

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HUDSON'S  
BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA PARENT  
HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY HOLDINGS I INC.,  
HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC,  
HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS  
GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.

Applicants

**RESPONDING MOTION RECORD OF  
MORGUARD INVESTMENTS LIMITED,  
the authorized agent and manager for various landlords  
wherein the Applicants operated retail stores  
(Returnable August 28, 2025)  
(Volume I of III)**

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Limited as authorized agent and manager for the landlords  
of its retail stores leased to one or more of the Applicants

TO: THE E-SERVICE LIST (as at July 30, 2025)

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Applicants

**AFFIDAVIT OF DAVID WYATT**

I, DAVID WYATT, of the city of Burlington, **MAKE OATH AND SAY:**

1. I am the Senior Vice President, Retail with Morguard Investments Limited ("Morguard"), the authorized agent and manager for various landlords wherein the Applicants (the "**Applicants**" and/or "**HBC**") operated retail stores and as such have knowledge of the matters hereinafter deposed.

2. Where the knowledge in this affidavit is based upon the information of others, I have stated the source of my knowledge and do verily believe it to be true.

3. I am swearing this affidavit in response to the affidavits filed by the Applicants and Ms Liu in connection with the motion brought by the Applicants for an Order assigning four of Morguard's leases to Ruby Liu Commercial Investment Corp. ("**Liu CIC**"). For the reasons set out below, Morguard opposes the Applicant's requested relief.

4. It should be noted that although Morguard has been impacted by hundreds of retail insolvencies during its tenure, and many motions to assign leases to new tenants, Morguard has never opposed such motions. In fact, in many insolvency proceedings, Morguard has consented to the assignment of its leases. Such was the case in Target Canada where Morguard consented to the assignment of certain of its leases to Walmart and Canadian Tire.

### **Industry Knowledge and Expertise**

5. I have over 35 years of experience in retail real estate operations and leasing. During my career I have worked in major markets in both Eastern and Western Canada. For the past 27 years I have held senior leasing roles with Ivanhoe Cambridge, Redcliff Realty, Bentall Kennedy and Morguard identifying and executing real estate strategies with both an operational and asset optimization objective.

6. I hold an Honours BA in Urban Development as well as a Senior Certified Leasing Specialist designation with the International Council of Shopping Centres. Over the years I have had extensive hands-on direct experience with tenants across the country addressing their leasing/operational needs.

7. I was the Senior Vice President, Leasing & Operations with Morguard when Sears filed for insolvency protection and directed the leasing and redevelopment efforts undertaken by Morguard when stores were assigned and disclaimed in those insolvency proceedings.

8. I currently lead the asset management leasing and operations group for Morguard's retail portfolio (which real estate portfolio exceeds 15.5M square feet of commercial retail space -

valued at over \$4.7B). I oversee more than 100 employees working to develop and implement property specific strategies designed to optimize market positioning and value.

9. In fulfilling the objective of optimize market positioning and value, Morguard continually assesses local, regional and national factors that may impact our shopping centres. These assessments include market studies, trends and review of our position in the markets as compared to our competitors. We regularly retain outside experts (brokers, market analysis, environics analytics, appraisers) to assess the primary and secondary trade areas which support our shopping centres to ensure each of our shopping centre merchandising plans are appropriate for the market they serve.

### **Tenant Review**

10. We strategically curate our tenant mix to align with our investment criteria, prioritizing financial strength, potential for long-term success, and alignment with our merchandising strategy and overall vision for the shopping centre. We are a seasoned operator of regional shopping centres, committed to delivering best-in-class management and operational excellence. We consistently make thoughtful leasing decisions, choosing to exclude tenants who don't meet our investment standards, to protect and enhance the long-term success of all our tenant partners—regardless of their size.

11. Prospective tenants seeking larger spaces (20,000 sq. ft. or more) are subject to heightened evaluation, as underperforming anchors can significantly diminish a shopping centre's appeal and market position—damage that can take years to reverse. To safeguard and strengthen our long-term investment goals, we carefully select major tenants who will enhance, not undermine, the centre's overall performance and reputation.

