

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment"), is made this ~~October, 2017~~ <sup>4<sup>th</sup></sup> day of ~~October, 2017~~ <sup>June, 2018</sup>, by and between B.R. MIDLAND CENTER, LLC, a Delaware limited liability company ("Landlord"), and CONN APPLIANCES, INC., a Texas corporation ("Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant are parties to that certain Lease, dated July 2, 2007 (the "Original Lease"), as amended by that certain First Amendment to Lease (the "First Amendment") dated August 8, 2007 (the First Amendment and the Original Lease, collectively referred to as the "Lease") with respect to certain premises consisting of approximately 31,385 square feet located at 3315 NW Expressway, Oklahoma City, Oklahoma, as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant desire to extend the Lease Term in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

- (a) "Effective Date" means January 1, 2019.
- (b) "Renewal Term" means a period of **FOUR (4) YEARS** from January 1, 2019 to December 31, 2022.
- (c) Any other capitalized terms that are used but are not defined in this Second Amendment shall have the respective meanings assigned to them in the Lease.

2. The term of the Lease is hereby extended to include the Renewal Term.

3. The Renewal Term will be on the same terms and conditions as are contained in the Lease, except as follows and to the extent that any provision of this Section 3 is in conflict with any provision of the Lease, such provision of this Section 3 shall control and take precedence over such provision of the Lease:

- (a) Fixed Minimum Rent. Tenant shall pay to Landlord, as Fixed Minimum Rent for the Premises during the Renewal Term (based on 31,385 square feet):

FROM	TO	ANNUAL PSF RENT	ANNUAL FIXED MINIMUM RENT	MONTHLY FIXED MINIMUM RENT
January 1, 2019	December 31, 2022	\$9.90	\$310,711.50	\$25,892.63

(b) Option to Renew. Tenant shall retain their existing options as outlined in their Lease as follows:

At the end of the above term, Tenant shall have the right and option to renew and extend the Term of this Lease with respect to all of the premises for one period of five (5) years at rent of \$10.89 per square foot then one period of four (4) years at rent of \$11.98 per square foot and then three (3) successive periods of five (5) years at rent of \$13.17, \$14.49 and \$16.00 per square foot, respectively.

(c) Notice. Any notice under the Lease provided for to be given to Landlord shall be deemed to be given if and when posted by registered mail, certified mail or courier service (postage prepaid) to between **B.R. MIDLAND CENTER, LLC**, c/o Price Edwards & Company, 210 Park Avenue, Suite 1000, Oklahoma City, OK 73102 and any notice under the Lease provided for to be given to Tenant shall be deemed to be given if and when posted by registered mail, certified mail or courier service (postage paid) to Conn Appliances, Inc., c/o Legal Department, 2445 Technology Forest Blvd., Suite 700, The Woodlands, TX 77381, Store #111, with copies to Conn Appliances, Inc., c/o Newmark Knight Frank Real Estate Administration, File ID #11111, 14651 N Dallas Parkway, Suite 910, Dallas, TX 75254. Either party shall have the right to designate by notice, in the manner above set forth, a different address to which notices under the Lease are to be delivered.

4. The parties confirm that in all other respects, the Lease will remain in full force and effect, unmodified, except to the extent set forth in this Second Amendment.
5. This Second Amendment shall inure to the benefit of and be binding upon the parties and their respective heirs, representatives, executors, administrators, successors and permitted assigns.
6. This Second Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered by electronic means shall be an original, and all such counterparts shall together constitute one and the same instrument.


*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

Between  
**B.R. MIDLAND CENTER, LLC**

Per:   
Name: Bernard Rosenson  
Title: Manager

**CONN APPLIANCES, INC.**

Per:   
Name: Brian McAndrews  
Title: Chief Real Estate Officer

(Store #111; LEAA)

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**FIRST AMENDMENT TO LEASE**

This FIRST AMENDMENT TO LEASE is entered into on this 1<sup>st</sup> day of August, 2007, by and between B.R. MIDLAND CENTER, LLC, a Delaware limited liability company, as Landlord, and CONN APPLIANCES, INC., a Texas corporation, as Tenant.

WHEREAS, Landlord and Tenant are parties to a certain Lease dated July 2, 2007.

WHEREAS, Landlord and Tenant desire to amend the Lease in certain respects.

NOW THEREFORE, in consideration of the foregoing and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. The Delivery Date of the Premises, as defined in Section 1.3.3 of the Lease, shall be October 1, 2007. Landlord shall have until October 1, 2007 to attain substantial completion of Landlord's work.
2. Tenant shall have access to the space no later than September 15, 2007 to begin their construction work.

IN WITNESS WHEREOF, the parties have executed this instrument under seal the day and year first above written.

LANDLORD:

B.R. MIDLAND CENTER, LLC, a Delaware limited liability company

By: STANFORD PROPERTY, I.L.C, a California limited liability company

By: \_\_\_\_\_  
Name: Bernard Rosenson  
Title: Manager

Date: August \_\_\_\_, 2007

TENANT:

CONN APPLIANCES, INC., a Texas corporation

By:   
Name: Thomas J. Frank  
Title: Chairman/CEO

Date: August \_\_\_\_, 2007

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**LEASE**

**between**

**B.R. MIDLAND CENTER, LLC,**  
**a Delaware limited liability company**  
**as Landlord,**

**and**

**CONN APPLIANCES, INC.**  
**as Tenant,**

**for approximately 31,385 square feet**  
**in the**  
**Midland Center Shopping Center**  
**Oklahoma City, Oklahoma**

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**EXHIBITS**

<u>EXHIBIT A</u>	SHOPPING CENTER LEGAL DESCRIPTION
<u>EXHIBIT B</u>	SITE PLAN
<u>EXHIBIT B-1</u>	NO CHANGE AREA
<u>EXHIBIT C</u>	ACKNOWLEDGMENT OF LANDLORD AND TENANT
<u>EXHIBIT D</u>	[INTENTIONALLY LEFT BLANK]
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<u>EXHIBIT J</u>	MEMORANDUM OF LEASE
<u>EXHIBIT K</u>	LANDLORD'S AGREEMENT



**LEASE**

**ARTICLE 1  
FUNDAMENTAL LEASE PROVISIONS; EXHIBITS; DEFINITIONS**

Section 1.1. Fundamental Lease Provisions. These are the provisions of the Lease, except as they may be modified hereafter.

- 1.1.1           DATE OF LEASE:           June \_\_\_ 2007 (being the date that this Lease has been executed by both parties, sometimes referred to herein as the "Effective Date")
- 1.1.2           LANDLORD:                    B.R. Midland Center, LLC, a Delaware limited liability company
- 1.1.3           LANDLORD'S ADDRESS FOR THE PAYMENT OF RENT HEREUNDER:           PO Box 51089  
Los Angeles, CA 90051-5389  
  
Landlord's Tax I.D. # 95-4677741
- 1.1.4           TENANT:                         Conn Appliances, Inc., a Texas corporation
- 1.1.5           ADDRESS OF TENANT:           3265 College Street  
Beaumont, Texas 77701  
Attn: Thomas J. Frank,  
Chairman/CEO
- 1.1.6           INITIAL TRADE NAME OF TENANT:           "CONN'S"
- 1.1.7           GUARANTOR                    Conn's, Inc.
- 1.1.8           LEASE TERM:                 The "Expiration Date" of the Lease Term shall be the date which is one hundred twenty (120) full calendar months from and after the Lease Term Commencement Date (as defined in Section 2.3) (the "Initial Term"), unless extended (the "Extended Lease Term(s)") pursuant to the provisions of Section 2.4 hereof, or unless sooner terminated in accordance with the terms and provisions of this Lease.

01/01/08 -  
12/31/08  
01/01/09 -  
12/31/12  
01/01/13 - 12/31/18

1.1.9 FIXED MINIMUM RENT:

<u>Years of the Initial Term:</u>	<u>Rental:</u>
1	Rental abated for initial 12 months of Lease
2-5	\$9.00 per square foot of the Floor Area per annum
6-11	\$9.90 per square foot of the Floor Area per annum

Years of the Lease Term (if extended)

One Four Year Option; Four Five Year Options

12-16 <i>5 year</i>	\$10.89 per square foot of the Floor Area per annum
17-20 <i>4 year</i>	\$11.98 per square foot of the Floor Area per annum
21-25 <i>5 year</i>	\$13.17 per square foot of the Floor Area per annum
26-30 <i>5 year</i>	\$14.49 per square foot of the Floor Area per annum
31-35 <i>5 year</i>	\$16.00 per square foot of the Floor Area per annum

1.1.10 NUMBER OF SUCCESSIVE RENEWAL OPTIONS:

One Four (4) Year Option; Four Five (5) Year Options

1.1.11	TENANT'S ESTIMATED FIRST YEAR CAM CONTRIBUTION:	\$ <u>2,876.96</u> per month
1.1.12	TENANT'S ESTIMATED FIRST YEAR REAL ESTATE TAX CONTRIBUTION:	\$ <u>2,353.88</u> per month
1.1.13	TENANT'S ESTIMATED FIRST YEAR INSURANCE CONTRIBUTION:	\$ <u>1,386.17</u> per month
1.1.14	CO-TENANCY REQUIREMENT:	None.
1.1.15	SHOPPING CENTER LOCATION:	NWC NW Expressway & Independence Avenue, Oklahoma City, OK
1.1.16	NAME OF SHOPPING CENTER:	Midland Center Shopping Center
1.1.17	BROKER(S):	CB Richard Ellis and The Woodmont Company
1.1.18	APPROXIMATE FLOOR AREA:	31,385 square feet as depicted on the Site Plan attached hereto as Exhibit B

1.1.19 PERMITTED USES; NATURE OF TENANT'S BUSINESS: Tenant's initial use of the Premises (the "Initial Use") will be for the operation of (i) a retail store offering, whether or not new, for sale, including, without limitation, household appliances, home products, washers, dryers, kitchen ranges, dishwashers, refrigerators, freezers, microwave and other ovens, television receivers and monitors, lawnmowers, lawn tractors, lawn equipment, air conditioning units, stereo equipment, sound systems, DVD/video cassette recorders, video cassette and digital cameras and equipment, household electronic equipment, computers and accessories, mattresses and other related products, home furniture, furnishings, appliances, electronics and any incidental or accessory uses relating thereto, and any other use then in effect at a majority of the Conn's stores in the Dallas/Fort Worth Metroplex. In addition, Tenant shall have the right to use the Premises for any other use as typically found in a Class A Shopping Center in the Oklahoma City Metropolitan Area, ("Subsequent Use"), or for no use (subject to recapture by Landlord as provided in Section \_\_\_ ) without any requirement to obtain the written consent of the Landlord, so long as said uses do not violate (i) any "exclusive use" granted to any other tenant in the Shopping Center at the time such other use would be effected or (ii) any prohibited use ("Prohibited Use") as such term is defined in

Section 1.3.13 hereinafter. If any Subsequent Use will require modifications to the structural aspects of the Premises or any change to the exterior portions of the Premises or Building (as defined below) requiring Landlord's consent pursuant to Sections 9.2.2 or 9.2.3 hereof, Tenant shall submit to Landlord for Landlord's review plans and specifications detailing the construction work required to effect such modifications. Landlord shall have fifteen (15) days after receipt of such plans to review and approve or disapprove such plans. Landlord hereby agrees to not unreasonably withhold or delay its approval of any such plans so long as the same will not impair the structural integrity of the improvements in the Premises or the Building or the mechanical or electrical systems therein. If Landlord elects to withhold its approval of such plans, Landlord shall notify Tenant in writing of its disapproval of such plans within fifteen (15) business days after Landlord's receipt of such plans, which notice shall include an explanation of Landlord's reasonable objections to such plans. Landlord and Tenant shall use reasonable commercial efforts to resolve any objections of Landlord to such plans within fifteen (15) additional days following any objection by Landlord. If Landlord fails to timely approve or object to Tenant's submitted plans, the plans and specifications as submitted shall be deemed to have been approved by Landlord. If Landlord and Tenant cannot resolve any reasonable objections raised by Landlord after commercially reasonable efforts within thirty (30) days following the request therefor, then and in such event, Tenant may elect to (i) continue in good faith to resolve any such issues with Landlord, or (ii) terminate this Lease by writing to Landlord. (The Initial Use and the Subsequent Use (subject to the restrictions contained in this Section 1.1.18 shall be herein together referred to as the "Permitted Use")

1.1.20 MINIMUM GENERAL LIABILITY INSURANCE COVERAGE:  
Three Million Dollars (\$3,000,000.00) Combined Single Limit Coverage.

