000,000.00 combined single limit per occurrence for bodily injury or death to any one person and for bodily injury or death to any number of persons in any one occurrence, and for property damage, including water damage and sprinkler leakage legal liability (coverage to include but not be limited to (i) premises operation, completed operations, broad form contractual liability and product liability, (ii) comprehensive automobile, truck and vehicle liability insurance covering all owned, hired and non-owned vehicles used by the contractor(s) in connection with their work and any loading of such vehicles, with limits as stated above and (iii) worker's compensation, employers liability and occupational disease insurance as required by statutes, but in any event not less than \$500,000.00 for Coverage B covering all damages and injuries arising from each accident or occupational disease) and (b) All Risk insurance in respect of Tenant's stock in trade, fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant in the Demised Premises in any amounts required by any Superior Lessor or any Superior Mortgagee but not less than eighty percent (80%) of the full insurable value of the property covered and not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies, and (c) such other insurance as is required for compliance with the Insurance Requirements. Landlord may at any time and from time to time require that the limits for the comprehensive general public liability insurance to be maintained by Tenant be increased to the limits that new tenants in the Building are required by Landlord to maintain. Tenant shall deliver to Landlord and any additional named insured(s) certificates for such fully paid-for policies upon execution hereof. Upon request of Landlord, Tenant shall furnish Landlord with copies of all such insurance policies. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insured(s) certificates therefor at least thirty (30) days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility, having a Bests Key Rating Guide of not less than A, Class VII, licensed

to do business in New Jersey, and all such policies shall contain a provision whereby the same cannot be canceled unless Landlord and any additional insured(s) are given at least thirty (30) days' (ten (10) days in the case of non-payment of premium) prior written notice of such cancellation. The certificates of insurance to be delivered to Landlord by Tenant shall be on an ACORD 27 form or its equivalent and shall name Landlord as an additional insured and, at Landlord's request, shall also name any Superior Lessors or Superior Mortgagees as additional insureds, and the following phrase must be typed on the certificate of insurance: "Hartz Mountain Industries, Inc., and its respective subsidiaries, affiliates, associates, joint ventures, and partnerships, are hereby named as additional insureds as their interests may appear (and if Landlord has so requested, Tenant shall include any Superior Lessors and Superior Mortgagees as additional insured(s)). It is intended for this insurance to be primary and non-contributing." Tenant shall give Landlord at least thirty (30) days' prior written notice that any such policy is being canceled or replaced. Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy of insurance carried and maintained by Tenant; provided, however, that (i) certificates of insurance (on ACORD 27 form or equivalent) are delivered to Landlord and that Landlord shall be named as an additional insured thereunder, as its interest may appear as more particularly required hereinabove, (ii) the coverage afforded Landlord shall not be reduced or diminished by reason of the use of such blanket policy of insurance, (iii) the requirements set forth herein are otherwise satisfied; (iv) such blanket policy shall reference the Demised Premises and guarantee a minimum limit available for the Demised Premises equal to the insurance amounts required in this Lease; and (v) Tenant agrees to make available to Landlord, at all reasonable times, the original policies of insurance.

13.03. Tenant shall not do, permit or suffer to be done any act, matter, thing or failure to act in respect of the Demised Premises or use or occupy the Demised Premises or conduct or operate Tenant's business in any manner objectionable to any insurance company or companies whereby the fire insurance or any other insurance then in effect in respect of the Land and Building or any part thereof shall become void or suspended or whereby any premiums in respect of insurance maintained by Landlord shall be higher than those which would normally have been in effect for the occupancy contemplated under the Permitted Uses. In case of a breach of the provisions of this Section 13.03, in addition to all other rights and remedies of Landlord hereunder, Tenant shall (a) indemnify Landlord and the Superior Lessors and hold Landlord and the Superior Lessors harmless from and against any loss which would have been covered by insurance which shall have become void or suspended because of such breach by Tenant and (b) pay to Landlord any and all increases of premiums on any insurance, including, without limitation, rent insurance, resulting from any such breach.

13.04. Tenant shall indemnify and hold harmless Landlord and all Superior Lessors and its and their respective partners, joint venturers, directors, officers, agents, servants and employees from and against any and all claims arising from or in connection with (a) the conduct or management of the Demised Premises or of any business therein, or any work or thing whatsoever done, or any condition created (other than by Landlord) in the Demised Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the Demised Premises; (b) any act, omission or negligence of Tenant or any of its subtenants or licensees or its or their partners, joint venturers, directors, officers, agents, employees or contractors; (c) any accident, injury or damage whatever (unless caused solely by Landlord's negligence) occurring in the Demised Premises; and (d) any breach or default by Tenant in the full and prompt payment and performance of Tenant's obligations under this Lease; together with all costs, expenses and liabilities incurred in or in connection with each such claim or

action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses. In case any action or proceeding is brought against Landlord and/or any Superior Lessor and/or its or their partners, joint venturers, directors, officers, agents and/or employees in connection with conduct or management of the Demised Premises or by reason of any claim referred to above, Tenant, upon notice from Landlord or such Superior Lessor, shall, at Tenant's cost and expense, resist and defend such action or proceeding by counsel reasonably satisfactory to Landlord.

13.05. Neither party shall be liable or responsible for, and each party hereby releases the other from, all liability and responsibility to any Person claiming by, through or under the other, by way of subrogation, for any injury, loss or damage to any property in or around the Demised Premises or to the other's business covered by insurance carried or required to be carried hereunder irrespective of the cause of such injury, loss or damage, and each party shall require its insurers to include in all of such party's insurance policies which could give rise to a right of subrogation against the other a clause or endorsement whereby the insurer waives any rights of subrogation against the other or permits the insured, prior to any loss, to agree with a third party to waive any claim it may have against said third party without invalidating the coverage under the insurance policy.

ARTICLE 14 - RULES AND REGULATIONS

14.01. Tenant and its employees and agents shall faithfully observe and comply with the Rules and Regulations and such reasonable changes therein (whether by modification, elimination or addition) as Landlord at any time or times hereafter may make and communicate to Tenant, which in Landlord's judgment, shall be necessary for the reputation, safety, care or appearance of the Land and Building, or the preservation of good order therein, or the operation or maintenance of the Building or its equipment and fixtures, or the Common Areas, and which do not unreasonably affect the conduct of Tenant's business in the Demised Premises; provided, however, that in case of any conflict or inconsistency between the provisions of this Lease and any of the Rules and Regulations, the provisions of this Lease shall control. Nothing in this Lease contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations against any other tenant or any employees or agents of any other tenant, and Landlord shall not be liable to Tenant for violation of the Rules and Regulations by any other tenant or its employees, agents, invitees or licensees. Landlord shall not discriminatorily enforce any Rule or Regulation against Tenant which Landlord is not enforcing, to the extent applicable, against the other Tenants in the Building.

ARTICLE 15 - ALTERATIONS AND SIGNS

15.01. Tenant shall not make any alterations or additions to the Demised Premises, or make any holes or cuts in the walls, ceilings, roofs, or floors thereof, or change the exterior color or architectural treatment of the Demised Premises, without on each occasion first obtaining the consent of Landlord. Landlord's consent shall not be required for any non-structural interior alteration of the Demised Premises which does not adversely affect the structure of the Building or functional utility of the Building for the Permitted Uses. Tenant agrees to give Landlord notice of any non-structural alteration costing more than Fifty Thousand Dollars (\$50,000.00). Landlord agrees that it shall not unreasonably withhold or delay its consent to structural or non-structural alterations provided same do not adversely affect the structure of the Building or the functional utility of the Building for the Permitted Uses. Tenant shall submit to Landlord plans and specifications for such work at the time Landlord's consent is sought. Notwithstanding anything

contained to the contrary herein, if Landlord has not responded to Tenant's submission of plans and specifications within fifteen (15) Business Days after receipt thereof, Tenant's plans and specifications so submitted shall be deemed approved. At the time such consent is granted, Tenant shall agree (or if no consent is required, upon request of Landlord upon notification by Tenant of such alteration) to restore the Demised Premises on or before the Expiration Date to their condition as of the Commencement Date, reasonable wear and tear excepted and subject to Article 24. Tenant shall pay to Landlord upon demand the reasonable cost and expense of Landlord actually incurred to third parties in (a) reviewing said plans and specifications and (b) inspecting the alterations to determine whether the same are being performed in accordance with the approved plans and specifications and all Legal Requirements and Insurance Requirements, including, without limitation, the fees of any architect or engineer employed by Landlord for such purpose. Before proceeding with any permitted alteration which will cost more than \$100,000 (other than the initial Tenant's Work and exclusive of the costs of decorating work and items constituting Tenant's Property), as estimated by a reputable independent contractor designated by Landlord, Tenant shall obtain and deliver to Landlord either (i) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New Jersey), each in an amount equal to 125% of such estimated cost and in form reasonably satisfactory to Landlord, or (ii) such other security as shall be reasonably satisfactory to Landlord. Tenant shall fully and promptly comply with and observe the Rules and Regulations then in force in respect of the making of alterations. Any review or approval by Landlord of any plans and/or specifications with respect to any alterations is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant in respect of the adequacy, correctness or efficiency thereof or otherwise.