12. In addition to ensuring prospective tenants meet our merchandising objective, we always carefully review the financial viability of the proposed business. With extensive experience evaluating retail performance, we've identified key traits that consistently drive success. Top-performing retailers demonstrate a deep understanding of their target customers, competitive landscape, supply chain, operational infrastructure, and brand presentation. They are also well-positioned to secure financing when needed. This comprehensive command of both front- and back-end operations enables them to attract customers, meet expectations, and convert traffic into sales.

13. With regard to financing, it is essential that our tenants are well financed with a strong covenant. We typically request financial statements to assess the financial wherewithal of the tenant. New tenants to the market that meet all other criteria are customarily asked to provide guarantees or letters of credit as security for the financial obligations of the lease. By way of example, when Target came to Canada, although it had a proven track record in the U.S. and it had a full and well-planned strategy for entering the Canadian market, we required that the U.S. parent company guarantee the performance of 13 Target leases in our portfolio.

14. When meeting with start-up tenants or tenants with an unproven concept, we typically ask the following questions:

### **Business Model & Value Proposition**

- What problem are you solving, and for whom?
- What makes your retail concept unique?
- Who is your target customer?
- How do you acquire customers, and what does it cost?

### **Market Opportunity**

- What is the size of your addressable market?

- Who are your main competitors?
- What is your competitive advantage or differentiation?
- How do you plan to gain market share?

### **Product & Merchandising**

- What are your best-selling products?
- How do you decide what to stock or sell?
- What is your pricing strategy?
- Do you plan to design, manufacture, or white-label products?
- Who are your biggest and most important suppliers/vendors?

### **Operations & Supply Chain**

- What does your supply chain look like?
- Are you working with manufacturers, distributors, or wholesalers?
- How do you manage inventory?
- What systems or technologies are you using for operations?

### **Store Set up**

- What is your store set up?
- Store size and layout?

### **Financials**

- Provide your revenue, gross margin, and net margin forecast.
- Provide 3 years of audited financial statements (if not publicly available).
- What funding have you raised so far (if any)?

### **Sales & Marketing**

- What are your most effective marketing channels?
- What's your expected retention or repeat purchase rate?
- How are you building brand awareness?

### **Team & Execution**

- Who is on your founding team and what are their backgrounds?
- What experience does your team have in retail or e-commerce?
- What gaps exist in your team?
- How do you handle hiring and scaling of operations?

### **Technology & Tools**

- Are you using any proprietary technology?

- How do you handle customer data and privacy?

### **Scalability & Growth**

- How scalable is your current model?
- What are your goals for the next 12–24 months?
- What are the biggest risks or challenges to your growth?

### **Exit Strategy**

- What is your long-term vision for your business?

15. Where we are not familiar with the retailer (merchandising products, store set up with department floor sizes, quality of fixture, store atmosphere, etc.) in addition to asking for such information and depending on the expansion plans and the size of the proposed leased premises, we will send a team to visit the tenant's other retail locations. This was the case before Target was approved to lease locations in Morguard's portfolio. Morguard visited U.S. Target stores to meet with key management personnel and to ensure the concept, merchandise, quality, etc. were appropriate in our shopping centres.

16. In no circumstance has Morguard ever agreed to lease a premises of over 100,000 sq. ft. in any of our shopping centres to a new, unknown retailer.

### **HBC - Anchor Tenant**

17. During my over 35 years in the retail leasing sector, I have had the opportunity to review many HBC leases and negotiate amendments. As a result I am very familiar with HBC's retail operations and more specifically with HBC's leases in Morguard's portfolio.

18. At the commencement of the Applicants' CCAA proceeding, HBC operated seven retail stores in Morguard's portfolio. Following the completion of the Lease Monetization Process,

the Applicants disclaimed three leases. The remaining four leases are the subject of the Liu CIC bid.

19. In every case, HBC served as an “anchor” tenant of the shopping centres.

20. Anchor tenants play a critical role in the financial viability of a shopping centre for both the landlord and other tenants in the shopping centre. Anchor tenants provide the single largest or one of the largest draws of customers to the shopping centres. In addition, anchor tenants will enhance and contribute to the mall atmosphere, ambiance, and merchandising mix.