1.1.21 ARTICLE 3 INFORMATION:

(a) Number of days after the Effective Date for Landlord to provide Tenant with a set of "as-built" drawings for the Premises: five (5).

(b) Number of days after the Effective Date for Landlord to provide Tenant with a current "Comprehensive Asbestos Survey": Thirty (30)

1.1.22 ARTICLE 12 INFORMATION:

Notices to Landlord shall be sent to:

B.R. Midland Center, LLC  
22900 Ventura Blvd., Suite 200  
Woodland Hills, CA 91364

Attention: Bernard Rosenson  
Telephone: 818-713-0155  
Facsimile: 818-598-8108

With a copy to:

CB Richard Ellis / Oklahoma  
8316 N. Glade Avenue  
Oklahoma City, OK 73132

Attention: Kerri Hudgens  
Telephone: 405-720-3993  
Facsimile: 405-720-3175

Notices to Tenant shall be sent to:

CAI. L. P.  
c/o Conn Appliances, Inc.  
Attn: Mr. Thomas J. Frank, Chairman/CEO  
3295 College Street  
Beaumont, Texas 77701  
Telephone: (409) 832-1696  
Facsimile: (409) 832-7069

With a copy to:

Sydney K. Boone  
Corporate General Counsel  
Conn's, Inc.  
3295 College Street  
Beaumont, TX 77701  
Telephone: (409) 832-1696, Ext. 3435  
Facsimile: (409) 832-7069

Section 1.2. Exhibits. The exhibits attached to this Lease are incorporated into this Lease by this reference and are to be construed as an integral part of this Lease.

Section 1.3. Definitions. Certain terms used in this Lease with an initial capital letter are defined within the text of those Sections in which the same are mentioned. For convenience, certain other terms are defined in this Section 1.3 as follows:

1.3.1 The term "Additional Rent" shall mean all payments required to be made hereunder by Tenant, other than "Fixed Minimum Rent".

1.3.2 The term "Sign Permits" shall mean all necessary building permits and other governmental approvals for the installation of Tenant's exterior building and pylon signage of the dimensions set forth in Section 12.16 hereof.

1.3.3 The term "Delivery Date" shall mean the date that is inclusive of but the later of (i) exclusive possession of the Premises is delivered to Tenant in the condition specified herein, Landlord's Work completed; (ii) Landlord has provided evidence to Tenant that the

Premises contain no asbestos. Delivery Date is estimated to be August 1, 2007. If Delivery of the Premises does not occur on or about August 1, 2007, Tenant shall have the right to extend the delivery date for successive periods of up to thirty (30) days each, by written notice to Landlord at or prior to August 1, 2007, and at or prior to the end of each successive thirty (30) day period thereafter as extended if extended. If the Premises are not delivered to Tenant by September 1, 2007, Tenant shall have the right to terminate this Lease by writing to Landlord, and this Lease shall be thereupon void *ab initio*.

1.3.4 The term "Floor Area" shall mean the number of square feet of ground floor space in all areas within the Premises within the exterior faces of exterior walls, store fronts, walls fronting on the enclosed malls or interior Common Areas, corridors and service areas (except party and interior walls, as to which the center thereof shall be used), including, by way of illustration and not by limitation, sales areas, warehousing or storage areas, office or clerical areas and employee facilities. The Floor Area shall exclude columns, the truck well and loading dock area (whether or not such truck well and/or loading dock are enclosed or covered and whether or not the exterior walls of the building in which the Premises are located (the "Building") include the truck well and/or loading area), which serve the Premises, and any common electrical utility or meter rooms shared with any other Occupant(s) (as defined in Section 1.3.11 hereinafter). The Floor Area shall be subject to adjustment on the Lease Term Commencement Date (defined in Section 2.3 hereinafter) based upon actual as-built measurements of the Premises.

1.3.5 The term "Hazardous Substance" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term, by any federal, state or local environmental health, safety or similar laws, statutes, rules, regulations or ordinances presently in effect or which may be promulgated in the future, as such laws, statutes, rules, regulations and/or ordinances may be supplemented or amended from time to time (collectively, "Environmental Laws").

1.3.6 The term "Institutional First Mortgagee" shall mean any commercial bank, federal or state savings and loan association or savings bank; insurance company; credit company; pension fund; real estate investment trust; investment banking firm or any lender or group of lenders whose loan is effected through the issuance of bonds, trust certificates, collateralized mortgage interests, stocks or other securities, or any financing vehicle or structure in a transaction which either is registered under the Securities Act of 1933, as amended, or which is exempt from the registration requirements of the Securities Act of 1933, as amended; or any affiliate, subsidiary, successor or assignee of any of the foregoing, holding a first mortgage on the Shopping Center (as defined in Section 1.3.15 hereinafter).

1.3.5 The term "Interest Rate" shall mean that rate of interest which is the lesser of (i) the maximum interest rate permitted under applicable usury laws; or (ii) the "prime rate" as published from time to time in the Money Section of the Wall Street Journal or, if the Wall Street Journal should at any time cease to be published or should the Wall Street Journal cease to publish a "prime rate," the term "Interest Rate" shall mean the prime rate published in such other comparable financial publication.

1.3.6 The term "Leasable Area" shall mean, on the date any particular computation is made by Landlord the total constructed leasable floor area of the Shopping Center, whether or not actually rented or open for business.

1.3.7 The term "Minimum Parking Ratio" shall mean a ratio of five (5) automobile parking spaces for each one thousand (1,000) square feet of Leasable Area or such greater ratio as may be required by local ordinance.

1.3.8 The term "Occupant(s)" shall mean any person, firm, corporation, association or other legal entity entitled to occupy a portion or portions of the Shopping Center (other than the Premises) as an owner or under and pursuant to a bona fide lease or other bona fide arrangement with Landlord, and any customers or invitees of any such Occupants.

1.3.9 The term "Permitted Exceptions" shall mean all those certain title exceptions set forth on Schedule B of the title commitment provided to Tenant by Landlord in accordance with Section 12.20 hereof. Such title exceptions are listed on Exhibit H attached hereto and are incorporated herein by reference as though more fully and expressly set forth herein.

1.3.10 The term "Prohibited Uses" shall mean those use restrictions set forth in Exhibit E that affect the use which may be made of those portions of the Shopping Center not included within the Premises. The Prohibited Uses shall be deemed a covenant of Landlord not to permit any Occupant to engage in any business activity that violates the Prohibited Uses. Landlord covenants that, in the event of a violation of such covenant by Landlord or any Occupant, Landlord will promptly and as expeditiously as possible, after notice, use commercially reasonable best efforts to terminate such violation, including, without limitation, the institution and timely prosecution of a law suit to cause such Occupant to cease operating as prohibited by the Prohibited Uses. In addition, if Landlord has not timely filed such litigation, Landlord hereby authorizes Tenant to immediately file suit on Landlord's behalf and to seek an injunction against any violation by any Occupant, in which event Landlord shall reimburse Tenant for court costs, reasonable attorneys' fees, premiums for surety bonds, expert witnesses' fees and other expenses of litigation. In the event any Occupant violates any of the Prohibited Uses and such Occupant's lease with Landlord does not permit or allow such Occupant to operate as prohibited by the Prohibited Uses, so long as Landlord uses commercially reasonable best efforts to terminate such violation, including, without limitation, the institution and timely prosecution of a law suit to cause such Occupant to cease operating as prohibited by the Prohibited Uses, Tenant agrees that it will not terminate this Lease as permitted herein. Except as set forth in the immediately preceding sentence, in the event a violation by any Occupant continues for more than six (6) months after notice from Tenant thereof, and Landlord is not at that time involved in legal proceedings in an attempt to cure any such violation, Tenant may, in addition to such other remedies as may be accorded Tenant at law, in equity or under this Lease, terminate this Lease and all obligations of Tenant to Landlord hereunder by written notice to Landlord effective upon receipt of such notice of termination by Landlord. Landlord agrees that it shall incorporate the Prohibited Uses into any and all leases entered into by and between Landlord and other Occupants of the Shopping Center (including any outparcels) subsequent to the Effective Date hereof.

1.3.11 The term "Shopping Center" shall mean the real property legally described on Exhibit A, together with the improvements now or hereafter constructed thereon by Landlord (excluding, specifically, any land or improvements comprising a portion thereof which may be sold or conveyed by Landlord at any time hereafter).

1.3.12 Intentionally omitted

1.3.13 The term "Tenant's Work" shall mean all work required to be performed by Tenant, at the sole cost and expense of Tenant, to provide leasehold improvements, furnish and equip the Premises. Tenant will be responsible for the construction of the interior leasehold improvements and for the installation of its fixture package in accordance with the interior detail attached as Annex 1 to Exhibit F, together with such modifications and changes thereto as may be approved by Landlord in accordance with Section 3.6 hereof.

1.3.19 The term "Landlord's Work" shall mean all work required to be performed by Landlord, at the sole cost and expense of Landlord, to provide the Premises to Tenant so that Tenant can start Tenant's Work, as provided herein in Section 3.1 below.

## ARTICLE 2 SHOPPING CENTER; PREMISES; AND TERM

Section 2.1. Shopping Center. Landlord is the fee simple owner of that certain parcel or those certain parcels of real property (the "Real Property") legally described on Exhibit A, situate, lying and being in the county and state (the "Applicable State") set forth on said Exhibit A, upon which Real Property the Shopping Center is located as delineated on Exhibit B, together with all improvements thereto and thereon.

Section 2.2. Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, certain premises situated within the Shopping Center, the boundaries and location of which premises are shown outlined on the site plan (the "Site Plan") attached hereto as Exhibit B (which premises are referred to in this Lease as the "Premises"), containing approximately 31,385 square feet of space, together with all appurtenant rights and easements, and the non-exclusive right and license during the entire Term hereof to use all the Common Areas (as defined in Section 5.1 hereinafter) of the Shopping Center for their intended purposes including, without limitation, parking, access, ingress and egress.

1/1/08

Section 2.3. Term and Lease Years. The term of this Lease (the "Lease Term") shall begin (the "Lease Term Commencement Date"), on the earlier of (a) ninety (90) days following the Delivery Date or the date of Landlord's approval of Tenant's plans for Tenant's Work, whichever is later, or (b) the date that Tenant opens for business to the public in the Premises. *As a condition to the Lease Term Commencement Date occurring*, Landlord shall have obtained and delivered to Tenant a duly executed non-disturbance agreement from all lenders having a lien or security interest on or in the Premises and the Shopping Center as required under Section 12.6 hereof, and the Lease Term Commencement Date shall, notwithstanding the occurrence of



(a) or (b) immediately above, occur on the day of such delivery, or the occurrence of (a) or (b) as applicable. If Landlord has failed to deliver the required non-disturbance agreement(s) by the occurrence of (b) above, Tenant (i) shall have the right, but not the obligation, to extend the date of obtaining same for additional successive thirty (30) day periods, and, thus, the Lease Term Commencement Date, or (ii) terminate this Lease by delivery of written notice to Landlord of Tenant's election to so terminate, which notice must be delivered within one hundred eighty (180) days after the Delivery Date, whereupon this Lease shall terminate and neither Landlord nor Tenant shall have any further obligations to the other hereunder. If Tenant fails to timely elect to terminate this Lease within the time period specified above, Tenant's right under this Section 2.3 to terminate this Lease shall expire automatically and be of no further force and effect. The Lease Term shall end on the Expiration Date set forth in Section 1.1.7 hereof, unless sooner terminated as hereinafter provided. When the Lease Term Commencement Date has been determined, as provided in this Section, Landlord and Tenant shall execute, acknowledge and deliver, each to the other, the written statement attached hereto as Exhibit C specifying the Lease Term Commencement Date. The term "Lease Year" means a period of twelve (12) consecutive calendar months from the first day of January through the following December 31. Any portion of the Lease Term or the Extended Lease Term(s) which is less than a Lease Year is herein called "Partial Lease Year." Notwithstanding the fact that the term of this Lease shall commence on the Lease Term Commencement Date, which date will be a date subsequent to the execution of this Lease by Landlord and Tenant, both Landlord and Tenant intend that each shall have vested rights under and pursuant to this Lease immediately upon the execution of this Lease by both Landlord and Tenant.