15.02. Tenant shall obtain all necessary governmental permits and certificates for the commencement and prosecution of permitted alterations and for final approval thereof upon completion, and shall cause alterations to be performed in compliance with all applicable Legal Requirements and Insurance Requirements. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the better of (a) the original installations of the Building, or (b) the then standards for the Building established by Landlord. Alterations shall be performed by contractors first approved by Landlord; provided, however, that any alterations in or to the mechanical, electrical, sanitary, heating, ventilating, air conditioning or other systems of the Building shall be performed only by the contractor(s) reasonably acceptable to Landlord. Alterations shall be made in such manner as not to unreasonably interfere with or delay and as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operation of the Building; and if any such additional expense shall be incurred by Landlord as a result of Tenant's making of any alterations, Tenant shall pay any such additional expense upon demand. Throughout the making of alterations, Tenant shall carry, or cause to be carried, workmen's compensation insurance in statutory limits and general liability insurance, with completed operation endorsement, for any occurrence in or about the Building, under which Landlord and its managing agent and any Superior Lessor whose name and address shall previously have been furnished to Tenant shall be named as parties insured, in such limits as Landlord may reasonably require, with insurers reasonably satisfactory to Landlord. Tenant shall furnish Landlord with reasonably satisfactory evidence that such insurance is in effect at or before the commencement of alterations and, on request, at reasonable intervals thereafter during the making of alterations.

15.03. Tenant shall not place any signs on the roof, exterior walls or grounds of the Demised Premises without first obtaining Landlord's written consent thereto. Landlord shall not

unreasonably withhold or delay its consent to (i) a sign indicating Tenant's (or other identifying information) on the exterior of the Demised Premises, or (ii) directional signs indicating the location of Tenant's loading areas. In placing any sign on or about the Demised Premises, Tenant shall, at its expense, maintain such sign, repair any damage caused to the Building, comply with all applicable Legal Requirements, obtain all required permits and/or licenses and agree to remove said sign and repair all damage to the Building caused by such removal at or prior to the Expiration Date.

ARTICLE 16 - LANDLORD'S AND TENANT'S PROPERTY

16.01. All fixtures, equipment, improvements and appurtenances attached to or built into the Demised Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant, shall be and remain a part of the Demised Premises, shall be deemed to be the property of Landlord and shall not be removed by Tenant, except as provided in Section 16.02. Further, any carpeting or other personal property in the Demised Premises on the Commencement Date, unless installed and paid for by Tenant, shall be and shall remain Landlord's property and shall not be removed by Tenant.

16.02. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to or built into the Demised Premises, which are installed in the Demised Premises by or for the account of Tenant without expense to Landlord and can be removed without structural damage to the Building and all furniture, furnishings, and other movable personal property owned by Tenant and located in the Demised Premises (collectively, "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of the Tenant's Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Demised Premises, the Building or the Common Areas resulting from the installation and/or removal thereof. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant shall not be deemed to have been installed by or for the account of Tenant without expense to Landlord, shall not be considered as the Tenant's Property and shall be deemed the property of Landlord.

16.03. At or before the Expiration Date or the date of any earlier termination of this Lease, or within fifteen (15) days after such an earlier termination date, Tenant shall remove from the Demised Premises all of the Tenant's Property (except such items thereof as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord if not removed), and Tenant shall repair any damage to the Demised Premises, the Building and the Common Areas resulting from any installation and/or removal of the Tenant's Property. Any items of the Tenant's Property which shall remain in the Demised Premises after the Expiration Date or after a period of fifteen (15) days following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case such items may be retained by Landlord as its property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine at Tenant's expense.

16.04. At or before the Expiration Date or the date of any earlier termination of this Lease, or within fifteen (15) days after such an earlier termination date, Tenant shall, at Tenant's sole cost and expense, remove from the Demised Premises such rack system as may be installed in the Demised Premises and Tenant shall repair any damage to the Demised Premises, the Building and the Common Areas resulting from any installation and/or removal thereof. Such removal shall

be in accordance with the following procedures, unless Landlord shall advise Tenant to the contrary by written notice to Tenant:

Core a hole centered over the anchor bolt with a core bit 1.5 times larger than the bolt to be removed, but in no event smaller than 1" in diameter.

Core hole shall be drilled to a depth equal to the bolt depth, but not less than 2" deep. Remove the cored concrete with the anchor bolt from the hole. Clean all concrete slurry and debris from area to be patched.

Fill the cored hole with a polymer-modified non-shrink mortar, specifically SikaTop 122 or Master Builders Ceilcote 648 CP, or equivalent, and finish to match surrounding concrete surface.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.01. Tenant shall, throughout the Term, take good care of the Demised Premises, the fixtures and appurtenances therein, and shall not do, suffer, or permit any waste with respect thereto. Tenant shall keep and maintain the Demised Premises including without limitation all building equipment, windows, doors, loading bay doors and shelters, plumbing and electrical systems, heating, ventilating and air conditioning ("HVAC") systems (whether located in the interior of the Demised Premises or on the exterior of the Building) in a clean and orderly condition. Tenant shall, at Landlord's option, keep and maintain in a clean and orderly condition all HVAC systems and any other mechanical or other systems exclusively serving the Demised Premises which are located in whole or in part outside of the Demised Premises (it being understood and agreed that if Landlord shall elect to keep and maintain said systems, then the cost of same shall be included in Operating Expenses). Tenant shall keep and maintain all exterior components of any windows, doors, loading bay doors and shelters serving the Demised Premises in a clean and orderly condition. The phrase "keep and maintain" as used herein includes repairs, replacement and/or restoration as appropriate. Tenant shall not permit or suffer any over-loading of the floors of the Demised Premises. Tenant shall be responsible for all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, in and to the Demised Premises, and the Building (including the facilities and systems thereof) and the Common Areas the need for which arises out of (a) the performance or existence of the Tenant's Work or alterations, (b) the installation, use or operation of the Tenant's Property in the Demised Premises, (c) the moving of the Tenant's Property in or out of the Building, or (d) the act, omission, misuse or neglect of Tenant or any of its subtenants or its or their employees, agents, contractors or invitees. Upon request by Landlord, Tenant shall furnish Landlord with true and complete copies of maintenance contracts and with copies of all invoices for work performed, confirming Tenant's compliance with its obligations under this Article. In the event Tenant fails to furnish such copies, Landlord shall have the right, at Tenant's cost and expense, to conduct such inspections or surveys as may be required to determine whether or not Tenant is in compliance with this Article and to have any work required of Tenant performed at Tenant's cost and expense. Tenant shall promptly replace all scratched, damaged or broken doors and glass in and about the Demised Premises and shall be responsible for all repairs, maintenance and replacement of wall and floor coverings in the Demised Premises and for the repair and maintenance of all sanitary and electrical fixtures and equipment therein. The Tenant shall also arrange for its own cleaning services and rubbish removal, subject to the right of Landlord, at Landlord's option to perform such services and include the cost of such services in Operating Expenses. Tenant shall promptly make all repairs in or to the Demised Premises for which Tenant is responsible, and any repairs required to be made by Tenant to the mechanical, electrical, sanitary, heating, ventilating, air-conditioning or other systems of the Building shall be performed only by contractor(s) designated by Landlord. Any other repairs in or to the Building and the facilities and systems thereof for which Tenant is responsible shall be performed by Landlord at Tenant's expense; but Landlord may, at its option, before commencing any such work or at any time thereafter, require Tenant to furnish to Landlord such security, in form (including, without limitation, a bond issued by a corporate surety licensed to do business in New Jersey) and amount, as Landlord shall deem necessary to assure the payment for such work by Tenant.

17.02. So long as Tenant is not in default under this Lease, Landlord shall make all structural repairs and replacements, including, specifically, the roof and roof membrane (except as hereinabove provided in Section 17.01) and the cost thereof shall be included in Operating

Expenses, for which Tenant shall pay Tenant's Fraction. Landlord shall keep and maintain the Common Areas and shall procure landscaping and snow removal services for the Building and the cost thereof shall be included in Operating Expenses, for which Tenant shall pay Tenant's Fraction. Notwithstanding anything herein contained to the contrary, to the extent the Operating Expenses include an expenditure for a capital improvement, as defined under generally accepted accounting principles (including but not limited to the roof membrane), Tenant shall only be responsible for that portion of the cost of said capital improvement as is determined by amortizing said cost over the useful life of the capital improvement; an annual amount equal to the amortized cost of the capital improvement plus an interest component equal to the Prime Rate of the Chase Manhattan Bank plus four percent per annum shall be then added to the Operating Expenses and paid by Tenant over the then remaining Term (or extension thereof) of the Lease.

17.03. Tenant shall not permit or suffer the overloading of the floors of the Demised Premises beyond 250 pounds per square foot, or lesser amount as may be applicable to any mezzanine area.

17.04. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's doing any repairs, maintenance, or changes which Landlord is required or permitted by this Lease, or required by Law, to make in or to any portion of the Building.

ARTICLE 18 - UTILITY CHARGES

18.01. Tenant shall pay all charges for gas, water, sewer, electricity, heat or other utility or service supplied to the Demised Premises as measured by meters relating to Tenant's use, and any cost of repair, maintenance, replacement, and reading of any meters measuring Tenant's consumption thereof. If any utilities or services are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants or occupants of the Building, Tenant shall pay to Landlord on demand Tenant's proportionate share of such charges for utilities and/or services, which shall be such charges multiplied by a fraction the numerator of which shall be the Floor Space in the Demised Premises and the denominator of which shall be the Floor Space of all tenants and occupants of the Building using such utilities and/or services. In the event Landlord determines that Tenant's utilization of any such service exceeds the fraction referred to above, Tenant's proportionate share with respect to such service shall, at Landlord's option, mean the percentage of any such service (but not less than the fraction referred to above) which Landlord reasonably estimates as Tenant's utilization thereof. Tenant expressly agrees that Landlord shall not be responsible for the failure of supply to Tenant of any of the aforesaid, or any other utility service. Landlord shall not be responsible for any public or private telephone service to be installed in the space, particularly conduit, if required.

18.02. Tenant's use of electric energy in the Demised Premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Demised Premises. In order to insure that such capacity is not exceeded and to avert possible adverse effect upon the Building's electric service, Tenant shall not, without Landlord's prior consent in each instance (which shall not be unreasonably withheld), connect any fixtures, appliances or equipment to the Building's electric distribution system or make any alteration or addition to the electric system of the Demised Premises existing on the Commencement Date.