21. In fact, most shopping centres are built and configured with a view to placing anchor tenants, in large premises, at the end of wings/hallways to encourage customers to walk through the shopping centre. In so doing, customers will frequent other retailers located between anchor tenants. Often other retail tenant in a shopping centre will include provisions in their leases that require the anchor tenants to be open and operating failing which rents may be reduced or abated. This is the case for Morguard’s shopping centre where HBC was an anchor tenant.

22. Anchor and major tenants are critical to the overall success of a shopping centre, as they drive foot traffic, influence the leasing appeal for other retailers, and help support market lease rates. The identity, performance, and brand strength of these key tenants play a major role not only in attracting new tenants but also in retaining existing ones. In many cases, the long-term viability of a shopping centre is closely tied to the quality and recognition of these key tenants.

23. HBC was aware of its role as an anchor tenant and its impact on Morguard’s shopping centres and the other tenants in the shopping centres. In this regard, HBC occupied the largest and most prominent premises in the shopping centres. In all cases, HBC’s premises had

both inside mall entrances and direct outside access for its customers, with an abundance of easy access parking.

24. As a nationally recognized brand and prominent anchor tenant, HBC secured highly favourable lease terms from developers and landlords—including Morguard—both at inception and throughout its tenancy, leveraging its strategic importance. Even as HBC’s performance declined in recent years, particularly during COVID-related retail shutdowns, it was able to obtain rent relief from Morguard and others—relief that was not extended to many smaller tenants. This was due to HBC’s market significance and the impact its presence had on co-tenancy clauses in other leases. Morguard provided such relief in part to preserve the operational continuity and tenant stability across its centres.

25. Immediately upon learning that HBC had filed for insolvency protection in March, 2025, Morguard mobilized its leasing and development teams of over 20 people (which team includes leasing personnel, asset managers, consultants, and development personnel) to consider and assess all options for re-demising and re-leasing the locations.

26. Given that HBC occupied one of the most prominent and strategically important retail spaces within our shopping centres, it is critical for Morguard to ensure that any re-leasing or reconfiguration results in a high-impact replacement. The goal is to enhance market positioning and maximize the long-term value of the property. Introducing an unproven tenant with an undeveloped concept or untested business model into such a key space poses a significant risk, potentially creating a negative ripple effect throughout the centre. Morguard understands that the retail leasing market is dynamic, and that the most suitable replacement tenants may not always be immediately available. In such cases, we believe it is prudent to exercise patience in securing

the right fit rather than rushing into a lease with a poorly aligned operator. An ill-suited tenant not only risks underperformance and early failure but can also undermine the centre's reputation and delay the opportunity for a successful long-term replacement. In our view, short-term income does not justify probable long-term reputational damage.

27. To ensure prime locations are only leased long term to appropriate best in class tenants, if necessary, Morguard will enter into temporary leases terminable by the landlord on 90 days notice with fashion tenants (Urban Behavior, Ardene) until an appropriate long term tenant is found. In no circumstance would Morguard enter into a long term lease with a tenant that did not fit within its goals for the asset.

#### **Morguard's four HBC Leases – Liu CIC Bid**

28. As noted above, Morguard has four leases which are the subject of the Liu CIC Bid:

- (i) Centrepont Mall;
- (ii) Bramalea City Centre;
- (iii) Coquitlam Shopping Centre; and
- (iv) St. Laurent Shopping Centre.

Below is a summary of the more salient provision of each of the four leases.

#### **(i) Centerpoint Mall**

29. The Centerpoint Mall is located at 6464 Yonge St. (at Steeles Avenue) in North York, Ontario. Morguard (via related entities) owns and operates this mall. The landlord of the leased premises with HBC is Revenue Properties Company Limited.

30. Centerpoint Mall is comprised of 519,210 square feet ("SF") of retail space on two levels inclusive of 48,197 SF of office space. There are over 135 tenants operating in the Mall.

31. Market Demographics for 2024 indicate that the primary trade area has a population of 363,646 with 139,148 households. Over 27% of the primary trade area has household income of over \$135,000. The secondary trade area population is 509,898 with 186,601 homes and an average household income of \$139,199.