#### Section 2.4. Renewals.

(a) If this Lease is still in full force and effect, and if Tenant shall not be in default beyond applicable notice and cure periods under the terms of this Lease, Tenant shall have the right and option to renew and extend the Term of this Lease with respect to all of the Premises for one period of four (4) years and then four (4) successive periods of five (5) years each (each of which periods is referred to herein as an "Extended Term"), commencing on the expiration of the Initial Term (or the preceding Extended Term, as the case may be) by giving Landlord written notice thereof no less than one hundred eighty (180) days prior to expiration of the then expiring term (Initial Term or Extended Term, as applicable). If Tenant gives timely written notice to Landlord of its election to extend the Term, the Lease Term shall be extended, as aforesaid, and all of the same terms, provisions and conditions set forth in this Lease shall apply, except that the Fixed Minimum Rent during the option periods shall be as set forth in Section 1.1.8, and except that Landlord shall not be obligated to make any alterations or improvements to the Premises or to provide an allowance or credit therefor.

(b) Any reference in this Lease to the "Term of this Lease" or "Term" or "Lease Term" shall mean the Initial Term together with any Extended Term accruing pursuant to Section 2.4(a). If any option to extend the Lease Term is not exercised in accordance with Section 2.4(a), then all other options to renew the Lease Term shall automatically terminate and be null and void.

Section 2.5. Shopping Center Name. The name of the Shopping Center shall be as set forth in Section 1.1.15. Landlord shall have the right to change the name of the Shopping Center

upon no less than ninety (90) days prior notice to Tenant. Landlord shall not change the name of the Shopping Center to include the name, logo or product line of any other Occupant of the Shopping Center.

### ARTICLE 3

#### POSSESSION AND PREPARATION OF THE PREMISES FOR TENANT'S USE

Section 3.1. Landlord's Delivery of Premises. Except as provided in the last sentence of this Section 3.1, Landlord shall terminate all existing Leases of any portion of the Premises, demo and demise the Premises, and deliver the Premises to Tenant free of any internal walls, any improvements (unless approved by Tenant in writing), in "vanilla shell", "broom clean" condition, free of asbestos or any Hazardous Substances (as defined in Section 1.3.6 hereof). Landlord shall deliver the Premises to Tenant (i) demised by Landlord as stated above and agreed between Landlord and Tenant (ii) with adequate utility service to satisfy tenant's Initial Use of the Premises, and with a separate meter for the Premises; and (iii) with all mechanical systems (excluding HVAC, which shall be Tenant's responsibility to install and maintain), the roof (including the surface and subsurface support system for the roof), the foundation (including imbedded plumbing and sewerage systems and piping), exterior walls and all structural components of the Premises in good and safe condition, good working order and good state of repair, and Landlord shall be and remain responsible for repairs and maintenance of the roof (including the surface and subsurface support system for the roof), the foundation (including imbedded plumbing and sewerage systems and piping), exterior walls and all structural components of the Premises for the complete term of this Lease. Landlord's further maintenance and repair obligations shall be as set forth in Section \_\_\_\_ hereof.

Section 3.2. As-built Drawings. Within five (5) days from the Effective Date, Landlord shall deliver one complete set of as-built drawings of the Premises, which drawings shall include, but not be limited to, the following information; location of all utilities into the Premises, overall dimensions of the space and clear height of the Building beneath the structural roof support. Tenant and Landlord shall agree within ten (10) days following Tenant's receipt of the "as-built" drawings as to the location of the demising wall separating the Premises. Such location shall be as agreed in writing, but shall demise approximately 31,385 square feet of space to Tenant, and the demising wall shall be constructed in accordance with the plans and specifications therefor prepared by Tenant and approved by Landlord within ten (10) days of Tenant's submission of such plans and specifications for approval by Landlord. If Landlord objects, the process for approval of Tenant's plans and specifications as set forth in Section 3.6 shall likewise be applicable to the approval process of the plans and specifications for the demising wall. Such demising shall be completed within thirty (30) days of the Effective Date of this Lease.

Section 3.3. Sign Permits. Tenant shall apply for its Sign Permits and shall continuously thereafter use diligent efforts to obtain the same. Tenant's failure to apply for its Sign Permits shall not constitute a default of this Lease by Tenant. Reference is hereby made to Section 12.16 of this Lease for additional provisions regarding Tenant's signage.

Section 3.4. Signage and Pylon Signs. Tenant shall be entitled to install its normal signage on the front facade of the Premises as presented in its new store front elevations in the

Dallas Metropolitan Area, and in accordance with the plans and specifications therefor submitted to Landlord together with the plans for Tenant's Work, subject to approval by Landlord on the same terms and conditions as Landlord's approval of plans for Tenant's Work. Notwithstanding anything herein to the contrary, Tenant shall be entitled to install its standard front elevation presentation with clearly designated trademarked "Conn's" logo of such height and location as presented in the signage plans, and shall be entitled to add its signage to existing pylon sign towers as described in the plans and specs and in the location on each such sign as set forth in Exhibit "\_\_\_".

Section 3.5. Timing of Tenant's Work. Tenant shall cause Tenant's Work to be substantially completed within one hundred fifty (150) days from and after the Delivery Date ("Tenant's Completion Date"), subject to the provisions of Section 12.11 hereof.

Section 3.6. Tenant's Work. At all times while Tenant is constructing the interior improvements specified in the Final Plans, and installing its trade equipment, furniture and fixtures, Tenant shall not interfere with the conducting of business at the Shopping Center. Tenant may not construct or install interior improvements except substantially as shown on the approved Final Plans therefor (as herein defined), without the consent of Landlord. Upon receipt by Landlord of all final plans, diagrams, and specifications necessary for Tenant's Work ("Final Plans") (which plans, diagrams and specifications shall be complete and in form sufficient to obtain a building permit and submitted to Landlord within fifteen (15) days following the Effective Date, if not so done prior thereto), Landlord shall, in writing, accept or notify Tenant of its acceptance or objections to the Final Plans within fifteen (15) days after receipt by Landlord of the Final Plans or the Effective Date, whichever is later. If Landlord fails to respond to Tenant within said 15-day period, Landlord shall be deemed to have approved the Final Plans. If Landlord objects to any aspects of Tenant's Final Plans within such fifteen (15) day period, then Landlord and Tenant shall use commercially reasonable efforts to resolve any such objections to enable Tenant to commence its construction. If Landlord and Tenant fail to reach agreement regarding the Final Plans within thirty (30) days following such written objections to Tenant by Landlord, then Tenant shall have the right to terminate this Lease by written notice to Landlord delivered within fifteen (15) days after the expiration of such thirty (30) day period. If Tenant fails to timely elect to terminate this Lease within the time period specified above, Tenant's right under this Section 3.6 to terminate this Lease shall expire automatically and be of no further force and effect.

Section 3.7. Liability and Liens Arising from Tenant's Work. In connection with the performance of Tenant's Work, with respect to any labor performed or materials furnished by Tenant at the Premises, the following shall apply: All such labor shall be performed and materials furnished at Tenant's own cost, expense and risk. No labor and other work on the Premises may be performed by Tenant except pursuant to the Final Plans (or other plans) approved by Landlord in accordance with Section 3.6 above. With respect to any contract for any such labor or materials, Tenant will act as a principal and not as the agent of Landlord. Tenant agrees to indemnify and hold Landlord harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from any act or omission of Tenant or Tenant's agents, employees, contractors, subcontractors, laborers, materialmen or invitees or arising from any bodily injury or property damage occurring or alleged to have

occurred incident to Tenant's Work at the Premises. Tenant shall have no authority to place any lien upon the Premises or the Shopping Center or any interest therein nor in any way to bind Landlord. If, because of any actual or alleged act or omission of Tenant, any lien, affidavit, charge or order for payment of money shall be filed against Landlord, the Premises or the Shopping Center or any portion thereof or interest therein, whether or not such lien, affidavit, charge or order is valid or enforceable, Tenant shall, at its own cost and expense, cause same to be discharged of record by payment, bonding or otherwise no later than fifteen (15) days after notice to Tenant of the filing thereof, but in all events, prior to any foreclosure thereof. All of Tenant's Work at the Premises shall be performed in compliance with the Final Plans, applicable codes and other legal requirements, and in a good and workmanlike manner reasonably satisfactory to Landlord and in such manner as to not cause Landlord's fire and extended coverage insurance to be canceled or the rate therefor increased. In the performance of Tenant's Work, Tenant shall not interfere with or delay any work being done by Landlord's contractors.

Section 3.8. Not Applicable

#### **ARTICLE 4**

#### **RENT, ITS DETERMINATION AND METHOD OF PAYMENT**

Section 4.1. Fixed Minimum Rent. Commencing on the Lease Term Commencement Date (which date shall be referred to herein as the "Fixed Minimum Rent Commencement Date" when applicable to payments of Fixed Minimum Rent and Additional Rent) and continuing for the remainder of the Lease Term, Tenant agrees to pay rent to Landlord, at the address of Landlord, or such other place as Landlord may designate by written notice to Tenant from time to time, at the following rates and times and without any demand therefor and without any offset or deduction except as expressly provided herein:

(a) The Fixed Minimum Rent shall be payable in advance in equal monthly installments, on the first (1st) day of each calendar month included in the Lease Term; and, for any portion of a calendar month included at the beginning or end of the Lease Term, one-thirtieth (1/30th) of such a monthly installment for each day of such portion, payable on the first (1st) day of the month at the beginning (or end as the case may be) of the Lease Term.

(b) The amount of Fixed Minimum Rent payable each month during the Lease Term shall be as set forth in Section 1.1.9 of this Lease.

(c) If Tenant should fail to pay to Landlord within ten (10) days of the due date any installment of Fixed Minimum Rent, and if such failure shall continue at the end of fifteen (15) days following Tenant's receipt of written notice from Landlord specifying the amount of the delinquency, then Tenant shall pay to Landlord on demand a late charge equal to the greater of (i) \$100.00, or (ii) three percent (3%) of the past due amount; provided, however,

the foregoing notwithstanding, Landlord shall be required as a condition of assessing such late charge to give such notice of delinquency only one (1) time during any period of twelve (12) months and, commencing on the third such delinquency during any 12-month period, the late charge shall be assessed automatically, without any prior notice of delinquency, until twelve (12) consecutive months shall have elapsed without occurrence of any such delinquency, at which time notice shall again be required as a condition of assessing such late charge.

Section 4.2. Real Estate Taxes.

(a) Tenant agrees to pay at the time and in the manner hereinafter provided, as Additional Rent, the Taxes Applicable to the Premises (defined in Section 4.2(c) hereinbelow).

(b) The term "Taxes" shall mean and include only all general ad valorem real estate taxes and assessments related to real property and improvements constituting fixtures thereon which shall, during the Lease Term, become due and payable with respect to the Shopping Center, other than any fine, penalty, cost or interest for any tax or assessment or part thereof which Landlord failed to timely pay (except if same are imposed by reason of Tenant's default hereunder). Landlord shall pay, prior to delinquency, all Taxes levied or assessed against the Shopping Center. Nothing contained in this Lease shall require Tenant to pay any estate, inheritance, succession, capital levy, corporate franchise, transfer or income tax of Landlord, or any municipal improvement charges, off-site levies, development costs charges, local improvement charges and any other charges or costs similar to the foregoing incurred by the Landlord or payable to any governmental authority in connection with the development or any future development of the Shopping Center permitted under this Lease, nor shall any of same be deemed Taxes except to the extent the same are specifically substituted in lieu of Taxes, and then only to the extent the same are limited to the Shopping Center as if it were the only property of Landlord.

(c) The term "Taxes Applicable to the Premises" shall mean all Taxes accruing during the Lease Term solely with respect to the land and improvements comprising the Premises if the Premises are separately assessed, together with Tenant's pro rata share of Taxes applicable to the Common Areas (as hereinafter defined). In the event the Premises are not separately assessed, the Taxes Applicable to the Premises shall mean a fractional portion of the Taxes accruing during the Lease Term (prorated for any partial tax year within the Lease Term) and assessed against the land and improvements comprising that portion of the Shopping Center within the tax parcel of which the Premises is a part, the numerator of which shall be the Floor Area of the Premises and the denominator of which shall be the Leasable Area of the Shopping Center within the tax parcel of which the Premises is a part (excluding any portions of the Shopping Center which are separately assessed).

(d) Tenant's payment of the Taxes Applicable to the Premises, prorated in the event that the Taxes Applicable to the Premises are payable for a Partial Lease Year, shall be paid to Landlord by Tenant on monthly basis based upon Landlord's estimate of taxes for the applicable year as provided to Tenant by Landlord annually. At the end of each tax year, Landlord shall reconcile actual taxes for the applicable year to that collected from Tenant, and shall provide Tenant, within thirty (30) days following receipt by Tenant of billing therefor from Landlord containing the calculation for the Taxes Applicable to the Premises and evidence (e.g.

the tax bill from the taxing authority) of the amount of the Taxes due and payable for the applicable Lease Year or Partial Lease Year. Either Tenant or Landlord, as applicable, shall reimburse the other for any shortage or overage collected by Landlord from Tenant for Taxes Applicable to the Premises within thirty (30) days from the provision of such reconciliation.