Should Landlord grant such consent, all additional risers or other equipment required therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant to Landlord on demand.

ARTICLE 19 - ACCESS, CHANGES AND NAME

19.01. Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Demised Premises, all of the Building, including, without limitation, exterior Building walls, core corridor walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Demised Premises, and any space in or adjacent to the Demised Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Building facilities and the use thereof, as well as access thereto through the Demised Premises for the purpose of operating, maintenance, decoration and repair, are reserved to Landlord. Landlord also reserves the right, to install, erect, use and maintain pipes, ducts and conduits in and through the Demised Premises, provided such are (1) properly enclosed, (2) do not interfere with Tenant's use and occupancy of the Demised Premises, and (3) do not reduce the size of the useable area of the Demised Premises, except in a de minimis manner.

19.02. Landlord and its agents shall have the right to enter and/or pass through the Demised Premises at all reasonable times upon reasonable prior notice to Tenant, which may be oral, from Landlord, except in the event of emergency (a) to examine the Demised Premises and to show them to actual and prospective Superior Lessors, Superior Mortgagees, or prospective purchasers of the Building, and (b) to make such repairs, alterations, additions and improvements in or to the Demised Premises and/or in or to the Building or its facilities and equipment as Landlord is required or desires to make. Landlord shall be allowed to take all materials into and upon the Demised Premises that may be required in connection therewith, without any liability to Tenant and without any reduction of Tenant's obligations hereunder. During the period of nine (9) months prior to the Expiration Date, Landlord and its agents may exhibit the Demised Premises to prospective tenants.

19.03. If at any time any windows of the Demised Premises are temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building, or if any part of the Building or the Common Areas, other than the Demised Premises, is temporarily or permanently closed or inoperable, the same shall not be deemed a constructive eviction and shall not result in any reduction or diminution of Tenant's obligations under this Lease.

19.04. [Intentionally Omitted]

19.05. Landlord reserves the right, at any time and from time to time, to make such changes, alterations, additions and improvements in or to the Building and the fixtures and equipment thereof as Landlord shall deem necessary or desirable.

19.06. Landlord may adopt any name for the Building. Landlord reserves the right to change the name and/or address of the Building at any time.

ARTICLE 20 - MECHANICS' LIENS AND OTHER LIENS

20.01. Nothing contained in this Lease shall be construed to imply any consent of Landlord to subject Landlord's interest or estate to any liability under any mechanic's, construction or other lien law. If any lien or any Notice of Intention (to file a lien), Lis Pendens, or Notice of Unpaid

Balance and Right to File Lien is filed against the Land, the Building, or any part thereof, or the Demised Premises, or any part thereof, for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of Tenant, or anyone holding any part of the Demised Premises through or under Tenant, Tenant shall cause the same to be canceled and discharged of record by payment, bond or order of a court of competent jurisdiction within fifteen (15) days after notice by Landlord to Tenant.

ARTICLE 21 - NON-LIABILITY AND INDEMNIFICATION

21.01. Neither Landlord nor any partner, joint venturer, director, officer, agent, servant or employee of Landlord shall be liable to Tenant for any loss, injury or damage to Tenant or to any other Person, or to its or their property, irrespective of the cause of such injury, damage or loss, unless caused by or resulting from the negligence of Landlord, its agents, servants or employees in the operation or maintenance of the Land or Building without contributory negligence on the part of Tenant or any of its subtenants or licensees or its or their employees, agents or contractors. Further, neither Landlord nor any partner, joint venturer, director, officer, agent, servant or employee of Landlord shall be liable (a) for any such damage caused by other tenants or Persons in, upon or about the Land or Building, or caused by operations in construction of any private, public or quasi-public work; or (b) even if negligent, for consequential damages arising out of any loss of use of the Demised Premises or any equipment or facilities therein by Tenant or any Person claiming through or under Tenant.

21.02. [Intentionally Omitted].

21.03. Notwithstanding any provision to the contrary, Tenant shall look solely to the estate and property of Landlord in and to the Land and Building (or the proceeds received by Landlord on a sale of such estate and property but not the proceeds of any financing or refinancing thereof) in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Demised Premises or the Common Areas, and Tenant agrees that the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Demised Premises or the Common Areas shall be limited to such estate and property of Landlord (or sale proceeds). No other properties or assets of Landlord or any partner, joint venturer, director, officer, agent, servant or employee of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgement (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of, or in connection with, this Lease, the relationship of Landlord and Tenant or Tenant's use of the Demised Premises or the Common Areas and if Tenant shall acquire a lien on or interest in any other properties or assets by judgment or otherwise, Tenant shall promptly release such lien on or interest in such other properties and assets by executing, acknowledging and delivering to Landlord an instrument to that effect prepared by Landlord's attorneys. Tenant hereby waives the right of specific performance and any other remedy allowed in equity if specific performance or such other remedy could result in any liability of Landlord for the payment of money to Tenant, or to any court or governmental authority (by way of fines or otherwise) for Landlord's failure or refusal to observe a judicial decree or determination, or to any third party.

ARTICLE 22 - DAMAGE OR DESTRUCTION

22.01. If the Building or the Demised Premises shall be partially or totally damaged or destroyed by fire or other casualty (and if this Lease shall not be terminated as in this Article 22 hereinafter provided), Landlord shall repair the damage and restore and rebuild the Building and/or the Demised Premises (except for the Tenant's Property) with reasonable dispatch after notice to it of the damage or destruction and the collection of the insurance proceeds attributable to such damage.

22.02. Subject to the provisions of Section 22.05, if all or part of the Demised Premises shall be damaged or destroyed or rendered completely or partially untenable on account of fire or other casualty, the Rent shall be abated or reduced, as the case may be, in the proportion that the untenable area of the Demised Premises bears to the total area of the Demised Premises (to the extent of rent insurance proceeds received by the Landlord) for the period from the date of the damage or destruction to (a) the date the damage to the Demised Premises shall be substantially repaired, or (b) if the Building and not the Demised Premises is so damaged or destroyed, the date on which the Demised Premises shall be made tenable; provided, however, should Tenant reoccupy a portion of the Demised Premises during the period the repair or restoration work is taking place and prior to the date that the Demised Premises are substantially repaired or made tenable the Rent allocable to such reoccupied portion, based upon the proportion which the area of the reoccupied portion of the Demised Premises bears to the total area of the Demised Premises, shall be payable by Tenant from the date of such occupancy.

22.03. If (a) the Building or the Demised Premises shall be totally damaged or destroyed by fire or other casualty, or (b) the Building shall be so damaged or destroyed by fire or other casualty (whether or not the Demised Premises are damaged or destroyed) that its repair or restoration requires the expenditure, as estimated by a reputable contractor or architect designated by Landlord, of more than twenty (20%) (or ten percent [10%] if such casualty occurs during the last two [2] years of the Term) of the full insurable value of the Building immediately prior to the casualty, or (c) the Building shall be damaged or destroyed by fire or other casualty (whether or not the Demised Premises are damaged or destroyed) and either the loss shall not be covered by Landlord's insurance or the net insurance proceeds (after deducting all expenses in connection with obtaining such proceeds) shall, in the estimation of a reputable contractor or architect designated by Landlord be insufficient to pay for the repair or restoration work, then in either such case Landlord may terminate this Lease by giving Tenant notice to such effect within ninety (90) days after the date of the fire or other casualty. Notwithstanding any of the foregoing to the contrary, if the Building shall be so damaged or destroyed by fire or other casualty so that it is rendered untenable for Tenant's use and occupancy and its repair would take more than eighteen (18) months from the date of the fire or other casualty to accomplish (the "Restoration Period"), as reasonably estimated by the Architect, (the "Architect's Determination"), then Tenant shall have the right to terminate this Lease upon written notice to Landlord given within thirty (30) days of notice of the Architect's Determination. Landlord shall give Tenant written notice of the Architect's Determination within sixty (60) days of such damage or destruction.

22.04. Tenant shall not be entitled to terminate this Lease, except as otherwise provided above, and no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Building pursuant to this Article 22. Landlord shall use its best efforts to make such repair or restoration promptly and in such manner as to not unreasonably interfere with Tenant's use and occupancy of the Demised Premises, but Landlord shall not be required to do such repair or restoration work except during Business Hours on Business Days.

22.05. Notwithstanding any of the foregoing provisions of this Article 22, if by reason of some act or omission on the part of Tenant or any of its subtenants or its or their partners, directors, officers, servants, employees, agents or contractors, either (a) Landlord or any Superior Lessor or any Superior Mortgagee shall be unable to collect all of the insurance proceeds (including, without limitation, rent insurance proceeds) applicable to damage or destruction of the Demised Premises or the Building by fire or other casualty, or (b) the Demised Premises or the Building shall be damaged or destroyed or rendered completely or partially untenable on account of fire or other casualty, then, without prejudice to any other remedies which may be available against Tenant, there shall be no abatement or reduction of the Rent. Further, nothing contained in this Article 22 shall relieve Tenant from any liability that may exist as a result of any damage or destruction by fire or other casualty.

22.06. Landlord will not carry insurance of any kind on the Tenant's Property and, except as provided by law or by reason of Landlord's breach of any of its obligations hereunder, shall not be obligated to repair any damage to or replace the Tenant's Property.

22.07. The provisions of this Article 22 shall be deemed an express agreement governing any case of damage or destruction of the Demised Premises and/or Building by fire or other casualty, and any law providing for such a contingency in the absence of an express agreement, now or hereafter in force, shall have no application in such case.