32. The Mall is shaped like a cross (+) with major/anchor tenants at each point. HBC occupied the largest premises in the mall with over 120,000 SF on two levels. The other major tenants are: Canada Computers & Electronic with 93,788 SF; Canadian Tire with 91,514 SF and No Frills grocery store with 68,630 SF.

Appended to my affidavit as **Exhibit “A”** is a copy of the map for the Centrepont Mall.

#### **HBC Lease at Centrepont Mall**

33. In 1974 the then landlord agreed with HBC to expand the shopping centre (then known as Town & Country Square Shopping Centre) to build a premises to be leased by HBC. The HBC lease is dated April 3, 1974.

Appended to my affidavit as **Exhibit “B”** is a copy of the April 3, 1974 HBC Lease.

34. The more salient provisions of the lease are summarized below.

- (1) **Term s. 3:** The initial Term of the Lease was for 30 years and 28 days ending on April 30, 2004. HBC was granted seven 10 year options. If all seven option are exercised, the Lease will expire on **April 30, 2074**. The current terms ends April 30, 2034.
- (2) **Premises size:** 122,502 SF.
- (3) **Rent:** The currently monthly rent is \$9,790.10 (being \$0.96 psf).

**Common Area Maintenance (“CAM”):** CAM monthly charges are \$39,273.15.  
**Realty Taxes:** Monthly Realty Tax charges are \$26,177.17  
**Total** monthly payment: **\$75,240.42.**

- (4) **Current Arrears of rent:** \$137,889.63
- (5) **Use and Operating Covenant s.6.00(1):** HBC to continuously operate its business in the leased premises as a **first-class, high quality retail department store**. See also s. 21.01(2) requirement on landlord only to lease to tenants that will occupy locations.
- (6) **Use limitation s.6.00(i):** limited restaurant permitted however no alcohol can be served.
- (7) **Landlord’s Operation obligations s.7.00:** Landlord to operate a First Class regional Shopping Centre, (7.01) manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (7.02) ensure other tenants are open and operating during established hours of business.
- (8) **Tenant Repair obligations s.12.00:** Tenant to maintain and keep in good and substantial state of repair the store building in accordance with the standards of a careful owner, including all repairs, major and minor, structural or otherwise, exterior or interior including those made necessary by age and damage (including HVAC, electrical, plumbing etc).
- (9) **No Assignment s.21.00:** HBC may not assign the lease without landlord consent.
- (10) **Disputes to be resolved by experts 22.00:** Disputes between the Landlord and HBC are to be resolved by a shopping centre consultant for questions relating to the operation and standards of the shopping centre.

#### **Special Lease Restrictions/Terms granted in favour of HBC**

- (11) **Restrictions on landlord’s Sign Policy .7.01(5):** HBC’s approval is required with respect to the landlord’s sign policy for other tenants in the shopping centre.
- (12) **Restrictions on Parking s.7.04(b):** Landlord may not impose any charges for parking without HBC approval.
- (13) **Parking Ratios s.7.04(c)(2):** Landlord is to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.

- (14) **Restrictions on landlord's Rules and Regulations s.7.05:** HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.
  
- (15) **Restrictions on landlord Merchandising Plan s.14.00:** Landlord is obligated to comply with Merchandising Plan when leasing to other tenants; HBC consent required to amend Merchandising Plan (s.14.00(c)) – **proposed tenants must be in “best interest” of shopping centre.** HBC's consent maybe withheld if proposed type and quality or class of use would not maintain in all material respects a fair balance of customer attraction throughout the shopping centre (s.14.00(c)(2))
  
- (16) **Restrictions on Leasing to other Tenants s.14.00(2):** Landlord to lease only to tenants whose business and reputation is consistent with good leasing practice in first class regional shopping centre, and if the tenant will be within 100 feet of the HBC store, HBC must approve the tenant;
  
- (17) **Restrictions on Provisions in leases with other Tenants s.14.02:** Landlord is to ensure that, subject to certain exceptions, leases with other tenants prohibit such tenants from assigning their leases including changing the identity of the tenant without landlord consent, and no landlord consent to be granted without HBC approval. Also (**Most Favoured Nation Provision**) in that no other department store to have more favourable assigning etc. rights that HBC.
  