(e) In the event that taxing authorities in the locality in which the Premises are located include or calculate, in Taxes, the value of Tenant's machinery, equipment, trade fixtures, stock in trade, inventory or other assets of Tenant, then and in that event, Tenant shall pay all taxes on such items if such taxes were separately stated.

(f) With respect to any assessments for Taxes which may be levied against or upon the Premises, or which under laws then in force may be evidenced by improvement or other bonds, or may be paid in installments, only the amount of such installments (with appropriate proration for any Partial Lease Year) which become due during the Lease Term shall be included in Tenant's annual pro rata portion of the Taxes Applicable to the Premises.

(g) Tenant shall also pay to Landlord as Additional Rent Tenant's share (based on the proportion which the Floor Area bears to the Leasable Area) of the reasonable costs and expenses paid or incurred by Landlord during each calendar year of the Lease Term for professional and other services (including, but not limited to, reasonable fees and expenses of consultants, attorneys, appraisers and experts) in connection with good faith efforts which successfully lowered Taxes or successfully resisted increased Taxes. Such costs and expenses shall be determined in accordance with generally accepted accounting principles and allocated to any particular calendar year on the accrual method of accounting. Tenant shall pay its share of such costs and expenses annually within thirty (30) days following receipt by Tenant of a statement therefor, and Tenant's share shall be prorated in the event Tenant is required to make such payment for a Partial Lease Year.

(h) Landlord agrees to notify Tenant of any substantial increase (including, without limitation) every increase or proposed increase of 10% or more over the prior year's tax) in Taxes within thirty (30) days after receipt of the tax bill or other evidence of any increase or proposed increase in Taxes, and Tenant shall have the absolute right (unless Landlord shall in good faith agree to contest such tax increase) to contest or resist, in good faith and by appropriate proceedings, such increased Taxes, or to contest the validity of the amount or rate of any increase or proposed increase in the Taxes, or any factor used in the calculation or determination of any increase or proposed increase in Taxes.

(i) Any rebates, refunds or abatements of Taxes received by Landlord subsequent to payment of the Taxes Applicable to the Premises by Tenant shall be refunded to Tenant on a pro rata basis within ten (10) days of receipt thereof by Landlord. Any such rebate, refund or abatement realized by Landlord prior to payment by Tenant shall result in an immediate reduction in the Taxes Applicable to the Premises then due to Landlord.

**ARTICLE 5**  
**COMMON AREAS, THEIR USE AND CHARGES**

Section 5.1. Common Areas. Landlord shall make available (or cause to be made available) throughout the Lease Term such Common Areas (herein so called) (including, but not limited to, parking areas, driveways, truck ways, delivery passages, truck-loading areas, access and egress roads, walkways, landscaped and planted areas) as are shown on the Site Plan. Landlord shall (or shall cause the same to be done) operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purposes in compliance with all laws and in such manner as is consistent with the operation and maintenance of a first-class or well maintained shopping center similar in nature to and within the same metropolitan area as the Shopping Center. In no event shall use of the Common Areas be conditioned upon payment of parking charges.

Section 5.2. Use of Common Areas. Tenant and its concessionaires, officers, employees, agents, customers and invitees shall have and Landlord hereby grants a non-exclusive license (in common with the other Occupants of the Shopping Center and their employees, agents, customers and invitees) to use the Common Areas for the intended purposes (e.g. parking, access, ingress and egress) during the entire Lease Term hereof. Landlord shall not grant the right to use the Common Areas to anyone other than an Occupant of the Shopping Center, and shall not modify the Common Areas reflected in the Site Plan without the prior approval of Tenant, which shall not be unreasonably withheld, denied or delayed if any such modification does not change the traffic patterns currently in existence in the Shopping Center or the parking ratio described above. Landlord agrees that no change to the Common Area directly adjacent to or in front of the Premises, as designated as a "no-change" area in the Site Plan.

Section 5.3. Common Area Operating Expenses. Tenant shall pay to Landlord, in the manner provided in Section 5.4, as Additional Rent, Tenant's pro rata share, as defined in Section 5.4, of all reasonable costs and expenses of every kind and nature as may be actually paid or incurred by Landlord during the Lease Term (except as hereafter provided) in operating, repairing and maintaining the Common Areas of the Shopping Center (the "Common Area Operating Expense(s)"), including, but not limited to: maintenance and repair (exclusive of replacement or repaving) of all paved areas (including without limitation re-striping, re-sealing and repair of potholes); cleaning, sweeping, snow and ice removal; maintenance of all Common Areas lighting facilities (inclusive of electrical service therefor); landscaping (inclusive of the cost of sprinkling); painting of the exterior buildings in the Shopping Center; maintenance of any traffic or directional signs benefitting the Shopping Center; maintenance of any Shopping Center pylon or monument sign on which Tenant is identified (inclusive of the cost of electrical service therefor); maintenance and repair of all utility lines located in the Common Areas and serving Tenant; premiums for liability, property damage, fire and extended coverage insurance (including without limitation the fire and extended coverage insurance required to be maintained by Landlord pursuant to Section 7.1.2 hereof); assessments attributable to Common Areas (to the extent not included in the definition of Taxes); personal property taxes; fees for required licenses and permits; supplies; management fees not to exceed five percent (5%) of CAM excluding management fee, taxes and insurance; reasonable depreciation of equipment used in the operation and maintenance of the Common Areas.

Common Area Operating Expenses shall not include: (a) costs of maintaining or operating any enclosed common or mall areas; (b) depreciation of the original cost of constructing, erecting and installing the Shopping Center, the Common Areas, common facilities and related services; (c) principal and interest payments pursuant to any mortgage which encumbers the Shopping Center (or any portion thereof); (d) Taxes; (e) administrative fee in excess of that provided above, or any leasing commission; (f) legal fees for preparation of leases or rents payable with respect to any leasing office; (g) excess premiums for insurance covering the Common Areas and/or the Shopping Center occasioned by the extra-hazardous use or activities of Occupants other than Tenant; (h) expenses incurred due to the negligence or willful misconduct of Landlord or any Occupant, or their respective agents or employees; (i) interest, late charges or penalties incurred as a result of Landlord's failure to pay bills timely; (j) costs and expenses incurred for repairs or replacements due to faulty construction, faulty workmanship or structural defects; (k) costs and expenses for repairs or replacements due to the installation of antiquated machinery, equipment, components, pipes and lines or resulting from improper engineering or substandard quality; (l) expenses related to any Leasable Area (inclusive of the repair and maintenance for the buildings thereof) except as may be otherwise set forth above; (m) any cost, fees, fines or penalties, or interest thereon, incurred due to violations by Landlord or any Occupant of any governmental law, ordinance, code, rule or regulation; (n) municipal improvement charges, off-site levies, development cost charges, local improvement charges, and any other charges or costs similar to the foregoing arising solely in connection with any new construction of, or expansion of existing, improvements in the Shopping Center by Landlord; (o) all other costs to comply with the requirements of any laws, codes or other governmental regulations, including without limitation, the Americans with Disabilities Act; (p) capital expenditures; (q) court costs or legal fees incurred to enforce obligations of tenants under leases of the Shopping Center; (r) amounts reimbursable from insurance proceeds or under warranty; (s) reserves for anticipated future expenses; (t) amounts paid to entities related to Landlord in excess of the cost of such services from any competitive source; (u) any dues or charges for a merchants' or other association of the tenants in the Shopping Center; (v) rent or other charges paid by Landlord pursuant to any other ground or master lease; (w) costs and expenses resulting from a breach by Landlord of its obligations under this Lease or any other lease for portions of the Shopping Center; or (x) garbage removal (as the Tenant shall be responsible and pay for its own garbage removal).

**Section 5.4. Tenant's Pro Rata Share and Payment.**

(a) Tenant's pro rata share of the costs and expenses referred to in Section 5.3 ("Tenant's CAM Contribution") shall be a fractional portion of the Common Area Operating Expenses, the numerator of which shall be the Floor Area and the denominator of which shall be the Leasable Area, subject however to the limitations set forth in Section 5.5 below.

(b) Tenant's CAM Contribution shall be paid in monthly installments on the first day of each calendar month after the Lease Term Commencement Date (prorated for any fractional month) in advance. Within ninety (90) days after the end of each Lease Year or Partial Lease Year, Landlord shall furnish to Tenant an itemized statement ("Landlord's CAM Statement") certified as correct by a Certified Public Accountant or an officer of Landlord showing in detail (with such substantiating documentation as Tenant may reasonably request) the



(i) total Common Area Operating Expenses for the immediately preceding Lease Year or Partial Lease Year, (ii) the amount of Tenant's share of such Common Area Operating Expenses, (iii) the then-current number of square feet of Leasable Area, and (iv) the payments made by Tenant during the Lease Year or Partial Lease Year and thereupon there shall be an adjustment between Landlord and Tenant (Tenant paying to Landlord any shortfall, and Landlord paying to Tenant any overage, as the case may be); and Tenant's CAM Contribution for the next ensuing Lease Year or Partial Lease Year shall be adjusted upward or downward based upon Landlord's CAM Statement for the prior year and reasonable adjustment for inflation (but omitting any extraordinary, non-recurring charges) all subject however to the limitations set forth in Section 5.5 below. Landlord shall use commercially reasonable efforts to minimize Common Area Operating Expenses in a manner consistent with good shopping center management practices.

(c) If there exists any dispute as to the calculation of Tenant's CAM Contribution (a "Dispute"), the events, errors, acts or omissions giving rise to the Dispute shall not constitute a breach or default by Landlord nor shall Landlord be liable to Tenant, except as specifically provided below. If there is a Dispute, Tenant shall so notify Landlord in writing within sixty (60) days after receipt of Landlord's CAM Statement. Such notice shall specify the items in Dispute. Notwithstanding the existence of a Dispute, Tenant shall timely pay the amount in dispute as and when required under this Lease, provided such payment shall be without prejudice to Tenant's position. Upon receipt of such payment, Landlord shall thereafter provide Tenant with such supplementary information regarding the items in Dispute as may be reasonably requested by Tenant in an effort to resolve such Dispute; provided, however, that Landlord shall not be required to provide any supplementary information to Tenant unless all sums shown to be due by Tenant on Landlord's CAM Statement are paid in full. If Landlord and Tenant are unable to resolve such Dispute, such Dispute shall be referred to a mutually satisfactory third party certified public accountant for final resolution, subject to the audit rights of Tenant contained in Section 5.4(d). The cost of such certified public accountant shall be paid by the party found to be least accurate (in terms of dollars in dispute). If a Dispute is resolved in favor of Tenant, Landlord shall, within thirty (30) days thereafter, refund any overpayment to Tenant, together with interest from the time of such overpayment at the Interest Rate. The determination of such certified public accountant shall be final and binding, subject to the audit rights of Tenant contained in Section 5.4(d), and final settlement shall be made within thirty (30) days after receipt of such accountant's decision. If Tenant fails to dispute the calculation of Tenant's CAM Contribution in accordance with the procedures and within the time periods specified in this Section 5.4(c), or request an audit of the Common Area Operating Expenses in accordance with the procedures and within the time periods specified in Section 5.4(d), Landlord's CAM Statement shall be considered final and binding for the calendar year in question.

(d) In the event resolution is not accomplished pursuant to Tenant's rights under Section 5.4(c) above, then during reasonable business hours and upon ten (10) days prior written notice, Tenant or Tenant's authorized agent, shall have the right, not more frequently than once in any calendar year, to examine and photocopy all of Landlord's (or Landlord's agent's) books and records pertaining to Common Area Operating Expenses. Without limitation upon the foregoing, Tenant's right to audit Landlord's books and records shall be subject to the following conditions:

(1) Such audit shall be conducted during normal business hours and at the location where Landlord maintains its books and records;

(2) Tenant shall deliver to Landlord a copy of the results of such audit within five (5) days after its receipt by Tenant;

(3) No audit shall be permitted if an Event of Default by Tenant has occurred and is continuing under this Lease, including any failure by Tenant to pay an amount in Dispute;

(4) Tenant shall reimburse Landlord within ten (10) days following written demand for the cost of all copies requested by Tenant's auditor;

(5) Such audit must be conducted by an independent, nationally-recognized accounting firm or a local accounting firm reasonably acceptable to Landlord that is not being compensated by Tenant on a contingency fee basis and which has agreed with Landlord in writing to keep the results of such audit confidential by executing and delivering to Landlord a confidentiality agreement in form reasonably acceptable to Landlord, such confidentiality agreement to also be signed and delivered to Landlord by Tenant; and

(6) Any assignee's audit right will be limited to the period after the effective date of the assignment.