ARTICLE 23 - EMINENT DOMAIN

23.01 If the whole of the Demised Premises shall be taken by any public or quasi-public authority under the power of condemnation, eminent domain or expropriation, or in the event of conveyance of the whole of the Demised Premises in lieu thereof, this Lease shall terminate as of the day possession shall be taken by such authority. If 25% or less of the Floor Space of the Demised Premises shall be so taken or conveyed, this Lease shall terminate only in respect of the part so taken or conveyed as of the day possession shall be taken by such authority. If more than 25% of the Floor Space of the Demised Premises shall be so taken or conveyed, this Lease shall terminate only in respect of the part so taken or conveyed as of the day possession shall be taken by such authority, but either party shall have the right to terminate this Lease upon notice given to the other party within 30 days after such taking possession. If more than 25% of the Floor Space of the Building shall be so taken or conveyed, Landlord may, by notice to Tenant, terminate this Lease as of the day possession shall be taken. If so much of the parking facilities shall be so taken or conveyed that the number of parking spaces necessary, in Landlord's judgment, for the continued operation of the Building shall not be available, Landlord shall, by notice to Tenant, terminate this Lease as of the day possession shall be taken. If this Lease shall continue in effect as to any portion of the Demised Premises not so taken or conveyed, the Rent shall be computed as of the day possession shall be taken on the basis of the remaining Floor Space of the Demised Premises. Except as specifically provided herein, in the event of any such taking or conveyance there shall be no reduction in Rent. If this Lease shall continue in effect, Landlord shall, at its expense, but shall be obligated only to the extent of the net award or other compensation (after deducting all expenses in connection with obtaining same) available to Landlord for the improvements taken or conveyed (excluding any award or other compensation for land or for the unexpired portion of the term of any Superior Lease), make all necessary alterations so as to constitute the remaining Building a complete architectural and tenantable unit, except for the Tenant's Property, and Tenant shall make all alterations or replacements to the Tenant's Property

and decorations in the Demised Premises. All awards and compensation for any taking or conveyance, whether for the whole or a part of the Land or Building, the Demised Premised or otherwise, shall be the property of Landlord, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such awards and compensation, including, without limitation, any award or compensation for the value of the unexpired portion of the Term. Tenant shall be entitled to claim, prove and receive in the condemnation proceeding such award or compensation as may be allowed for the Tenant's Property and for loss of business, good will, and depreciation or injury to and cost of removal of the Tenant's Property, but only if such award or compensation shall be made by the condemning authority in addition to, and shall not result in a reduction of, the award or compensation made by it to Landlord.

23.02. If the temporary use or occupancy of all or any part of the Demised Premises shall be taken during the Term, Tenant shall be entitled, except as hereinafter set forth, to receive that portion of the award or payment for such taking which represents compensation for the use and occupancy of the Demised Premises, for the taking of the Tenant's Property and for moving expenses, and Landlord shall be entitled to receive that portion which represents reimbursement for the cost of restoration of the Demised Premises. This Lease shall be and remain unaffected by such taking and Tenant shall continue to be responsible for all of its obligations hereunder insofar as such obligations are not affected by such taking and shall continue to pay the Rent in full when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award or payment which represents compensation for the use and occupancy of the Demised Premises (or a part thereof) shall be divided between Landlord and Tenant so that Tenant shall receive (except as otherwise provided below) so much thereof as represents compensation for the period up to and including the Expiration Date and Landlord shall receive so much thereof as represents compensation for the period after the Expiration Date. All monies to be paid to Tenant as, or as part of, an award or payment for temporary use and occupancy for a period beyond the date to which the Rent has been paid shall be received, held and applied by the first Superior Mortgagee (or if there is no Superior Mortgagee, by Landlord as a trust fund) for payment of the Rent becoming due hereunder.

ARTICLE 24 - SURRENDER

24.01. On the Expiration Date, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Demised Premises, Tenant shall quit and surrender the Demised Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and Tenant shall remove all of Tenant's Property therefrom except as otherwise expressly provided in this Lease.

24.02. If Tenant remains in possession of the Demised Premises after the expiration of the Term, Tenant shall be deemed to be occupying the Demised Premises at the sufferance of Landlord subject to all of the provisions of this Lease, except that the monthly Fixed Rent shall be twice the Fixed Rent in effect during the last month of the Term.

24.03. No act or thing done by Landlord or its agents shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord.

ARTICLE 25 - CONDITIONS OF LIMITATION

25.01. This Lease is subject to the limitation that whenever Tenant or any Guarantor (a) shall make an assignment for the benefit of creditors, or (b) shall commence a voluntary case or have entered against it an order for relief under any chapter of the Federal Bankruptcy Code (Title 11 of the United States Code) or any similar order or decree under any federal or state law, now in existence, or hereafter enacted having the same general purpose, and such order or decree shall have not been stayed or vacated within 30 days after entry, or (c) shall cause, suffer, permit or consent to the appointment of a receiver, trustee, administrator, conservator, sequestrator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, and such appointment shall not have been revoked, terminated, stayed or vacated and such official discharged of his duties within 30 days of his appointment, then Landlord, at any time after the occurrence of any such event, may give Tenant a notice of intention to end the Term at the expiration of five (5) days from the date of service of such notice of intention, and upon the expiration of said five (5) day period, whether or not the Term shall theretofore have commenced, this Lease shall terminate with the same effect as if that day were the expiration date of this Lease, but Tenant shall remain liable for damages as provided in Article 27.

25.02. This Lease is subject to the further limitations that: (a) if Tenant shall default in the payment of any Rent, and such default shall continue for ten (10) days after written notice or invoice, or (b) if Tenant shall, whether by action or inaction, be in default of any of its obligations under this Lease (other than a default in the payment of Rent) and such default shall continue and not be remedied within twenty (20) days after Landlord shall have given to Tenant a notice specifying the same, or, in the case of a default which cannot with due diligence be cured within a period of twenty (20) days and the continuance of which for the period required for cure will not subject Landlord or any Superior Lessor or prosecution for a crime (as more particularly described in the last sentence of Section 12.02) or termination of any Superior Lease or foreclosure of any Superior Mortgage, if Tenant shall not, (i) within said twenty (20) day period advise Landlord of Tenant's intention to take all steps necessary to remedy such default, (ii) duly commence within said twenty (20) day period, and thereafter diligently prosecute to completion all steps necessary to remedy the default, and (iii) complete such remedy within a reasonable time after the date of said notice by Landlord, or (c) if any event shall occur or any contingency shall arise whereby this Lease would, by operation of law or otherwise, devolve upon or pass to any person, firm or corporation other than Tenant, except as expressly permitted by Article 11, or (d) if Tenant shall vacate or abandon the Demised Premises, or (e) if there shall be any default by Tenant (or any person which, directly or indirectly, controls, is controlled by, or is under common control with Tenant) under any other lease with Landlord (or any person which, directly or indirectly, controls, is controlled by, or is under common control with Landlord) which shall not be remedied within the applicable grace period, if any, provided therefor under such other lease, then in any of said cases Landlord may give to Tenant a notice of intention to end the Term at the expiration of five (5) days from the date of the service of such notice of intention, and upon the expiration of said five (5) days, whether or not the Term shall theretofore have commenced, this Lease shall terminate with the same effect as if that day were the expiration date of this Lease, but Tenant shall remain liable for damages as provided in Article 27.

ARTICLE 26 - RE-ENTRY BY LANDLORD

26.01. If Tenant shall default in the payment of any Rent, and such default shall continue for ten (10) days after written notice or invoice, or if this Lease shall terminate as provided in Article

25, Landlord or Landlord's agents and employees may immediately or at any time thereafter re-enter the Demised Premises, or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any Person therefrom, to the end that Landlord may have, hold and enjoy the Demised Premises. The word "re-enter," as used herein, is not restricted to its technical legal meaning. If this Lease is terminated under the provisions of Article 25, or if Landlord shall re-enter the Demised Premises under the provisions of this Article 26, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossession or other proceedings or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall thereupon pay to Landlord the Rent payable up to the time of such termination of this Lease, or of such recovery of possession of the Demised Premises by Landlord, as the case may be, and shall also pay to Landlord damages as provided in Article 27.

26.02. In the event of a breach or threatened breach by Tenant of any of its obligations under this Lease, Landlord shall also have the right of injunction. The special remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

26.03. If this Lease shall terminate under the provisions of Article 25, or if Landlord shall re-enter the Demised Premises under the provisions of this Article 26, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as Advance Rent, security or otherwise, but such monies shall be credited by Landlord against any Rent due from Tenant at the time of such termination or re-entry or, at Landlord's option, against any damages payable by Tenant under Article 27 or pursuant to law.

ARTICLE 27 - DAMAGES

27.01. If this Lease is terminated under the provisions of Article 25 or if Landlord shall re-enter the Demised Premises under the provisions of Article 26, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall pay as Additional Charges to Landlord, at the election of Landlord, either or any combination of:

(a) a sum which at the time of such termination of this Lease or at the time of any such re-entry by Landlord, as the case may be, represents the then value of the excess, if any, of (i) the aggregate amount of the Rent which would have been payable by Tenant (conclusively presuming the average monthly Additional Charges to be the same as were the average monthly Additional Charges payable for the year, or if less than 365 days have then elapsed since the Commencement Date, the partial year, immediately preceding such termination or re-entry) for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the Expiration Date, over (ii) the aggregate rental value of the Demised Premises for the same period;
or

(b) sums equal to the Fixed Rent and the Additional Charges which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so

re-entered the Demised Premises, payable upon the due dates therefor specified herein following such termination or such re-entry and until the Expiration Date, provided, however, that if Landlord shall relet the Demised Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this Lease or in re-entering the Demised Premises and in securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Demised Premises for new tenants, brokers' commissions, legal fees, and all other expenses properly chargeable against the Demised Premises and the rental therefrom, it being understood that any such reletting may be for a period shorter or longer than the period ending on the Expiration Date; but in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, nor shall Tenant be entitled in any suit for the collection of damages pursuant to this subsection (b) to a credit in respect of any rents from a reletting, except to the extent that such net rents are actually received by Landlord. If the Demised Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot basis shall be made of the rent received from such reletting and of the expenses of reletting; or

(c) a sum which at the time of such termination of this Lease or at the time of any such re-entry by Landlord, as the case may be, represents the aggregate amount of the Rent which would have been payable by Tenant (conclusively presuming the average monthly Additional Charges to be the same as were the average monthly Additional Charges payable for the year, or if less than 365 days have then elapsed since the Commencement Date, the partial year, immediately preceding such termination or re-entry) for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the Expiration Date; provided, however, that if Landlord shall relet the Demised Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this Lease or in re-entering the Demised Premises and in securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Demised Premises for new tenants, brokers' commissions, legal fees, and all other expenses properly chargeable against the Demised Premises and the rental therefrom, it being understood that any such reletting may be for a period shorter or longer than the period ending on the Expiration Date; but in no event shall Landlord have to account to Tenant for any rents in excess of the total damages recovered by Landlord hereunder, nor shall Tenant be entitled in any suit for the collection of damages pursuant to this subdivision (c) to a credit in respect of any rents from a reletting, except to the extent that such net rents are actually received by Landlord. If the Demised Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot basis shall be made of the rent received from such reletting and of the expenses of reletting.