- (18) **Prohibited Uses s.14.04:** Landlord is not to lease to tenants for listed prohibited uses, including discount department stores or businesses whose merchandising or pricing methods likely to lower the “character” of the shopping centre.
  
- (19) **Restrictions on Outdoor selling areas s.17.01:** Outdoor selling areas of other departments stores are not to exceed 10,000 SF and (**Most Favoured Nation Provision**) in that no other department store to have more favourable terms for outdoor area than HBC.
  
- (20) **Automotive Centre s.18.00 and 18.02:** HBC has right of first refusal for an automotive centre.
  
- (21) **Expansion Rights s.19.00:** HBC granted the right to alter, reconstruct or expand the HBC store.
  
- (22) **Restrictions on Landlord rights to expand the Shopping Centre s.20.00:** Landlord redevelopment rights for the shopping centre are limited and require HBC's consent.

35. The monthly minimum rent is very low compared to rates that would be negotiated today due to the time that this lease was negotiated and the anchor status of the lessee, that enabled them to negotiate a long initial term with rights to a series of fixed rate, flat options, that provided the lessee the significant benefit of a long term low rate rent structure.

36. The special lease restrictions and terms listed above, granted in favour of HBC are not granted to other non-anchor tenants and in fact, no other anchor tenants have such significant/expansive restrictions over what Morguard can and cannot do in and with the shopping centre. These provision were granted to HBC as it was a nationally recognized brand, that would act as the anchor tenant of the shopping centre driving sales, contributing to the first class mall character and drawing foot traffic into the shopping centre.

**(ii) Bramalea City Centre**

37. Bramalea City Centre (“BCC”) is located at 25 Peel Centre Drive (Queen Street and Dixie Road), in Brampton, Ontario.

38. BCC has 1.5M SF of retail space on two levels with an additional 100,000 SF of office space. BCC is the fifth largest shopping centre in Ontario and the seventh largest in Canada. There are over 300 tenants operating in BCC.

39. Market Demographic for 2024 indicate that the primary trade area has a population of 595,987 with 160,690 households. The average household income in the primary trade area is \$130,000. The secondary trade area population is 388,387 with 122,365 homes and an average household income of \$169,525.

40. HBC occupied the largest premises in BCC with over 130,000 SF on two levels. Other major tenants include: Designer Depot with 70,418; Metro Grocery store with 63,904 SF and GoodLife Fitness 48,335, Best Buy with 31,108 SF.

Appended to my affidavit as **Exhibit “C”** is a copy of the shopping centre mall map for the BCC.

### **HBC Lease at BCC**

41. In or about May 1972 the landlord agreed with an entity now known as HBC to construct a shopping centre (now known as Bramalea City Centre) which shopping centre was to include a shopping centre intended for occupancy by HBC. The shopping mall was constructed and by lease agreement dated March 28, 1973 the landlord and HBC entered into a lease for a premises at the shopping centre. The current landlords of the shopping centre are Morguard Corporation and Bramalea City Centre Equities Inc

Appended to my affidavit as **Exhibit “D”** is a copy of the March 28, 1973 HBC Lease together with a Lease Amending Agreement dated March 8, 2007.

42. The more salient provisions of the lease are summarized below.

- (1) **Term ( s. 3):** The Term of the Lease was for **101 years ending on March 31, 2074** The lease was amended to grant HBC the right to terminate the lease commencing as of March 31, 2029 and each successive 10 year anniversary thereafter.
- (2) **Premises size:** 131,438 SF.
- (3) **Rent:** The current monthly rent is \$33,123.75 (being \$3.02 psf).  
**Common Area Maintenance:** CAM monthly charges are \$31,326.06 (CAM cost are subject to a cap and are significantly lower than actual costs).  
**Realty Taxes:** Monthly Realty Tax charges are \$29,156.25  
**Total monthly payment: \$93,606.06.**