Unless Landlord in good faith disputes the results of such audit, an appropriate adjustment shall be made between Landlord and Tenant to reflect any overpayment or underpayment of Tenant's CAM Contribution within thirty (30) days after delivery of such audit to Landlord. In the event of an overpayment by Tenant, within thirty (30) days following the delivery of such audit, Landlord shall, if no Event of Default exists hereunder, make a cash payment to Tenant in the amount of such overpayment, or, if an Event of Default exists hereunder, credit such overpayment against delinquent Rent and make a cash payment to Tenant for the balance. In the event Landlord in good faith disputes the results of any such audit, the parties shall in good faith attempt to resolve any disputed items. If Landlord and Tenant are able to resolve such dispute, then the disputed items shall be submitted to an independent certified public accountant for final determination, in accordance with the provisions of Section 5.4(c) above. If any overstatement of charges disclosed by such audit exceeds three percent (3%) of the sum previously billed to Tenant by Landlord, Landlord shall reimburse Tenant for all reasonable expenses of such audit. Landlord shall retain its books and records regarding Common Area Operating Expenses for a period of at least three (3) years following the final billing for the calendar year in question.

(e) Landlord and Tenant are knowledgeable and experienced in commercial transactions and agree that the provisions of this Lease for determining charges, amounts and rent payable by Tenant (including without limitation, payments Tenant's CAM Contribution) are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges.

Section 5.5. Limitation on Common Area Operating Expense Charges. Tenant's Common Area Operating Expenses will be based on the actual costs experienced by Landlord, but capped at a non-cumulative 5% increase over the Common Area Operating Expenses payable by Tenant in the prior Lease Year, per Lease Year, for controllable expenses.

## ARTICLE 6 UTILITIES AND SERVICES

Section 6.1. Utilities in General. Tenant shall pay for all public and other utilities and related services rendered or furnished to the Premises during the Lease Term, which utilities shall be separately metered into the Premises by Landlord at Landlord's expense, and which utilities include, without limitation, water, gas, electricity, telephone and sewer charges. Landlord shall be solely responsible for the performance of any and all repairs to all utility lines, pipes and other facilities leading to the Premises, unless such repair was necessitated by the negligence of Tenant or anyone acting by, through or under Tenant. Tenant shall reimburse Landlord for its pro rata share of the costs incurred by Landlord for such repairs to all utility lines, pipes and other facilities leading to the Premises and located in the Common Areas as set forth in Section 5.3 hereof, as part of Tenant's CAM Contribution.

Section 6.2. Interruption of Utility Service. In the event of any interruption of utility services, not the result of Tenant's negligence, Landlord will use reasonable diligence to promptly restore such service; provided, however, that Tenant acknowledges that restoration of full service may require action by a third party service provider and Landlord cannot control the conduct or actions of such service provider. The interruption or impairment of any utility or related service caused or necessitated by repairs, improvements or hazards or occurrences beyond Landlord's control and not attributable to the act, omissions, neglect or default of Landlord shall not give Tenant any claim for damages against Landlord nor any right to abate its rent and other obligations hereunder.

## ARTICLE 7 LANDLORD'S AFFIRMATIVE AND NEGATIVE COVENANTS

Section 7.1. Affirmative Covenants. Landlord covenants and agrees throughout the Term of this Lease, as follows:

7.1.1 At Landlord's sole cost and expense and not to be included in Common Area Operating Expenses or otherwise charged to Tenant under this Lease, to keep or cause to be kept in good order, repair and condition, and to replace if so required, throughout the Lease Term the following: (a) the foundations of the Premises; (b) the roof of the Premises (inclusive of the roof membrane); (c) the floor slab of the Premises; (d) the exterior walls (excluding the interior surface of exterior walls and all windows, doors and glass) of the Premises; (e) all structural components of the Premises; (f) all capital repairs to the driveways, sidewalks, parking and service facilities and structural repairs to all pylon signage, excepting any repairs necessitated by the negligence of Tenant, its agents, employees or contractors (subject to Article 10 hereof), and except for depreciation of items listed in this subparagraph (f) in accordance with GAAP lives of depreciation. The provisions of this Paragraph shall not apply

in the case of damage or destruction by fire or other casualty or by eminent domain, in which event the obligations of Landlord shall be controlled by Article 10 of this Lease.

7.1.2 To maintain with responsible companies qualified to do business in the Applicable State, as part of the Common Area Operating Expenses, "all-risk" casualty coverage insurance (including earthquake and flood insurance) to the extent of the full replacement value of the Building) and the improvements now located or hereafter constructed on the Premises, naming Tenant as an additional insured, and to deposit with Tenant certificates for insurance bearing the endorsement that the policies will not be canceled or reduced in scope of coverage or amount of coverage without thirty (30) days prior written notice thereof to Tenant. The proceeds of any such insurance shall be dedicated to the repair of the Premises, subject, however, to the provisions of Article 10 hereof.

7.1.3 Subject to Tenant's compliance with each of the terms and provisions of this Lease and the Permitted Exceptions, to permit Tenant to lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises and any appurtenant rights granted to Tenant under this Lease during the Lease Term without hindrance or ejection by Landlord or the successors or assigns of Landlord or anyone acting by, through or under Landlord (including without limitation any mortgagee of Landlord).

7.1.4 To indemnify, protect, defend and hold Tenant harmless from and against any and all claims, demands, losses, liabilities, penalties and costs (including, without limitation, reasonable attorneys' fees at all trial and appellate levels, whether or not suit is brought) arising directly or indirectly from or out of, or in any way connected with the presence, leakage, escape, emanation, migration or release of any Hazardous Substances on, under, above or about the Real Property or the Premises caused by Landlord, its agents, employees or contractors or in existence on the Delivery Date.

7.1.5 To indemnify, protect, defend and hold Tenant harmless from and against any and all injury, loss, claims or damage to any person or property while on the Common Areas of the Shopping Center unless caused by an act, omission, neglect or default of Tenant, its agents, employees or contractors; and, subject to Section 12.12 hereof, to indemnify, protect, defend and hold Tenant harmless from and against any and all injury, loss, claims or damage to any person or property occasioned by any gross negligence or willful act or omission of Landlord, its agents, employees or contractors and to maintain or cause to be maintained as a Common Area Operating Expense, with responsible companies qualified to do business in the Applicable State, Commercial General Liability Insurance covering the Shopping Center (such insurance to include contractual liability coverage with respect to the indemnity obligations set forth hereinabove), and naming Tenant as an additional insured thereunder, with limits at least equal to those set forth in Section 1.1.19 of this Lease, and workers' compensation insurance covering all of Landlord's employees working in the Shopping Center, and to deposit with Tenant certificates for such insurance bearing the endorsement that the policies will not be canceled or reduced in scope of coverage or amount of coverage until thirty (30) days after written notice to Tenant. It is the agreement of Landlord and Tenant that the liability insurance maintained hereunder by Landlord on the Common Areas shall be primary insurance to the liability insurance maintained by Tenant under Section 9.1.8 hereof with respect to claims covered by the indemnities in this Section 7.1.5.

7.1.6 To comply with all laws (including without limitation the Americans with Disabilities Act), codes, regulations and other governmental requirements (both now or hereafter in effect) in connection with the Shopping Center, the Premises (subject to Tenant's obligations set forth in Section 9.1.6 hereof) and the Common Areas.

Section 7.2. Negative Covenants. Landlord covenants and agrees throughout the Term of this Lease, as follows:

7.2.1 Not to build or otherwise erect any beams, berms or other barriers within the Common Areas after the date hereof which have the effect of: (a) guiding traffic away from the Premises; or (b) impeding pedestrian or vehicular access to the Shopping Center or the Premises; or (c) reducing in any material way the visibility of the Premises or its signage from the roadways contiguous to or which serve the Shopping Center.

7.2.2 Not to make any material changes to the Common Areas of the Shopping Center (including without limitation any construction of improvements, changes to the striping, curbing, landscaping, directional signage, access, ingress or egress or erecting any structures) within the "No Change Area" as shown and designated on the Site Plan attached hereto as Exhibit B, without Tenant's prior written consent which may be withheld by Tenant in its sole judgment.

7.2.3 Not to reduce the number of parking spaces within the Shopping Center to a number which produces a parking ratio less than the Minimum Parking Ratio (unless due to governmental action such as condemnation, in which event Section 10.2 hereof shall govern).

7.2.4 Not to build or otherwise erect any additional buildings or other structures, or otherwise alter the plan for the Shopping Center in any material respect for development from that shown on the Site Plan.

7.2.5 Use commercially reasonable efforts to prevent any Occupant from violating the Prohibited Uses.

## **ARTICLE 8 LANDLORD'S REPRESENTATIONS**

Section 8.1. Landlord's Representations. Landlord, in order to induce Tenant to enter into this Lease, hereby represents:

8.1.1 (a) That, as of the Effective Date and again as of the Delivery Date, Landlord has no knowledge of the presence of any Hazardous Substance (including without limitation asbestos material) on, under, above or about the Real Property or the Premises in violation of applicable Environmental Laws.

(b) That, as of the Effective Date and again as of the Delivery Date, Landlord has not received any notice with respect to, and has no knowledge of, any facts that

would constitute violations of any Environmental Laws relating to the use, ownership or occupancy of the Real Property or the Premises.

(c) That, as of the Effective Date and again as of the Delivery Date, Landlord has not (and to Landlord's knowledge, no third party has) engaged in the generation, storage, treatment, recycling, transportation or disposal of any Hazardous Substances on, under, above or about the Real Property or the Premises (any such activity is referred to herein as a "Regulated Activity") except in compliance with all applicable Environmental Laws, and no Regulated Activity has occurred on, under, above or about the Real Property or the Premises, that would constitute a violation of applicable Environmental Laws.

8.1.2 That Landlord is duly organized and validly existing under the laws of the Applicable State and has full power and authority to enter into this Lease.

8.1.3 That Landlord is not a party to any agreement or litigation which could adversely affect the ability of Landlord to perform its obligations under this Lease or which would constitute a default on the part of Landlord under this Lease, or otherwise adversely affect Tenant's rights or entitlements under this Lease.

8.1.4 That the current zoning for the Premises does not prohibit the use of the Premises for the Initial Use.

8.1.5 That Landlord is the fee simple owner of the Shopping Center, subject only to the Permitted Exceptions.

8.1.6 That any future buildings shall not be located within the area identified as "No Change Area" as identified in the Site Plan attached hereto as Exhibit "\_\_\_" (being that parking area in front of the Premises from the building front to the street). Further, any future buildings constructed in the Shopping Center shall not reduce the parking available to Tenant to that less than at the Lease Term Commencement Date.

8.1.7 That Landlord shall not use or permit the use of any portion of the parking facilities of the Shopping Center for other than the intended purposes without the prior written consent of Tenant, which may be arbitrarily withheld.

8.1.8 That any construction activities being conducted by, through or under Landlord shall be performed in a manner having as little adverse effect as possible (under the circumstances) on Tenant's operations in the Premises, and in no event shall any portion of those parking areas directly in front of the Premises be used for the staging of trucks or equipment or the storage of materials, nor shall access to the Premises be materially adversely affected.

8.1.9 That as of the Effective Date and again as of the Delivery Date, Landlord has no actual knowledge of any change contemplated in any applicable Legal Requirements, or any action by adjacent landowners, or natural or artificial conditions on the Premises that would prevent, limit, impede, or render more costly Tenant's Work.

8.1.10 That all statements made here are true and correct in all material respects.

8.1.11 That, to Landlord's knowledge, the execution, delivery and performance of this Lease will not: (i) violate any provisions of the law of the Applicable State or any applicable regulation, order, writ, injunction or decree of any court or governmental authority; or (ii) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind or nature to which Landlord is a party or by which Landlord or the Premises may be bound.