If the Demised Premises or any part thereof should be relet by Landlord before presentation of proof of such damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall, prima facie, be the fair and reasonable rental value for the Demised Premises, or part thereof, so relet during the term of the reletting. Landlord shall not be liable in any way whatsoever for its failure to relet the Demised Premises or any part thereof, or if the Demised Premises or any part thereof are relet, for its failure to collect the rent under such reletting, and no such failure to relet or failure to collect rent shall release or affect Tenant's liability for damages or otherwise under this Lease. Furthermore, Tenant, on behalf of itself and any and all persons claiming through or under Tenant, does hereby waive and surrender all right and privilege which it, they or any of them might have under or by reason of any present or future law or applicable governmental or judicial authority, to require that Landlord mitigate damages sustained or to be sustained by Landlord hereunder as a result of a default by Tenant and/or any and all persons claiming through or under Tenant under this Lease. In the event Tenant, on behalf of itself or any and all persons claiming through or under Tenant, attempts to raise a defense or assert any affirmative obligations on Landlord's part to mitigate such damages or relet the Demised Premises, Tenant shall reimburse Landlord for any costs and expenses incurred by Landlord as a result of any such defense or assertion, including but not limited to Landlord's attorneys' fees incurred in connection therewith.

27.02. Suit or suits for the recovery of such damages or, any installments thereof, may be brought by Landlord at any time and from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term would have expired if it had not been so terminated under the provisions of Article 25, or under any provision of law, or had Landlord not re-entered the Demised Premises. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for and obtain as damages by reason of the termination of this Lease or re-entry of the Demised Premises for the default of Tenant under this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time, whether or not such amount be greater than, equal to, or less than any of the sums referred to in Section 27.01.

27.03. In addition, if this Lease is terminated under the provisions of Article 25, or if Landlord shall re-enter the Demised Premises under the provisions of Article 26, Tenant covenants that: (a) the Demised Premises then shall be in the same condition as that in which Tenant has agreed to surrender the same to Landlord at the Expiration Date; (b) Tenant shall have performed prior to any such termination any obligation of Tenant contained in this Lease for the making of any alteration or for restoring or rebuilding the Demised Premises or the Building, or any part thereof; and (c) for the breach of any covenant of Tenant set forth above in this Section 27.03, Landlord shall be entitled immediately, without notice or other action by Landlord, to recover, and Tenant shall pay, as and for liquidated damages therefor, the cost of performing such covenant (as estimated by an independent contractor selected by Landlord).

27.04. In addition to any other remedies Landlord may have under this Lease, and without reducing or adversely affecting any of Landlord's rights and remedies under this Article 27, if any Rent or damages payable hereunder by Tenant to Landlord are not paid upon demand therefor, the same shall bear interest at the Late Payment Rate or the maximum rate permitted by law,

whichever is less, from the due date thereof until paid, and the amounts of such interest shall be Additional Charges hereunder.

ARTICLE 28 - AFFIRMATIVE WAIVERS

28.01. Tenant, on behalf of itself and any and all persons claiming through or under Tenant, does hereby waive and surrender all right and privilege which it, they or any of them might have under or by reason of any present or future law, to redeem the Demised Premises or to have a continuance of this Lease after being dispossessed or ejected from the Demised Premises by process of law or under the terms of this Lease or after the termination of this Lease as provided in this Lease.

28.02. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and Tenant's use or occupancy of the Demised Premises including, without limitation, any claim of injury or damage, and any emergency and other statutory remedy with respect thereto. Tenant shall not interpose any counterclaim of any kind, except compulsory counterclaims as permitted by applicable Court Rule, in any action or proceeding commenced by Landlord to recover possession of the Demised Premises.

ARTICLE 29 - NO WAIVERS

29.01. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of Fixed Rent or Additional Charges with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

ARTICLE 30 - CURING TENANT'S DEFAULTS

30.01. If Tenant shall default in the performance of any of Tenant's obligations under this Lease, Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Tenant, without notice in a case of emergency, and in any other case only if such default continues after the expiration of fifteen (15) days from the date Landlord gives Tenant notice of the default. Charges for any expenses reasonably incurred by Landlord in connection with any such performance by it for the account of Tenant, and charges for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees and expenses, involved in collecting or endeavoring to collect the Rent or any part thereof or enforcing or endeavoring to enforce any rights against Tenant or Tenant's obligations hereunder, under or in connection with this Lease or pursuant to law, including any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings or in recovering possession of the Demised Premises after default by Tenant or upon the expiration of the Term or sooner termination of this Lease, and interest on all sums advanced by Landlord under this Article at the Late Payment Rate or the maximum rate permitted by law, whichever is less, shall be payable by Tenant and may be invoiced by Landlord to Tenant monthly, or immediately, or at any time, at Landlord's option, and such amounts shall be due and payable in accordance with the terms of such bills upon demand.

ARTICLE 31 - BROKER

31.01. Landlord and Tenant each represents to the other that it dealt with no broker except the Broker in bringing about or consummating this Lease and that each respectively had no conversations or negotiations with any broker except the Broker concerning the leasing of the Demised Premises. Landlord and Tenant agree to indemnify, defend and hold each other harmless against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, arising out of any conversations or negotiations had by the indemnifying party with any broker other than the Broker and for enforcing this indemnity provision. Landlord shall pay any brokerage commissions due the Broker pursuant to a separate agreement between Landlord and the Broker.

ARTICLE 32 - NOTICES

32.01. Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Lease or pursuant to any applicable Legal Requirement, shall be in writing and shall be deemed to have been properly given, rendered or made only if hand delivered or sent by United States registered or certified mail, return receipt requested, addressed to the other party at the address hereinabove set forth (except that after the Commencement Date, Tenant's address, unless Tenant shall give notice to the contrary, shall be the Building) as to Landlord, to the attention of General Counsel with a concurrent notice to the attention of Controller, and shall be deemed to have been given, rendered or made on the second day after the day so mailed, unless mailed outside the State of New Jersey, in which case it shall be deemed to have been given, rendered or made on the third business day after the day so mailed. Either party may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands, consents, approvals or other communications intended for it. In addition, upon and to the extent requested by Landlord, copies of notices shall be sent to the Superior Mortgagee.

ARTICLE 33 - ESTOPPEL CERTIFICATES

33.01. Each party shall, at any time and from time to time, as requested by the other party, upon not less than ten (10) days' prior notice, execute and deliver to the requesting party a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the dates to which the Fixed Rent and Additional Charges have been paid, stating whether or not, to the best knowledge of the party giving the statement, the requesting party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which the party giving the statement shall have knowledge, and stating whether or not, to the best knowledge of the party giving the statement, any event has occurred which with the giving of notice or passage of time, or both, would constitute such a default of the requesting party, and, if so, specifying each such event; any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the party requesting the certificate and by others with whom such party may be dealing, regardless of independent investigation. Tenant also shall include in any such statement such other information concerning this Lease as Landlord may reasonably request.

ARTICLE 34 - [INTENTIONALLY OMITTED]

ARTICLE 35 - MEMORANDUM OF LEASE

35.01. Tenant shall not record this Lease. However, at the request of Landlord, Tenant shall promptly execute, acknowledge and deliver to Landlord a memorandum of lease in respect of this Lease sufficient for recording. Such memorandum shall not be deemed to change or otherwise affect any of the obligations or provisions of this Lease. Whichever party records such memorandum of Lease shall pay all recording costs and expenses, including any taxes that are due upon such recording.

ARTICLE 36 - MISCELLANEOUS

36.01. Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease or in any other written agreement(s) which may be made between the parties concurrently with the execution and delivery of this Lease. All understandings and agreements heretofore had between the parties are merged in this Lease and any other written agreement(s) made concurrently herewith, which alone fully and completely express the agreement of the parties and which are entered into after full investigation. Neither party has relied upon any statement or representation not embodied in this Lease or in any other written agreement(s) made concurrently herewith. The submission of this Lease to Tenant does not constitute by Landlord a reservation of, or an option to Tenant for, the Demised Premises, or an offer to lease on the terms set forth herein and this Lease shall become effective as a lease agreement only upon execution and delivery thereof by Landlord and Tenant.

36.02. No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing, refers expressly to this Lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination or effectuation of abandonment is sought.

36.03. If Tenant shall at any time request Landlord to sublet or let the Demised Premises for Tenant's account, Landlord or its agent is authorized to receive keys for such purposes without releasing Tenant from any of its obligations under this Lease, and Tenant hereby releases Landlord of any liability for loss or damage to any of the Tenant's Property in connection with such subletting or letting.