- (4) **Current Arrears of rent:** \$156,635.68
- (5) **Use and Operating Covenant s.5(1):** HBC is to continuously operate its business in the leased premises as a **first-rate merchandising activity in the business of retail department store**. Licensees permitted for up to 20% of the store premise. See also s. 6(1) requirement on landlord ensure other tenants will occupy locations be open during business hours.
- (6) **Use limitation s.5(3):** No food supermarket is permitted until March 28, 2034 at which time a supermarket is permitted in an area not to exceed 30,000.
- (7) **Landlord's Operation obligations s.6(1):** Landlord is to operate BCC in the highest standards in the shopping centre industry and ensure other tenants are open and operating during established hours of business. See also s.8(5) obligating the landlord to ensure any merchandising activity does not lower the standard of the mall (subsection (h)).
- (8) **Tenant Repair obligations s.8:** Tenant is to maintain and keep in good and repair the store (both inside and out) in a good and workmanlike manner including all repairs (subject to Article XIII – expansion and alteration by tenant) structural or otherwise as a prudent owner to property maintain the premise.

#### **Special Lease Restrictions/Terms granted in favour of HBC**

- (9) **Restrictions on landlord's Sign Policy s.5(4) as amended by (2g) of LAA dated March 8, 2007):** HBC's approval is required with respect to sign policy for parking facility and the exterior of the shopping centre.
- (10) **Restrictions on Parking s.6.6(d):** Landlord may not impose any charges for parking without HBC approval.
- (11) **Parking Ratios s.1(1)(r) as amended by LAA dated Marcy 8, 2007:** Landlord to maintain minimum parking stalls as ratio of number of stalls per 1000 SF. of rentable space of the shopping centre.
- (12) **Restrictions on landlord's Rules and Regulations s.6.6:** HBC has consent rights over landlord rules and regulations in the shopping centre.
- (13) **Restrictions on Leasing to other Tenants s.6(2) as amended by LAA March 2007 (s.2(i)):** Landlord must obtain HBC consent to any lease with another tenant that will be located within 80 feet of the HBC store entrance. See also s. 6(1) requirement on landlord to ensure other tenants will be open during business hours.

- (14) **HBC Expansion Rights s.13(1) as amended by LAA March 2007:** HBC granted the right to alter, reconstruct or expand the HBC store.
- (15) **Restrictions on Landlord rights to alter or amend uses of Shopping Centre s.6(1)(2):** Landlord must only permit shopping centre to be used as a retail shopping centre.
- (16) **Restrictions on Landlord rights build s. 14(2) (as amended by LAA March 2007):** Landlord may not construct or build or undertake any improvements on the Bramalea Lands without the consent of HBC.

43. Similar to our other HBC leases, the monthly minimum rent for BCC is very low compared to rates that would be negotiated today due to the time that this lease was negotiated and the anchor status of the lessee, that enabled them to negotiate a long initial term with rights to a series of fixed rate, flat options, that provided the lessee the significant benefit of a long term low rate rent structure. CAM costs are capped resulting in significant underpayment for CAM when compared to actual costs to operate the shopping centre.

44. As with Centrepont Mall, the special lease restrictions and terms in the BCC lease granted in favour of HBC are not granted to other non-anchor tenants and in fact, no other anchor tenants in BCC (or other malls) have such significant/expansive restrictions over what Morguard can do in the shopping centre. These provisions were granted to HBC as it was a nationally recognized brand that would act as the anchor tenant of the shopping centre driving sales, contributing to the first class mall character and drawing foot traffic into the shopping centre.

### (iii) Coquitlam Centre

45. The Coquitlam Centre is located at 2929 Barnet Highway, Coquitlam, British Columbia. Morguard manages this asset on behalf of Pension Fund Realty Limited.

46. Coquitlam Centre is comprised of 955,000SF of retail space on two levels. There are over 190 tenants operating in the Centre.

47. Market Demographics for 2024 indicate that the primary trade area around the Coquitlam Centre has a population of 182,856 with 64,159 households. The primary trade area has an average household income of \$138,100. The secondary trade area population is 852,132 with 296,168 homes and an average household income of \$127,700.