Section 8.2. Knowledge. For purposes of this Lease and each of the documents executed in connection herewith, the phrases "Landlord's actual knowledge," or "Landlord's knowledge" or phrases of similar construction and import shall specifically mean and be limited to the actual, conscious awareness, as of the date hereof or as of the date specifically stated herein, of \_\_\_\_\_ (the "Named Person"), with complete duty of inquiry or independent investigation on the part of Landlord including the duty of reasonable inquiry and investigation by the Named Person. It is expressly understood and agreed that the Named Person shall not be personally liable to Tenant for any representation or warranty set forth herein. Information possessed by or known to any person or entity other than Landlord (including Landlord's brokers, consultants, agents and advisors, lenders or their respective employees or representatives) shall not be imputed or attributed to Landlord unless the same has been expressly communicated to the Named Person.

## **ARTICLE 9 TENANT'S AFFIRMATIVE AND NEGATIVE COVENANTS**

Section 9.1. Affirmative Covenants. Tenant covenants and agrees throughout the Term of this Lease, as follows:

9.1.1 To perform all of the obligations of Tenant set forth in this Lease and in the Exhibits attached hereto.

9.1.2 To open for business in the Premises for at least one (1) day within one hundred twenty (150) days following Delivery Date, and thereafter to operate, subject to any permitted assignment, one hundred percent (100%) of the Premises during the entire Lease Term unless prevented from doing so because of fire, accident, or acts of God, or as a result of interruption of utility service or other non-controllable event (not caused by Tenant), and to conduct its business at all times in a high class and reputable manner, maintaining at all times a full staff of employees and a full and complete stock of merchandise. Notwithstanding the foregoing and subject to the next paragraph of this 9.1.2, Tenant, at its sole discretion, may elect to close its business at the Premises for an indefinite period or periods of time, and the event of any such closure shall not be a breach of Tenant's covenants set forth in this Article 9.

If Tenant intends to discontinue the use of the Premises for the operation from the Premises, Tenant shall give Landlord notice of such intention at least sixty (60) days prior to the date of such discontinuance, and Landlord shall then have the right and option to take possession

of the Premises and thereby terminate this Lease and cancel the remaining term of this Lease if Tenant does not reopen its operations in the Premises within ninety (90) days of the cessation of such operations, by giving Tenant notice of Landlord's exercise of such option at any time after the date of discontinuance specified in said notice of Tenant's intention to discontinue the use of the Premises for the operation of a Conn Appliance retail store business. If Landlord exercises said option to cancel, and if Tenant has not reopened its operations in the Premises prior to the expiration of such ninety (90) day period, Tenant shall vacate the Premises within thirty (30) days after the date of expiration of such ninety (90) day period, and the term of this Lease shall in such event be automatically terminated as of the date on which Tenant vacates the Premises or as of the date which is thirty (30) days following the expiration of such ninety (90) day period, whichever is the earlier date. Upon such termination of the term hereof both Landlord and Tenant shall be released and relieved from and of any and all obligations thereafter to accrue hereunder.

9.1.3 To use the Premises for only the Permitted Uses.

9.1.4 To store all trash and refuse in appropriate containers within the Premises or adjacent thereto and to remove or cause the removal of all trash and refuse on a regular basis in a manner approved by Landlord; to keep all drains inside the Premises open; to receive and deliver goods and merchandise only in loading areas or the areas designated on the Site Plan; and to conform to all reasonable, nondiscriminatory and uniformly enforced rules and regulations which Landlord may promulgate from time to time with respect to the management and use of the Shopping Center.

9.1.5 Subject to Landlord's repair and maintenance obligations expressly set forth in this Lease, at Tenant's sole cost and expense, to (a) maintain and keep all the Premises in a good condition and state of repair, including all equipment, facilities and fixtures therein; and (b) keep all glass, including that in windows, doors and skylights, clean and in good condition, and to immediately replace any glass which may be damaged or broken with glass of equivalent quality.

9.1.6 Subject to Sections 7.1.1, 7.1.4, and 7.1.6 hereof, to (a) make all repairs, alterations or other improvements in and to the interior of Premises required by governmental authorities; (b) keep the Premises equipped with all safety appliances so required because of Tenant's use of the Premises; (c) procure any licenses and permits required for any such use; and (d) comply with the orders and regulations of all governmental authorities having jurisdiction over the use of the Premises. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees to cause the interior of the Premises (excluding structural portions constructed or installed by Landlord) to comply with all laws (including without limitation the Americans with Disabilities Act), codes, regulations and other governmental requirements (both now or hereafter in effect) if same is in connection with Tenant's particular use of the Premises or in connection with Tenant's alterations or improvements.

9.1.7 To pay when due the entire cost of any work on the Premises, including equipment, facilities, signs and fixtures therein and Tenant's Work, undertaken by Tenant, so that the Premises shall at all times be free of liens for labor and materials; to procure all necessary permits before undertaking such work (including Tenant's Work); to perform such



work (including Tenant's Work) in a good and workmanlike manner, employing materials of good quality; to comply with all governmental requirements; and to save Landlord harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or arising out of such work (including Tenant's Work).

9.1.8 To maintain, with responsible companies qualified to do business in the Applicable State, general or commercial public liability insurance covering the Premises, naming Landlord as an additional insured, with limits at least equal to those set forth in Section 1.1.19, and workers' compensation insurance (with the limits required by applicable law) covering all of Tenant's employees working in the Premises, and to deposit with Landlord certificates for such insurance bearing the endorsement that the policies will not be canceled or reduced in scope of coverage or amount of coverage until thirty (30) days after written notice to Landlord. Notwithstanding the requirement that Tenant provide workers' compensation insurance, in the event that Tenant elects to become a non-subscriber on a company-wide basis, the failure to continue workers' compensation insurance shall not constitute a default hereunder so long as insurance is not required to be maintained by, and Tenant otherwise complies with, all applicable state and local laws and ordinances regarding disability or worker's compensation for employees. It is the agreement of Landlord and Tenant that the liability insurance maintained hereunder by Tenant on the Premises shall be primary insurance to the liability insurance maintained by Landlord under Section 7.1.5 hereof with respect to claims covered by the indemnities in this Section 9.1.8.

9.1.9 To permit Landlord and its agents, upon reasonable prior notice to Tenant, to enter the Premises during Tenant's normal business hours for the purpose of inspecting the same or making repairs to the Building, and to show the Premises to actual or prospective purchasers and lenders, and to prospective tenants. Landlord shall be entitled to enter the Premises during times other than Tenant's normal business hours and without prior notice only in the event of an emergency. The term "emergency" as used herein shall mean a situation which requires, in the good faith judgment of Landlord, immediate action in order to prevent death, bodily injury or property damage. Any such entry, and any repairs or other work to be performed by Landlord in connection therewith, shall be undertaken at a time and in a manner which is least disruptive to Tenant's business operations as are reasonably practicable under the circumstances.

9.1.10 At the termination of this Lease, peaceably to give up and surrender the Premises, including all alterations and additions made by Tenant and all fixtures permanently attached to the Premises during the Lease Term, except fixtures as Landlord shall direct Tenant to remove; the Premises and improvements and HVAC equipment to be in good order, repair and condition, excepting only reasonable wear and tear, fire or other casualty, a taking by eminent domain or any repairs that are the obligation of Landlord under this Lease. It is recognized that Tenant will install various appliances and equipment as floor models, and such installation will not be deemed "permanent" and all such floor models will be removable by Tenant. Should Tenant fail to remove any of Tenant's goods, effects and fixtures such goods, effects and fixtures shall be deemed to have been abandoned by Tenant, Landlord may have them removed, and store the same in any public warehouse at the risk of Tenant; the expense of

such removal, storage and disposition shall be borne by Tenant or reimbursed by Tenant to Landlord within ten (10) days after demand.

9.1.11 To remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence, granted by Landlord to Tenant or to any assignee or sublessee, unless expressly released by Landlord.

9.1.12 To obtain all permits or licenses necessary to conduct business and to pay all taxes upon its merchandise, stock, fixtures, equipment and leasehold improvements in the Premises.

Section 9.2. Negative Covenants. Tenant covenants and agrees throughout the Term of this Lease, as follows:

9.2.1 Not to intentionally or negligently injure, deface or otherwise harm the Premises or any part thereof or any equipment or installation therein; nor commit any nuisance; nor permit the emission of any objectionable noise or odor, nor burn any trash or refuse within the Shopping Center; nor make any use of the Premises or of any part thereof or equipment therein which is improper, offensive or contrary to any law or ordinance or to reasonable rules and regulations for the Occupants of the Shopping Center as such may be promulgated by Landlord from time to time or the Prohibited Uses, or which will invalidate or increase the cost of any of Landlord's insurance over a standard rate for similar commercial properties, notwithstanding the Permitted Use; nor use any advertising medium which may constitute a nuisance, such as loud speakers or tape recorders, in a manner to be heard outside the Premises; nor conduct any auction, fire, "going out of business," bankruptcy sales; nor to sell merchandise from the Common Areas, without prior consent of Landlord.

9.2.2 Not to make any structural alterations to the Premises without the prior written consent of Landlord, as provided herein.

9.2.3 Not to make any material changes to the exterior of the Premises unless (i) such changes are aesthetically compatible with the rest of the Shopping Center, and (ii) Tenant has provided Landlord with a copy of its plans for such changes at least thirty (30) days prior to its commencement of such construction, and (iii) Tenant has obtained Landlord's consent to such changes (which consent shall not be unreasonably withheld). Notwithstanding anything herein to the contrary, Tenant shall be permitted, without Landlord's prior consent, to make such alterations to the Premises as may be required to conform the Premises to the then exterior design, materials, colors and appearance of a majority of Tenant's (or any assignee's or sublessee's) other stores in Houston, Texas metropolitan trade area operating under the same trade name provided Tenant complies with subsections (i) and (ii) of this Section 9.2.3.

9.2.4 Not to permit to be created nor to remain undischarged, and to indemnify Landlord against, any lien, encumbrance or charge filed against the Premises or any part thereof by reason of any work, labor, services or materials performed at or furnished to the Premises, to Tenant, or to anyone holding the Premises through or under Tenant, and not to suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof may be impaired. Notice is hereby given that Landlord shall not

be liable for any work or materials furnished to Tenant on credit and that no mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to Tenant or anybody claiming through Tenant. Should Tenant receive written notice of such a lien having attached to Landlord's interest, Tenant shall forthwith take such action by bonding or otherwise as will remove or satisfy such lien. If Tenant shall fail to cause such lien to be discharged within thirty (30) days after receipt by Tenant of written notice of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount reasonably claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all reasonable costs and expenses, including interest at the Interest Rate and reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien shall be deemed to be Additional Rent and shall be due and payable by Tenant to Landlord on the first day of the next following month.

9.2.5 Not to assign or in any manner transfer this Lease or any interest therein, or sublet or license the Premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone with, through or under it, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. If Tenant requests Landlord's consent to a specific assignment or sublease, Tenant will give Landlord (i) the name and address of the proposed assignee or subtenant, (ii) the basic terms of the proposed assignment or sublease, and (iii) reasonably satisfactory information about the nature, financial condition, business and business history of the proposed assignee or subtenant, and its proposed initial use of the Premises (collectively, the "Assignment/Sublease Information"). Landlord agrees to (i) review the Assignment/Sublease Information as expeditiously as possible to approve or disapprove the same in writing, specifying the reasons for any disapproval, and (ii) promptly submit all Assignment/Sublease Information to Landlord's lender for its review and approval. Notwithstanding the foregoing, Tenant may, without the approval of Landlord, assign the Lease, or any part thereof, or sublease the Premises, in whole or in part, to: (a) any corporation or other legal entity which has the power to direct Tenant's management and operation, or any corporation whose management and operation is controlled by Tenant; or (b) any corporation a majority of whose voting stock is owned by Tenant; or (c) any corporation or other entity in which or with which Tenant is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations or other entities, so long as the liabilities of the corporations or other entities participating in such merger or consolidation are assumed by the corporation or other entity surviving such merger or created by such consolidation; or (d) any corporation or other entity acquiring this Lease and a substantial portion of Tenant's assets; or (e) any corporate or other successor to a successor corporation or entity becoming such by either of the methods described in subsections (c) or (d); or (f) any entity (or member of a group of affiliated entities) which is acquiring the majority of Tenant's other similar stores located in the Dallas Metropolitan Area of Texas, "Area of Dominant Influence for Media Coverage" (as such term is commonly defined in the advertising industry), including those in the State of Oklahoma. Tenant must deliver prompt written notice to Landlord of any such assignment. No subletting or assignment shall relieve Tenant from its obligations hereunder unless Landlord in its sole discretion so agrees to and does release Tenant in writing; provided, however, if following an approved assignment of this

Lease wherein Tenant has not been specifically released, the assignee shall default in performance of its obligations hereunder, and if Landlord shall terminate such assignee's right to occupancy of the Premises and make demand upon Tenant to cure any default, Tenant shall have the right, not the obligation, for a period of up to thirty (30) days after it shall have cured any such default, to retake possession of the Premises under all of the terms and conditions of this Lease.