36.04. Except as otherwise expressly provided in this Lease, the obligations under this Lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party is named or referred to; provided, however, that (a) no violation of the provisions of Article 11 shall operate to vest any rights in any successor or assignee of Tenant and (b) the provisions of this Section 36.04 shall not be construed as modifying the conditions of limitation contained in Article 25.

36.05. Except for Tenant's obligations to pay Rent, the time for Landlord or Tenant, as the case may be, to perform any of its respective obligations hereunder shall be extended if and to the

extent that the performance thereof shall be prevented due to any Unavoidable Delay. Except as expressly provided to the contrary, the obligations of Tenant hereunder shall not be affected, impaired or excused, nor shall Landlord have any liability whatsoever to Tenant, (a) because Landlord is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Lease due to any of the matters set forth in the first sentence of this Section 36.05, or (b) because of any failure or defect in the supply, quality or character of electricity, water or any other utility or service furnished to the Demised Premises for any reason beyond Landlord's reasonable control.

36.06. Any liability for payments hereunder (including, without limitation, Additional Charges) shall survive the expiration of the Term or earlier termination of this Lease.

36.07. If Tenant shall request Landlord's consent and Landlord shall fail or refuse to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent; Tenant's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law Landlord may not unreasonably withhold its consent.

36.08. If an excavation shall be made upon land adjacent to or under the Building, or shall be authorized to be made, Tenant shall afford to the Person causing or authorized to cause such excavation, license to enter the Demised Premises for the purpose of performing such work as said Person shall reasonably deem necessary or desirable to preserve and protect the Building from injury or damage and to support the same by proper foundations, without any claim for damages or liability against Landlord and without reducing or otherwise affecting Tenant's obligations under this Lease.

36.09. Tenant shall not exercise its rights under Article 15 or any other provision of this Lease in a manner which would violate Landlord's union contracts or create any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant of the Building.

36.10. Tenant shall give prompt notice to Landlord of (a) any occurrence in or about the Demised Premises for which Landlord might be liable, (b) any fire or other casualty in the Demised Premises, (c) any damage to or defect in the Demised Premises, including the fixtures and equipment thereof, for the repair of which Landlord might be responsible, and (d) any damage to or defect in any part of the Building's sanitary, electrical, heating, ventilating, air-conditioning, elevator or other systems located in or passing through the Demised Premises or any part thereof.

36.11. This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey. Tenant hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Lease may be brought in the Courts of the State of New Jersey, or the Federal District Court for the District of New Jersey, as Landlord may elect. By execution and delivery of this Lease, Tenant hereby irrevocably accepts and submits generally and unconditionally for itself and with respect to its properties, to the jurisdiction of any such court in any such action or proceeding, and hereby waives in the case of any such action or proceeding brought in the courts of the State of New Jersey, or Federal District Court for the District of New Jersey, any defenses based on jurisdiction, venue or forum non conveniens. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected and shall be enforced to the extent permitted by law. The table of contents, captions, headings and

titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. If any words or phrases in this Lease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Lease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Lease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. Tenant specifically agrees to pay all of Landlord's costs, charges and expenses, including attorneys' fees, incurred in connection with any document review requested by Tenant and upon submission of bills therefor. In the event Landlord permits Tenant to examine Landlord's books and records with respect to any Additional Charge imposed under this Lease, such examination shall be conducted at Tenant's sole cost and expense and shall be conditioned upon Tenant retaining an independent accounting firm for such purposes which shall not be compensated on any type of contingent fee basis with respect to such examination. Wherever in this Lease or by law Landlord is authorized to charge or recover costs and expenses for legal services or attorneys' fees, same shall include, without limitation, the costs and expenses for in-house or staff legal counsel or outside counsel at rates not to exceed the reasonable and customary charges for any such services as would be imposed in an arms length third party agreement for such services.

36.12. Within thirty (30) days after written request therefor from Landlord, but not more than once per year, Tenant shall furnish to Landlord a copy of its then current audited (if available) financial statement (which may be in the form of an annual report (10K), so long as Tenant shall be a publicly traded company) which shall be employed by Landlord for purposes of financing the Premises and not distributed otherwise without prior authorization of Tenant.

36.13. Upon written request therefor from Landlord, at least ninety (90) days prior to Tenant's termination of its lease, and any extensions thereof, Tenant agrees to seek a determination from the New Jersey Department of Environmental Protection and Energy ("NJDEP") in the form of a Letter of Non-applicability ("LNA"), that the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA"), is inapplicable to the Tenant's cessation of operations and termination of its lease. Tenant represents, warrants, and covenants that any information contained in any application for an LNA submitted pursuant to this subsection will be true and complete. Tenant represents that the Standard Industrial Classification (SIC) number applicable to Tenant's operations would not subject this transaction to the requirements of ISRA.

(ii) In the event that an LNA is denied by NJDEP, notice of such denial will be given to Landlord within two (2) business days of Tenant's receipt of NJDEP's denial of the LNA. Tenant shall satisfy its obligations under ISRA prior to its lease termination date: (1) by securing an approval of the Tenant's Negative Declaration; or (2) by securing an approval of the Tenant's Remedial Action Workplan, and completing the implementation of such Plan, and obtaining from NJDEP a "No Further Action" letter. Tenant shall bear sole responsibility for any investigation and cleanup costs, fees, penalties, or damages associated with ISRA compliance. In the event that Tenant is unable to complete the its ISRA compliance obligations by the date of its lease termination, Landlord shall continue to provide Tenant with reasonable access to the Demised

Premises, provided that any work undertaken by Tenant shall be performed in such a manner as to minimize interference with Landlord's or any other tenant's use of the Demised Premises. However, Landlord reserves its rights to deem Tenant a holdover tenant in the event that Tenant's ISRA compliance unreasonably restricts the Landlord's use of the Demised Premises.

(iii) Tenant shall provide Landlord with copies of all correspondence, documents and reports, including sampling results submitted to or received from any governmental agency or third party in connection with Tenant's compliance with ISRA.

(iv) Notwithstanding any of the foregoing to the contrary, in no event shall Tenant be responsible for any compliance or any costs or expenses of any required cleanup or clean-up plan where the spills or discharges which create the need for such compliance, cleanup or plan occurred prior to the Commencement Date unless such spill or discharge is caused by Tenant's acts or action or those of its contractors, agents or employees.

(v) Notwithstanding any provision to the contrary contained in this Lease, Landlord shall be responsible for the cleanup of any environmental condition or any violation of environmental law at the Building or the Land existing prior to the Commencement Date which is required to be cleaned up or remediated in accordance with applicable environmental law (except to the extent caused or suffered by Tenant, its agents, contractors or employees in the event Tenant is permitted to occupy the Demised Premises prior to the Commencement Date). Landlord agrees to and shall indemnify, defend and hold Tenant harmless from and against any and all costs incurred with respect to the cleanup or remediation of any environmental condition existing at the Building or the Land prior to the Commencement Date (except to the extent caused or suffered by Tenant, its agents, contractors or employees in the event Tenant is permitted to occupy the Demised Premises prior to the Commencement Date), which is required to be cleaned up or remediated in accordance with applicable environmental law (including without limitation, reasonable consultants fees and reasonable attorney fees arising by reason of any of the foregoing or a successful action to enforce the provisions of this indemnity) arising from any non-compliance with environmental law at or from the Building or the Land, any of which is Landlord's responsibility under this Paragraph 36.13(v). None of Landlord's representations or covenants herein shall be construed as creating any third party beneficiaries or obligating Landlord to any third parties. Notwithstanding anything to the contrary stated hereinabove, the indemnifications, contained in this Paragraph 36.13(v) shall not include any special or consequential damages incurred by Tenant. The indemnifications contained in this Paragraph 36.13(v) shall survive any expiration or termination of the Term, but shall terminate three (3) years after any such expiration or termination except with respect to any specific claims which have been given in writing by Tenant to Landlord prior to the expiration of said three year period.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

("Landlord")
HARTZ MOUNTAIN ASSOCIATES
BY: HARTZ MOUNTAIN INDUSTRIES, INC.

By: _____
Irwin A. Horowitz
Executive Vice President

[Corporate Seal]

("Tenant")
THE CHILDREN'S PLACES RETAIL STORES, INC.

By: _____
Name:
Title:

[Corporate Seal]

R1. If any of the provisions of this Rider shall conflict with any of the provisions, printed or typewritten, of this Lease, such conflict shall resolve in every instance in favor of the provisions of this Rider.

R2. Provided Tenant is in not in default under this Lease beyond any applicable notice and/or cure periods, if any, and provided Tenant has not assigned (other than to a permitted assignee under Section R4) this Lease or sublet all or any portion of the Demised Premises and is itself (or its permitted assignee as contemplated in Section R4) in occupation and conducting business in the whole of the Demised Premises in accordance with the terms of this Lease, and provided Tenant shall have validly exercised its renewal option pursuant to its lease of the premises at 915 Secaucus Road, Tenant expressly acknowledging and agreeing that the option rights contained herein are personal to the original named Tenant (or its permitted assignee as contemplated in Section R4), Tenant shall have one (1) option to extend the Term of its lease of the Demised Premises, from the date upon which this Lease would otherwise expire for one extended period of three (3) years (herein referred to as the "Extended Period"), upon the following terms and conditions:

1. If Tenant elects to exercise said option, it shall do so by giving notice of such election to Landlord on or before the date which is nine (9) months before the beginning of the Extended Period for which the Term is to be extended by the exercise of such option. Tenant agrees that it shall have forever waived its right to exercise any such option if it shall fail for any reason whatsoever to give such notice to Landlord by the time provided herein for the giving of such notice, whether such failure is inadvertent or intentional, time being of the essence as to the exercise of such option.