48. The Coquitlam Centre's first floor is shaped like a cross (+) with major/anchored tenants at each point. HBC occupied the largest premises in the mall with over 120,000 SF on two levels. The other major tenants are: Walmart with 116,270 SF; Best Buy with 40,853SF; London Drugs with 36,568SF; and T&T supermarket with 33,062SF.

Appended to my affidavit as **Exhibit "E"** is a copy of the shopping centre mall map for the Coquitlam Centre.

### **HBC Lease at Coquitlam Centre**

49. In 1979 the then landlord agreed with HBC construct a shopping centre to be known as The Coquitlam Centre wherein HBC would be a tenant. The lease between the parties was dated January 6, 1979.

Appended to my affidavit as **Exhibit "F"** is a copy of the January 6, 1979 Lease and lease amending agreement dated Oct. 8, 1999.

50. The more salient provisions of the lease are summarized below.

- (1) **Term (s. 3):** The initial Term of the Lease was for 35 years on or about July 31, 2014. HBC was granted six 10 year options and one additional 5 year option (which options were later amended to be thirteen 5 options). If all options are exercised, the Lease will expire on **July 31, 2079**. The current term ends July 31, 2029.

- (2) **Premises size:** 120,527 SF.
- (3) **Rent:** The currently monthly rent is \$49,918.27 (being \$4.97 psf).  
**Common Area Maintenance:** CAM monthly charges are \$25,310.67.  
**Realty Taxes:** Monthly Realty Tax charges are \$14,521.09  
**Total monthly payment: \$89,750.03.**
- (4) **Current Arrears of rent:** \$167,192.45.
- (5) **Use and Operating Covenant s.11 as amended by LAA dated Oct. 8, 1999:**  
HBC is to continuously operate its business in the leased premises in a similar manner to that of its typical department store operations in Lower Mainland Area. See also s. 10.02 requirement on landlord to ensure other tenants will occupy and remain open and limit other tenant assignment rights. NOTE: s.11.08, subject to listed exceptions, HBC not to permitted to have a food supermarket.
- (6) **Landlord's Operation obligations s.10.01:** Landlord is to operate a First Class regional Shopping Centre, 10.02 manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (10.02) ensure other tenants are open and operating during established hours of business. See also s.12.01(a) "best standards of a first class regional shopping centre".
- (7) **Tenant Repair obligations s.16.06:** Tenant is to maintain and keep in good and substantial state of repair the HBC store.
- (8) **No Assignment s.18.01:** HBC may not assign the lease without landlord consent.

#### **Special Lease Restrictions/Terms granted in favour of HBC**

- (9) **Restrictions on landlord's Sign Policy 10.04:** HBC's approval is required to alter sign policy stipulated in Schedule E to the Lease.
- (10) **Restrictions on Parking s.10.02(n):** Landlord may not impose any charges for parking without HBC approval.
- (11) **Parking Ratios s.10.02(o):** Landlord to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.
- (12) **Restrictions on landlord's Rules and Regulations s.11.04(a):** HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.

- (13) **Restrictions on landlord Merchandising Plan s.12.01; 12.02:** Landlord is obligated to comply with Merchandising Plan when leasing to other tenants; HBC consent required to amend Merchandising Plan (s.12.01(c)); Landlord is to maintain in all material respects a fair balance of customer attraction throughout the shopping centre (s.12.01(a))
- (14) **Restrictions on Leasing to other Tenants s.12.01(b):** HBC approval required for leases to other tenants within 100 feet of the HBC store.
- (15) **Restrictions on Provisions in leases with other Tenants s.10.02:** Landlord is to ensure that it includes appropriate lease terms with other tenants to control assignment and operations.
- (16) **Prohibited Uses s.10.02(g):** Landlord is not to lease to tenants for listed prohibited uses, or any activity not in keeping with the “character” of the shopping centre.
- (17) **(Most Favoured Nation Provision) 5.02:** Neither Eatons nor Woodward is to be treated by the Landlord more favourably than HBC re management, operations, expansions of their premises etc.
- (18) **No Additional Department Stores s.17.08(g):** HBC consent required for construction of another department store.
- (19) **Site Control s.2.05(a) and 17.08(i):** Landlord is prohibited from making alterations to plan/area on Schedule A, without HBC consent.
- (20) **Expansion of HBC store 17.01:** HBC granted the right to alter, reconstruct or expand the HBC store.