9.2.6 Following Landlord's receipt of Tenant's notice requesting Landlord's approval of any assignment or sublease requiring such approval, accompanied by the information pertaining to such assignment or subletting required by said Section 9.2.5 ("Tenant's Assign/Sublet Notice"), Landlord shall have the right to recapture the Premises by terminating this Lease as hereinafter provided, it being understood that right of recapture and termination shall not apply (i) to any intracorporate transfers permitted under the provisions of Section 9.2.5, or (ii) in connection with the sale of the majority of Tenant's stores in the Applicable State. If Landlord elects to exercise its aforesaid right to recapture, it must do so by giving Tenant written notice thereof ("Landlord's Recapture Notice") within thirty (30) days after its receipt of Tenant's Assign/Sublet Notice. The effective date of any such recapture and termination of this Lease shall be one hundred twenty (120) days after the date of Landlord's Recapture Notice. If this Lease is terminated by Landlord as aforesaid, Tenant shall have no further liability under this Lease, except for liability accruing prior to the effective date of such termination. If Landlord fails to timely exercise its right to terminate this Lease as aforesaid, Tenant shall thenceforth be allowed to assign this Lease or sublet the Premises to the proposed subtenant or assignee, subject to Landlord's right to approve (not to be unreasonably withheld) as set forth in the first paragraph of Section 9.2.5. Notwithstanding the above, if any such proposed subletting is for a portion of the Premises, (i) Landlord's aforesaid right to recapture shall be limited to such proposed sublet area only, and this Lease shall continue relative to the remaining portion of the Premises, but the rental provisions hereof shall be adjusted based upon the ratio that the area of the remaining space bears to the area of the Premises prior to Landlord's recapture, and Tenant's other obligations hereunder shall only be applicable to the remaining space, and the term Premises as used in this Lease shall thenceforth be defined as such remaining space; and (ii) Tenant shall at its sole expense install any required demising partition and shall separate the HVAC and other utilities serving the Premises, all in accordance with plans and specifications reasonably satisfactory to Landlord. In the event Landlord does not timely exercise Landlord's Right of Recapture, or does not object to any such assignment or subletting within thirty (30) days of Landlord's receipt of Tenant's Assign/Sublet Notice, Landlord shall be deemed to have consented to such assignment or subletting, but such deemed consent shall not release or relieve Tenant from any of its obligations or liabilities under this Lease.

9.2.7 Not to dispose of or discharge or permit the disposal or discharge of any Hazardous Substance on, in, or about the Premises. Tenant may store minimal quantities of substances in the Premises which technically could be considered Hazardous Substances; provided that such substances are of a type and are held only in a quantity normally used in connection with the occupancy or operation of the Premises for a Permitted Use (such as cleaning fluids and supplies normally used in the day to day operation of retail store operations) and such substances are being held, stored and used in complete and strict compliance with all

applicable laws. Tenant will promptly furnish to Landlord copies of all notices given by Tenant, its agents, or employees, to any governmental agency, court, or other entity, or received by Tenant, its agents, or employees from any governmental agency, court, or other entity, in connection with any Hazardous Substance relating to the Premises. Tenant will promptly notify Landlord of the pendency or threat of private or governmental claims or judicial or administrative actions relating to environmental impairment or regulatory requirements relating to Hazardous Substances on the Premises caused by the acts or omissions of Tenant, its agents or employees. If Tenant defaults in any of its obligations under this Section, in addition to all other rights and remedies available to Landlord under this Lease or at law or in equity, Landlord will have the right (but not the obligation) to cure such default (at Tenant's sole expense), including the repair of the Premises. The amount so paid by Landlord, together with any reasonable attorneys' fees incurred by Landlord, will be immediately due from Tenant to Landlord as Additional Rent. Tenant will indemnify, protect, defend, and hold Landlord harmless from and against any and all claims, demands, losses, liabilities, and penalties (including, without limitation, reasonable attorneys' fees at all trial and appellate levels, whether or not suit is brought) arising from or out of the presence of any Hazardous Substance on the Premises or any violation of any local, state or federal environmental law, regulation, ordinance or administrative or judicial order relating to any Hazardous Substance, provided such has been caused by the acts or omissions of Tenant, its agents, contractors, employees or invitees. The provisions of this Section 9.2.7 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 10 DAMAGE AND DESTRUCTION; CONDEMNATION

### Section 10.1. Fire or Other Casualty.

10.1.1 If during the Lease Term, any or all of the Premises shall be damaged or destroyed by fire or other casualty, Landlord shall forthwith proceed to repair such damage and restore the Premises to substantially their condition at the time of such damage, so long as (i) Landlord's lender agrees to release any insurance proceeds payable to Landlord in connection with such fire or other casualty for the purpose of such repair, (ii) Tenant is not otherwise then in default of its duties and obligations under this Lease, and (iii) Tenant, at its sole cost and expense, shall repair and restore whatever fixtures, equipment and other personalty it had installed prior to the damage or destruction. In the event Landlord's lender does not agree to or fails to timely release insurance proceeds to Landlord to enable Landlord to timely repair such damage and so restore the Premises, and if Landlord does not agree to undertake to commence and complete the repair and restoration of the Premises, Tenant shall be entitled to (i) cause the Premises to be so repaired and restored at Tenant's initial cost, and offset the cost of such repair and restoration against any rental obligations next due under this Lease, both Fixed Minimum and Additional, in their direct order of maturity, until fully recovered, or (ii) terminate this Lease as of the date of such damage or destruction by written notice to Landlord within sixty (60) days from Tenant's determination that the Premises will not be repaired and restored by Landlord, and be, thereupon, released from and relieved of any liability or obligation under this Lease except that arising prior to such termination date.

10.1.2 If the Premises shall be completely destroyed or substantially damaged (as hereinafter defined) or destroyed by fire or other casualty within the last two (2) years of the Lease Term, either party shall have the right to terminate this Lease, provided that notice thereof is given to the other party not later than sixty (60) days after such damage or destruction. However, if Landlord shall exercise said right of termination and at that time Tenant shall have the right to extend the Lease Term, Tenant may render Landlord's notice of termination null, provided that Tenant, within fifteen (15) days of receipt of the notice, shall elect to extend the term of this Lease, and elect to repair and restore the Premises as provided in Section 10.1.1 at its initial cost. In such event, tenant shall be able to set off the cost of such repair and restoration against its rentals, both Fixed Minimum and Additional, next due in their direct order of maturity, as provided in Section 10.1.1.

10.1.3 If the provisions of Section 10.1.1 or Section 10.1.2 shall become applicable to the extent that Landlord is obligated to or elects to repair and restore the Premises, or Tenant elects to so repair and restore the Premises according to its right to do so set forth in Section 10.1.1, the Fixed Minimum Rent, Additional Rent and all other charges specified in this Lease shall be abated during any period in which, by reason of such damage or destruction, there is interference with the operation of the business of Tenant in the Premises, having due regard to the extent to which Tenant may be required to discontinue its business in the Premises, and such abatement or reduction shall continue for the period commencing with such destruction or damage and ending with: the completion by Landlord of such work of repair and/or restoration as Landlord is obligated or elects to do, or the completion by Tenant of such work of repair and/or restoration if Tenant elects to so repair and restore; and Tenants completion of its re-fixturing of the Premises and reopening for business,.

10.1.4 In the event of the termination of this Lease pursuant to this Article 10, this Lease, and the term hereof, shall cease and come to an end as of the date of such damage or destruction. Any rent or other charges paid in advance by Tenant shall be promptly refunded by Landlord. It is further understood and agreed that, at Tenant's election, the Lease Term shall be extended by up to the number or days, if any, during which business shall not have been conducted in the Premises by reason of such damage or destruction.

10.1.5 The term "substantially damaged" as used in this Article, shall mean that the Premises or the rest of the Shopping Center have been damaged to the extent that the cost of restoration of the Premises and/or the rest of the Shopping Center (as the case may be) will exceed a sum constituting sixty percent (60%) of the total replacement cost of the Premises or the Shopping Center (as the case may be), or the damage to the Premises is such that it prevents Tenant's use and occupancy thereof for its operations as conducted immediately prior to such damage for more than sixty (60) days from the date of such damage or destruction.

10.1.6 If any other portion of the Shopping Center is either partially or substantially damaged (irrespective of whether the Premises shall have been damaged or destroyed) then, so long as Landlord's lender agrees to release any insurance proceeds payable to Landlord in connection with such fire or other casualty for the purpose of repair and restoration, Landlord shall proceed promptly to rebuild the same to the extent that all of the Common Areas are restored to the condition required prior to the original Delivery Date set forth herein. Notwithstanding the availability of insurance proceeds, Landlord may, at its own

cost and expense, but is not obligated to do so, undertake the repair and restoration of that portion of the Shopping Center so damaged. During any period of time that by reason of such damage or destruction there is any material interference with access to the Premises, there shall be a fair and equitable abatement of the Fixed Minimum Rent, and other charges payable hereunder, taking into account the extent to which Tenant's operations may thereby be interfered with; and, if it is impracticable for Tenant, in the reasonable exercise of its business judgment, to remain open for business and Tenant elects to close down until such damage or destruction has been repaired or rubble, etc., removed, there shall be a full abatement of Fixed Minimum Rent, Additional Rent and all other charges payable hereunder until Landlord's completion of the restoration work. It is further understood and agreed that, at Tenant's election, the term of this Lease shall be extended by up to the number of days, if any, during which Tenant has been unable to conduct business in the Premises by reason of such damage or destruction. . In the event Landlord's lender does not agree to or fails to timely release insurance proceeds to Landlord to enable Landlord to timely repair such damage and so restore the Shopping Center, and if Landlord does not agree to undertake to commence and complete the repair and restoration of the Shopping Center, Tenant shall be entitled to terminate this Lease as of the date of such damage or destruction by written notice to Landlord within sixty (60) days from Tenant's determination that the Shopping Center will not be repaired and restored by Landlord, and be, thereupon, released from and relieved of any liability or obligation under this Lease except that arising prior to such termination date.

10.1.7 [Intentionally omitted]

10.1.8 In any event, if Landlord shall not commence, in good faith, repair and restoration work within sixty (60) days after any damage which Landlord is required to or elects to repair pursuant to the terms hereof, or if Landlord shall fail with all due diligence to continue with such repair and restoration work to completion (which completion shall in no event exceed one hundred (180) days from the date of the casualty), then Tenant shall have the right, in addition to all other rights and remedies available at law, in equity or under this Lease, to terminate this Lease by giving written notice, within ten (10) days after the expiration of said sixty (60) day or 180-day period, as applicable, to Landlord of its election to so terminate this Lease effective as of the date of such damage or destruction or casualty in accordance with the provisions of this Article X.

Section 10.2. Eminent Domain.

10.2.1 If, after the execution and before the termination of this Lease: (i) more than twenty percent (20%) of the Floor Area of the Premises is taken by eminent domain or conveyed in lieu thereof; or (ii) more than twenty percent (20%) of the leaseable area of the Shopping Center is taken by condemnation or conveyance in lieu thereof; or (iii) the number of automobile parking spaces is reduced within the Shopping Center to a number which produces a parking ratio less than the Minimum Parking Ratio as a result of a taking by eminent domain or of a conveyance in lieu thereof; or (iv) the truck well and/or loading dock area or the access thereto which services the Premises is taken by eminent domain or conveyed in lieu thereof, and no reasonably acceptable substitute is provided by Landlord to Tenant; or (v) a material obstruction to the view of the Premises or its signage will result from any post-taking construction of any roadway improvements; then, in any of the foregoing events, Tenant shall

have the right to terminate this Lease. Such option to terminate this Lease shall be exercisable by Tenant giving written notice to Landlord within forty-five (45) days after the date possession of the Premises or other action specified hereinabove shall be taken by the acting governmental or quasi-governmental authority (the "Date of Taking"), as of the Date of Taking (the "Termination Date"), and Landlord shall refund such Fixed Minimum Rent and Additional Rent as shall have been paid in advance and which cover a period subsequent to the Termination Date. In the event Tenant does not terminate this Lease, Landlord, at Landlord's cost and expense, shall promptly and diligently restore the (a) Premises to a complete architectural unit to as near its condition as existed prior to such taking or conveyance, and (b) remaining Common Areas or other portion of the Shopping Center so taken to as near to their condition prior to such taking or conveyance as is reasonably possible (but in any event to a good and usable condition). Following any such taking, as aforesaid, and Tenant does not elect to terminate this Lease in accordance with its rights to do so as set forth in this Section 10.2.1, wherein Tenant's business operations in the Premises are materially adversely affected, there shall be an equitable reduction in Fixed Minimum Rent based upon the square footage reduction in the Premises as a percentage of the original square footage of the Premises.