2. If Tenant elects to exercise said option, the Term shall be automatically extended for the Extended Period covered by the option so exercised without execution of an extension or renewal lease. Within ten (10) days after request of either party following the effective exercise of such option, however, Landlord and Tenant shall execute, acknowledge and deliver to each other duplicate originals of an instrument in recordable form confirming that such option was effectively exercised.

3. The Extended Period shall be upon the same terms and conditions as are in effect immediately preceding the commencement of such Extended Period; provided, however, that Tenant shall have no right or option to extend the Term for any period of time beyond the expiration of the Extended Period and, provided further, that in the Extended Period the Fixed Rent shall be at ninety-five percent (95%) of Fair Market Value ("FMV"). FMV shall be determined by mutual agreement of the parties. If the parties are unable to agree on the FMV within thirty (30) days of Tenant's exercise of its option, the parties shall choose a licensed Real Estate Appraiser who shall determine the FMV. The cost of said Real Estate Appraiser shall be borne equally by the parties. If the parties are unable to agree on a licensed Real Estate Appraiser within forty-five (45) days of Tenant's exercise of its option, each party shall select one Appraiser to appraise the FMV. All appraisals shall be rendered within thirty (30) days of appointment of the respective Appraiser appointed under this paragraph. If the difference between the two appraisals is 20% or

less of the lower appraisal, then the FMV shall be the average of the two appraisals. If the difference between the two appraisals is greater than 20% of the lower appraisal, the two Appraisers shall select a third licensed Real Estate Appraiser to appraise the FMV. The FMV shall in such case be the average of the three appraisals. The cost of the third appraisal shall be borne equally by the parties.

Anything to the contrary contained herein notwithstanding, the Fixed Rent for the Extended Period shall not be less than the Fixed Rent for the period immediately preceding the Extended Period for which the Fixed Rent is being calculated.

4. Any termination, expiration, cancellation or surrender of this Lease shall terminate any right or option for the Extended Period not yet exercised.

5. Landlord shall have the right, for thirty (30) days after receipt of notice of Tenant's election to exercise the option to extend the Term, to reject Tenant's election if Tenant gave such notice while Tenant was in default beyond any applicable notice and/or cure periods, if any, in the performance of any of its obligations under the Lease, and such rejection shall automatically render Tenant's election to exercise such option null and void and of no effect.

6. The option provided herein to extend the Term of the Lease may not be severed from the Lease or separately sold, assigned or otherwise transferred.

R3. Landlord represents that the Demised Premises are located within Light Industrial Zone A pursuant to the regulations of the Hackensack Meadowlands Development Commission and that the use of the Demised Premises for the Permitted Use is authorized therein.

R4. Notwithstanding anything to the contrary set forth in Article 11 hereof:

(a) Tenant may assign this Lease to the parent corporation or to any wholly-owned subsidiary corporation of Tenant without obtaining the prior written consent of Landlord, provided that the following conditions are met:

(i) Any such assignee shall remain the parent of Tenant, or a wholly-owned subsidiary corporation of Tenant, as the case may be;

(ii) The net worth of the assignee shall be not less than the greater of (1) Tenant's net worth at the time of execution of this Lease, or (2) Tenant's net worth at the time of the assignment;

(iii) Tenant shall have given Landlord thirty (30) days' prior written notice of such assignment, which notice contains all information and documentation Landlord reasonably requires to satisfy itself as to the conditions contained in the Section R4(a);

(iv) Tenant shall not then be in default beyond any applicable notice and/or cure period, if any, under this Lease;

(v) Tenant and its assignee furnishes Landlord not less than thirty (30) days prior to the effective date of said assignment a written instrument in form and substance

satisfactory to Landlord agreeing to assume and be bound by all the conditions, obligations and agreements contained in this Lease.

Notwithstanding any such assignment, Tenant shall remain fully and primarily liable for the performance of all conditions, obligations and agreements of Tenant under this Lease.

(b) Tenant may without Landlord's prior written consent, assign this Lease to an entity which is buying all or substantially all, of the assets of Tenant, or with which Tenant is merging or consolidating, provided the following conditions are met:

(i) The net worth of the assignee shall be not less than the greater of (1) Tenant's net worth at the time of execution of this Lease, or (2) Tenant's net worth at the time of the assignment;

(ii) The assignee is taking an assignment of all or substantially all of the retail stores of Tenant, and of Tenant's parent, subsidiaries and affiliates;

(iii) The assignee, in Landlord's reasonable judgment, has sufficient past retail experience, there shall be no material change in Tenant's management on account of the transaction, and the assignment, in Landlord's reasonable judgment, will not result in a decrease in the quality of Tenant's business operations;

(iv) Tenant shall have given Landlord thirty (30) days' prior written notice of such assignment, which notice contains all information and documentation Landlord reasonably requires to satisfy itself as to the conditions contained in the Section R4(b);

(v) Tenant shall not then be in default beyond any applicable notice and/or cure period, if any, under this Lease;

(vi) Tenant and its assignee furnishes Landlord not less than thirty (30) days prior to the effective date of said assignment a written instrument in form and substance satisfactory to Landlord agreeing to assume and be bound by all the conditions, obligations and agreements contained in this Lease.

Notwithstanding any such assignment, Tenant shall remain fully and primarily liable for the performance of all conditions, obligations and agreements of Tenant under this Lease.

HARTZ MOUNTAIN ASSOCIATES
BY: HARTZ MOUNTAIN INDUSTRIES, INC.

By: /s/ Irwin A. Horowitz

Irwin A. Horowitz
Executive Vice President

THE CHILDREN'S PLACE RETAIL STORES, INC.,

By: /s/ Steven Balasiano

Steven Balasiano
Vice President and General Counsel

/s/ Mario Ciampi

Mario Ciampi
Senior Vice President

Exhibit B - Description of Land
DEED DESCRIPTION

900 SECAUCUS ROAD
(LOT 3, BLOCK 22)

Deed description of a parcel of land situate along the southerly side of Secaucus Road in the Town of Secaucus, Hudson County, New Jersey.

Beginning at a point on the southerly side of Secaucus Road (60' wide), said point being N 68(0) 17' 22" W 658.00 feet along the southerly side of Secaucus Road (60' wide) from its intersection with the westerly side of Enterprise Avenue South (60' wide) and running; thence

1. S 21(0)42' 38" W 503.73 feet along the westerly side of a 24' wide Railroad Right of Way to a point; thence
2. N 68(0)17' 22" W 480.27 feet to a point; thence
3. N 19(0)20' 54" W 97.29 feet to a point of curvature; thence
4. Along a curve to the Right having a radius of 310.00 feet, an arc length of 51.10 feet to a point on curve; thence
5. S 70(0)39' 06" W 80.87 feet to a point on curve; thence
6. Along a curve to the Right having a radius of 390.00 feet, an arc length of 228.44 feet along the westerly side of an ingress and egress easement to a point of tangency; thence
7. N 21(0)42' 38" E 186.76 feet still along the westerly side of an ingress and egress easement to a point of curvature; thence
8. Along a curve to the left having a radius of 40.00 feet, an arc length of 62.83 feet to a point of tangency on the southerly side of Secaucus Road (60' wide); thence
9. S 68(0)17' 22" E 740.42 feet along the southerly side of Secaucus Road (60' wide) to the point of beginning.

Containing 7.671 acres

Being known as Lot 3, Block 22 as shown on the Town of Secaucus Tax Maps.

Subject to a 80' wide easement for ingress and egress to be used in common with others described as follows:

Beginning at the terminus of the eighth course of the above description and running; thence

1. S 68(0)17' 22" E 160.00 feet along the southerly side of Secaucus Road (60' wide) to a point of curvature; thence

2. Westerly along a curve to the left having a radius of 40.00 feet, an arc length of 62.83 feet to a point of tangency; thence
3. S 21(0)42' 38" W 186.76 feet to a point of curvature; thence
4. Along a curve to the left having a radius of 310.00 feet, an arc length of 171.03 feet to a point on curve and the terminus of the fourth course of the above description; thence
5. S 70(0)39' 06" W 80.87 feet along the fifth course to a point on curve; thence
6. Along a curve to the Right having a radius of 390.00 feet, an arc length of 228.44 feet along the sixth course of the above description to a point of tangency; thence
7. N 21(0)42' 38" E 186.76 feet along the seventh course of the above description to a point of curvature; thence
8. Along a curve to the left having a radius of 40.00 feet, an arc length of 62.83 feet along the eighth course of the above description to the point of beginning.

Subject to all easements, rights of ways and agreements of record.

Rev 12/96

Exhibit C - [Intentionally Omitted]

Exhibit D - Rules and Regulations
EXHIBIT D

MULTI-WAREHOUSE
RULES AND REGULATIONS

1. The rights of each tenant in the entrances, corridors, elevators and escalators servicing the Building are limited to ingress and egress from such tenant's premises for the tenant and its employees, licensees and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, escalators or elevators for any other purpose. No tenant shall invite to the tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the plazas, entrances, corridors, escalators, elevators and other facilities of the Building by any other tenants. Fire exits and stairways are for emergency use only, and they shall not be used for any other purpose by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of, any of the sidewalks, plazas, entrances, corridors, escalators, elevators, fire exits or stairways of the Building. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

2. Landlord may refuse admission to the Building outside of Business Hours on Business Days to any person not known to the watchman in charge, or not having a pass issued by Landlord or the tenant whose premises are to be entered, or not otherwise properly identified, and Landlord may require all persons admitted to or leaving the Building outside of Business Hours on Business Days to provide appropriate identification. Tenant shall be responsible for all persons for whom it issues any such pass and shall be liable to Landlord for all acts or omissions of such persons. Any person whose presence in the Building at any time shall, in the judgment of Landlord, be prejudicial to the safety, character or reputation of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. During any invasion, riot, public excitement or other commotion, Landlord may prevent all access to the Building by closing the doors or otherwise for the safety of the tenants and protection of property in the Building.