10.2.2 During any period of time that, by reason of such taking, there is any material interference with access to the Premises, there shall be a fair and equitable abatement of the Fixed Minimum Rent, Additional Rent and all other charges payable hereunder, taking into account the extent to which Tenant's operations may thereby be interfered with; and, if it is impracticable for Tenant to remain open for business, in the reasonable exercise of Tenant's business judgment, and Tenant elects to close its business operations in the Premises until restoration or removal of rubble, etc., has been accomplished, then there shall be a full abatement of Fixed Minimum Rent, Additional Rent and all other charges payable hereunder until Landlord's completion of the restoration work. It is understood and agreed that, at Tenant's election, the term of this Lease shall be extended by up to the number of days, if any, during which business shall not have been conducted in the Premises by reason of such restoration work. In the event Landlord has not fully restored the Shopping Center so as to not materially interfere with Tenant's business operations as provided immediately above within sixty (60) days of Tenant's closing of its operations in the Premises, then and in such event, in addition to its right of rental abatement provided for immediately above, Tenant shall have the right to terminate this Lease as of the date of such cessation of operations by giving Landlord written notice of such election within thirty (30) days following the expiration of such sixty (60) day period, in which event the Lease shall thereupon terminate as of the date of Tenant's closing of operations, unless the Shopping Center has been fully restored prior to Landlord's receipt of such Tenant notice of termination.

10.2.3 If less than twenty percent (20%) of the Floor Area of the Premises shall be taken by condemnation or conveyed in lieu thereof, then this Lease shall terminate only with respect to that portion of the Floor Area so taken or conveyed as of the day possession shall be taken and Tenant shall pay Fixed Minimum Rent and Additional Rent up to that day, with an appropriate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking of possession and, thereafter, the Fixed Minimum Rent and Additional Rent shall be equitably adjusted. This obligation is effective only if and upon Landlord's restoration of the Premises to an architecturally complete unit in such configuration



as approved by Tenant in writing, and upon Tenant's restoration of the interior of the Premises to its former condition, and Tenant's opening the Premises for operations.

10.2.4 In the event of any taking by eminent domain or condemnation or conveyance in lieu thereof wherein the Premises, access thereto or the parking areas thereof are materially adversely affected, whether or not this Lease has been terminated as a result thereof, Tenant shall have the right to make separate claims allowed by the laws of the Applicable State against the condemning authority for the following: (a) the value or cost of its fixtures, equipment or other personalty; (b) its relocation expenses; (c) the cost of any leasehold improvements made by Tenant in and to the Premises; (d) good will; and (e) loss of business. In the event that the Lease is terminated as a result of a taking, Tenant's right to claim compensation as herein set forth shall not be extinguished by reason of the termination of this Lease. Whether or not this Lease is terminated, if only one award is allowed under applicable law, then Tenant shall have the right to share in such award to the extent such award specifically allocates amounts for the items set forth above that Tenant is entitled to receive. To the extent that applicable laws allow Tenant the right to make a claim for the value of its leasehold estate and such claim does not diminish the award to be made to Landlord, Tenant shall be entitled to recover, as a separate award, the value of its leasehold estate.

**ARTICLE 11  
TERMINATION FOR DEFAULT OR INSOLVENCY AND REMEDIES OF  
LANDLORD**

Section 11.1. Termination for Default or Insolvency. The occurrence of any one or more of the following events or conditions shall constitute an Event of Default (herein so called) by Tenant under this Lease:

(a) Tenant fails to pay Fixed Minimum Rent and Additional Rent as and when due under Article 4 of this Lease (after giving effect to applicable notice, grace or cure periods, if any, specified in said Article 4); or

(b) Tenant fails to pay any other amount due hereunder (other than amounts specified in clause (a) above) within thirty (30) days when the same shall become due and payable hereunder, and Tenant shall have received written notice of its obligation to so pay; or

(c) Tenant fails to timely and properly observe, keep or perform any covenant, agreement or condition required in this Lease and such failure continues for more than twenty (20) days (provided, however, if such failure cannot be cured within such 20-day period and Tenant has commenced such cure within such 20-day period and is diligently and consistently pursuing such cure to completion, Tenant shall have an additional, reasonable period of time (not to exceed, in the aggregate, ninety (90) days) to complete such cure; or

(d) This Lease or the leasehold hereby created shall be taken by writ of execution or other process of law, or an assignment shall be made of Tenant's property for the benefit of creditors, or a receiver, guardian, conservator, trustee in bankruptcy or

similar officer shall be appointed to take charge of all or any part of Tenant's property by a court of competent jurisdiction, or a petition (including, without limitation, a petition for reorganization or arrangement) is filed by or against Tenant under any bankruptcy law and same is not dismissed within one hundred twenty (120) days from the date of filing.

Upon the occurrence of any Event of Default, Landlord lawfully may, in addition to any and all other rights and remedies provided for at law or equity any time thereafter upon three (3) days prior written notice, and upon satisfaction of all legal prerequisites (a) enter into and upon the Premises or any part thereof, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, and remove any personalty left by Tenant (or anyone claiming an interest by through or under Tenant) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant or (b) Landlord shall have the option of terminating this Lease upon written notice thereof given to Tenant in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages of rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages thereof. Tenant covenants and agrees, notwithstanding any entry or reentry by Landlord, whether by summary proceedings, termination or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated, or if Landlord had not entered or reentered as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for the remainder of the Lease Term or a period less than the remainder of the Lease Term. In the event the Premises are relet by Landlord, Tenant shall be entitled to a credit against its rental obligations hereunder in the amount of rents received by Landlord from any such reletting of the Premises less any reasonable costs incurred by Landlord (not previously reimbursed by Tenant) in connection with the repossession and reletting of the Premises (including without limitation reasonable attorneys' fees, brokerage commissions, prorated for the portion of the Lease Term remaining after the execution of any new lease, and any cost of repairs, alterations and improvements to the Premises). In no event shall Tenant's obligations hereunder exceed the amount of any such obligation that would have existed if the Premises had remained vacant and had not been relet. In the event of any termination of this Lease or repossession of the Premises by Landlord as aforesaid, Landlord shall use reasonable efforts to relet the Premises at a fair market rental or as near thereto as is possible under the circumstances then existing so as to minimize the damages suffered by Landlord and payable by Tenant hereunder.

Upon the occurrence of an Event of Default as aforesaid, Landlord, in addition to all other remedies available to Landlord, shall have the right (but not the obligation) (i) if no emergency exists, to pay and/or perform the same after giving thirty (30) days' notice to Tenant (15 days notice in the case of a monetary Event of Default) or such longer time as may be reasonably required because of the nature of the non-monetary Event of Default provided Tenant has commenced to cure within such thirty (30) day period and thereafter diligently pursues such cure to completion; and (ii) in any emergency situation (i.e., a situation imposing imminent danger to persons or property), to perform the same immediately without notice or delay. For the

purpose of rectifying an Event of Default as aforesaid, Landlord shall have the right to enter the Premises. Tenant shall, within fifteen (15) days after written demand, reimburse Landlord as Additional Rent for the reasonable costs and expenses incurred by Landlord in rectifying an Event of Default as aforesaid, including reasonable attorneys' fees. Except for the negligence by Landlord or Landlord's agents, employees, licensees or invitees, Landlord shall not be liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Tenant or anyone holding under Tenant for any action taken by Landlord pursuant to this Section. Any act or thing done by Landlord pursuant to this Section shall not constitute a waiver of any such default by Tenant or a waiver of any covenant, term or condition herein contained or the performance thereof.

Subject to the applicable notice and cure periods provided herein, Landlord shall have the right to exercise any and all other remedies (excepting any statutory lien rights which Landlord expressly waives) available to Landlord, in connection with an Event of Default as aforesaid, at law or in equity, including, without limitation, injunctive relief; provided, however, that Tenant shall also be afforded any and all rights available at law or in equity in connection with its Event of Default. The rights and remedies of Landlord hereunder are cumulative, are non-exclusive, and are in addition to any and all other rights and remedies which Landlord has or may have at law or in equity.

Section 11.2. Holdover by Tenant. In the event Tenant remains in possession of the Premises after the expiration of this Lease, and without the execution of a new lease, Tenant, at the option of Landlord, shall be deemed to be occupying the Premises as a tenant from month to month, at a rental rate equal to one hundred twenty-five percent (125%) of the Fixed Minimum Rent in effect at the end of the Lease Term, with the same Additional Rent in effect during the last month of the Lease Term, subject to all the other conditions, provisions and obligations of this Lease, insofar as the same are applicable to month-to-month tenancy.

Section 11.3. Effect of Waivers of Default. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No consent or waiver, express or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty, unless in writing signed by Landlord.

Section 11.4. Landlord's Default. If Landlord shall violate, neglect or fail to perform or observe any of the representations, covenants, provisions, or conditions contained in this Lease on its part to be performed or observed, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than thirty (30) days to remedy and continues beyond the time reasonably necessary to cure (provided Landlord must have undertaken procedures to cure the default within such thirty (30) day period and thereafter diligently pursues such efforts to cure to completion), Tenant may, at its option (in addition to all other rights and remedies provided Tenant at law, in equity or hereunder), upon written notice to Landlord of Tenant's intention to exercise its self-help remedies hereunder, incur any reasonable expense necessary to perform the

obligation of Landlord specified in such notice and bill Landlord for the costs thereof. The foregoing notice and cure period respecting Landlord defaults shall not be applicable to those certain Landlord defaults under provisions in this Lease wherein Tenant is expressly provided with the right to terminate this Lease as a result thereof. If Landlord has not reimbursed Tenant within ten (10) days after receipt of Tenant's bill, Tenant may deduct the reasonable cost of such expense from the Fixed Minimum Rent and Additional Rent next becoming due after the expiration of said ten (10) day period. Notwithstanding the foregoing, if in Tenant's reasonable judgment an emergency shall exist, Tenant may cure such default without any prior notice to Landlord. Nothing herein shall be construed as requiring Tenant to await the passage of thirty (30) days before seeking equitable relief. The self-help option given in this Section is for the sole protection of Tenant, and its existence shall not release Landlord from its obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord. Notwithstanding the foregoing, Tenant shall not deduct more than one-quarter (1/4) of the Fixed Minimum Rent from any monthly installment thereof if there are sufficient months remaining in the Lease Term to enable Tenant to fully recover the amount owed by Landlord.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

Section 12.1. Notices from One Party to the Other. Any notice, request, demand, consent, approval or other communication required or permitted under this Lease shall be in writing and shall be deemed to have been given: (a) when delivered by reputable express mail courier service providing confirmation of delivery (e.g. U.P.S. or Federal Express) to the address set forth below; or (b) on the third (3rd) business day after being properly deposited in United States registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth below; or (c) the date any delivery in the manner described in (a) or (b) above is refused. Either party hereto shall have the right to change, at anytime, its address for notice as aforesaid upon at least ten (10) days prior written notice thereof given to the other party. Addresses for notice are as set forth in Section 1.1.21 hereof.

Section 12.2. Deemed Approval. If pursuant to other provisions of this Lease the consent or approval as to any matter is required of either party hereto, and if such consent will be deemed given if such party fails to respond within a specified time period, such consent or approval shall be deemed given if no response is given by the end of such time period only if the request for such consent or approval is in writing, delivered in accordance with the provisions of Section 12.1 above, and includes the following statement in all capitalized letters and boldface type: **"YOUR FAILURE TO GIVE WRITTEN NOTICE OF APPROVAL OR SPECIFIC GROUNDS FOR DISAPPROVAL OF [SPECIFY ITEM TO BE APPROVED OR CONSENT REQUESTED, E.G., ENCLOSED PLANS] WITHIN \_\_\_ DAYS OF RECEIPT HEREOF SHALL CONSTITUTE YOUR DEEMED APPROVAL OF SUCH [SPECIFY ITEM]."**

Section 12.3. Brokerage. Landlord and Tenant acknowledge that the Broker(s), if any, whose name(s) appear in Section 1.1.17, will be paid a brokerage commission by Landlord pursuant to a separate written agreement between said Broker and Landlord, and between Brokers.