3. No tenant shall obtain or accept for use in its premises ice, drinking water, food, beverage, towel, barbering, bootblackening, floor polishing, cleaning or other similar services from any persons not authorized by Landlord in writing to furnish such services, provided that the charges for such services by persons authorized by Landlord are comparable to similar charges in other comparable buildings in Hudson County. Such services shall be furnished only at such hours, and under such reasonable regulations, as may be fixed by Landlord from time to time.

4. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or its employees, licensees or invitees, shall be paid by such tenant.

5. No awnings or other projections other than canopies over the loading docks shall be attached to the outside walls of the Building.

6. Subject to Article 15, no lettering, sign, advertisement, notice or object shall be displayed in or on the windows or doors, or on the outside of any tenant's premises, or at any point inside any tenant's premises where the same might be visible outside of such premises, without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove the same without any liability, and may charge the expense incurred in such removal to the tenant violating this rule. Interior signs, elevator cab designations and lettering on doors and the Building directory shall, if and when approved by Landlord, be inscribed, painted or affixed for each tenant by Landlord at the reasonable expense of such tenant, and shall be of a size, color and style acceptable to Landlord.

7. The sashes, sash doors, skylights, windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills or on the peripheral air conditioning enclosures, if any.

8. No showcase or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules.

9. Linoleum, tile or other floor covering shall be laid in a tenant's premises only in a manner first approved in writing by Landlord.

10. No tenant shall mark, paint, drill into, or in any way deface any part of its premises or the Building. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct, except as may be approved pursuant to Article 15.

11. No bicycles, vehicles, animals, fish or birds of any kind shall be brought into or kept in or about the premises of any tenant of the Building.

12. No noise, including, but not limited to, music or the playing of musical instruments, recordings, radio or television, which, in the judgment of Landlord, might disturb other tenants in the Building, shall be made or permitted by any tenant. Nothing shall be done or permitted in the premises of any tenant which would impair or interfere with the use or enjoyment by any other tenant of any other space in the Building.

13. No tenant, nor any tenant's contractors, employees, agents, visitors or licensees, shall at any time bring into or keep upon the premises or the Building any inflammable, combustible, explosive or otherwise dangerous fluid, chemical or substance.

14. Additional locks or bolts of any kind which shall not be operable by the grand master key for the Building shall not be placed upon any of the doors or windows by any tenant, nor shall any changes be made in locks or the mechanism thereof which shall make such locks inoperable by said grand master key without Landlord's prior written consent. Additional keys for a tenant's premises and toilet rooms may be procured from Landlord who may make a reasonable charge therefor. Each tenant shall, upon the termination of its tenancy, turn over to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such tenant, and in the event of the loss of any keys furnished by Landlord such tenant shall pay to Landlord the cost thereof.

15. All removals, or the carrying in or out of any safes, freight, furniture, packages, boxes, crates or any other object or matter of any description must take place during such hours and in such elevators and in such manner as Landlord or its agent may reasonably determine from time to time. The persons employed to move safes and other heavy objects shall be reasonably acceptable to Landlord and, if so required by law, shall hold a master rigger's license. Arrangements will be made by Landlord with any tenant for moving large quantities of furniture and equipment into or out of the Building. All labor and engineering costs reasonably incurred by Landlord in connection with any moving specified in this rule, shall be paid by Tenant to Landlord, on demand.

16. Landlord reserves the right to exclude from the Building all objects and matter which violate any of these Rules and Regulations or this Lease. Landlord may require any person leaving the Building with any package or other object or matter to submit a pass, listing such package or object or matter, from the tenant from whose premises the package or object or matter is being removed, but the establishment and enlargement of such requirement shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the premises of such tenant. Landlord shall in no way be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the premises or the Building under the provisions of this RULE or of RULE 2 hereof.

17. No tenant shall occupy or permit any portion of its premises to be occupied as an office for a public stenographer or public typist, or for the possession, storage, manufacture, or sale of liquor, narcotics, tobacco in any form, or as a barber, beauty or manicure shop, or as a school. No tenant shall use its premises or any part thereof to be used for manufacturing, or the sale at retail or auction of merchandise, goods or property of any kind.

18. Landlord shall have the right to prohibit any advertising or identifying sign by any tenant which, in Landlord's judgment, tends to impair the reputation of the Building or its desirability as a building for others, and upon written notice from Landlord, such tenant shall refrain from and discontinue such advertising or identifying sign.

19. Landlord shall have the right to prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept upon any tenant's premises. If, in the judgment of Landlord, it is necessary to distribute the concentrated weight of any heavy object, the work involved in such distribution shall be done at the expense of the tenant and in such a manner as Landlord shall determine.

20. No machinery or mechanical equipment other than ordinary business machines may be installed or operated in any tenant's premises without Landlord's prior written consent, and in no case (even where the same are of a type so excepted or as so consented to by Landlord) shall any machines or mechanical equipment be so placed or operated as to disturb other tenants; but machines and mechanical equipment which may be permitted to be installed and used in a tenant's premises shall be so equipped, installed and maintained by such tenant as to prevent any disturbing noise, vibration or electrical or other interference from being transmitted from such premises to any other area of the Building.

21. Landlord, its contractors, and their respective employees, shall have the right to use, without charge therefor all light, power and water in the premises of any tenant while cleaning or making repairs or alterations in the premises of such tenant.

22. No premises of any tenant shall be used for lodging or sleeping or for any immoral or illegal purpose.

23. The requirements of tenants will be attended to only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties, unless under special instructions from Landlord.

24. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.

25. No tenant shall cause or permit any unusual or objectionable odors to emanate from its premises which would annoy other tenants or create a public or private nuisance. No cooking shall be done in the premises of any tenant except as is expressly permitted in such tenant's Lease.

26. Nothing shall be done or permitted in any tenant's premises, and nothing shall be brought into or kept in any tenant's premises, which would impair or interfere with any of the Building's services or the proper and economic heating, cleaning or other servicing of the Building or the premises, or the use or enjoyment by any other tenant of any other premises nor shall there be installed by any tenant any ventilating, air-conditioning, electrical or other equipment of any kind which, in the judgment of Landlord, might cause any such impairment or interference.

27. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage them. The water and wash closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purposes for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the tenants who, or whose servants, employees, agents, visitors or licensees shall have, caused the same. Any cuspidors or containers or receptacles used as such in the premises of any tenant or for garbage or similar refuse, shall be emptied, cared for and cleaned by and at the expense of such tenant.

28. All entrance doors in each tenant's premises shall be left locked and all windows shall be left closed by the tenant when the tenant's premises are not in use. Entrance doors shall not be left open at any time. Each tenant, before closing and leaving its premises at any time, shall turn out all lights.

29. Hand trucks not equipped with rubber tires and side guards shall not be used within the Building.

30. All windows in each tenant's premises shall be kept closed, and all blinds therein above the ground floor shall be lowered as reasonably required because of the position of the sun, during the operation of the Building air-conditioning system to cool or ventilate the tenant's premises.

31. Landlord reserves the right to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in its judgment, it deems it necessary, desirable or proper for its best interest and for the best interests of the tenants, and no alteration or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant. Landlord shall not be responsible to any tenant for the non-observance or violation by any other tenant of any of the rules and regulations at any time prescribed for the Building.

Exhibit E - Letter of Credit
[NAME AND ADDRESS OF ISSUING BANK]

[INSERT DATE]
IRREVOCABLE LETTER OF CREDIT NO. (INSERT NUMBER)
[Landlord]
[c/o Hartz Mountain Industries, Inc.]
400 Plaza Drive
Secaucus, New Jersey 07094

Gentlemen:

At the request and for the account of [TENANT], located at _____
(hereinafter called "Applicant"), we hereby establish our Irrevocable Letter of
Credit No. [INSERT NUMBER] in your favor and authorize you and your assigns to
draw on us up to the aggregate amount of US\$ [TO BE INSERTED] available by your
draft(s) at sight drawn on us and accompanied by the following:

A statement signed as follows: "The drawer hereunder is entitled to draw upon
this letter of credit pursuant to that certain lease agreement, dated [INSERT
DATE], by and between [LANDLORD], as Landlord, and [TENANT], as Tenant (the
"Lease")."

This Irrevocable Letter of Credit will be duly honored by us at sight upon
delivery of the statement set forth above without inquiry as to the accuracy of
such statement and regardless of whether Applicant disputes the content of such
statement. Partial drawings against this Letter of Credit are permitted.

This Irrevocable Letter of Credit shall automatically renew itself for
successive twelve (12) month periods from the date above, unless we notify you,
by certified mail, return receipt requested, of our intention not to renew at
least sixty (60) days prior to any annual renewal date.

This irrevocable Letter of Credit is transferable at no charge to any transferee
of Landlord upon notice to the undersigned from you and such transferee.

Multiple draws on this Letter of Credit are permitted.

This credit is subject to the Uniform Customs and Practices for Documentary
Credits (1993 Revisions International Chamber of Commerce, Publication #500).

Upon receipt of the documents above described, we shall pay you as requested.

Very truly yours,

Name of Bank

Countersigned:

- - - - -
Vice President

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE FINANCIAL STATEMENTS OF THE CHILDREN'S PLACE RETAIL STORES, INC. AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

1,000

3-MOS	
	FEB-03-2001
	JUL-30-2000
	OCT-28-2000
	7,509
	0
	13,647
	0
	77,784
112,200	152,390
38,742	
236,495	
80,899	0
0	0
	2,589
236,495	146,991
	165,774
165,774	93,173
	39,022
	8
	0
	483
	27,563
	10,718
16,845	0
	0
	0
	16,845
	0.65
	0.63