51. Once again, the monthly minimum rent is very low compared to rates that would be negotiated today due to the time that this lease was negotiated and the anchor status of the lessee, that enabled them to negotiate a long initial term with rights to a series of fixed rate, flat options, that provided the lessee the significant benefit of a long term low rate rent structure.

52. The special lease restrictions and terms listed above, are not granted to other non-anchor tenants. In fact, no other anchor tenants have such significant/expansive restrictions over

what Morguard can and cannot do in and with the shopping centre. These provision were granted to HBC as it was a nationally recognized brand, that would act as the anchor tenant of the shopping centre driving sales, contributing to the first class mall character and drawing foot traffic into the shopping centre.

**(iv) St. Laurent Centre**

53. The St. Laurent Centre is located at 1200 St. Laurent Boulevard, Ottawa, Ontario. Morguard (via related entities) owns and operates this mall. The landlord of the leased premises with HBC is Morguard Real Estate Investment Trust.

54. The St. Laurent Centre is a 868,624SF regional shopping centre with retail operations on three levels inclusive of 49,422SF of office space. There are over 179 tenants operating in the Mall.

55. Market Demographics for 2024 indicate that the primary trade area has a population of 409,819 with 182,702 households. The primary trade area has a household average income of over \$125,000. The secondary trade area population is 498,638 with 206,652 homes and an average household income of \$129,000.

56. HBC occupied the largest premises in the mall with 158,314SF on two levels. The other major tenants are: Urban Behaviour with 149,141SF; Toys “R” Us with 34,824 SF and Sport Chek with 31,373SF.

Appended to my affidavit as **Exhibit “G”** is a copy of the shopping centre mall map for the St. Laurent Centre.

## HBC Lease at St Laurent Centre

57. By lease dated March 25, 1997 (with a commencement date of March 13, 1991) the then landlord agreed to lease to HBC a premises in the St. Laurent Centre.

Appended to my affidavit as **Exhibit “H”** is a copy of the March 25, 1997 HBC Lease.

58. The more salient provisions of the lease are summarized below.

- (1) **Term (s.3):** The initial Term of the Lease was for 20 years ending on March 12, 2021. HBC was originally granted eight 10 year options to extend the term of the lease. HBC exercised its first option and thereafter the remaining seven 10 year options were amended to be fourteen 5 year options. If all option are exercised, the Lease will expire on **March 12, 2091**. The current term ends March 12, 2026.
- (2) **Premises size:** 158,314SF.
- (3) **Rent:** The currently monthly rent is \$39,578.50 (being \$3.00 psf).  
**Common Area Maintenance (“CAM”):** CAM monthly charges are \$18,134.25 (which amount is capped at \$2.00 pst and amount well below actual costs)  
**Realty Taxes:** Monthly Realty Tax charges are \$31,789.90  
**Total monthly payment: \$89,502.65**
- (4) **Current Arrears of rent:** \$156,635.68
- (5) **Use and Operating Covenant s.6.00(1) and 6.02:** HBC is to continuously operate its business in the leased premises similar to **first-class department stores operated by HBC in Toronto**.
- (6) **Landlord’s Operation obligations s.7.00:** Landlord is to operate a First Class regional Shopping Centre, (7.01) manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (7.02) ensure other tenants are open and operating during established hours of business.
- (7) **Tenant Repair obligations s.12:00:** Tenant is to maintain and keep in good and substantial state of repair the store building in accordance with the standards of a careful owner, including all repairs, major and minor, structural or otherwise, exterior or interior including those made necessary by age and damage (including HVAC, electrical, plumbing etc).

- (8) **No Assignment s.21.00:** HBC may not assign the lease without landlord consent.

**Special Lease Restrictions/Terms granted in favour of HBC**

- (9) **Restrictions on landlord's Sign Policy s.7.01(6) (23.01):** HBC's approval is required with respect to the landlord's sign policy for other tenants in the shopping centre.
- (10) **Restrictions on Parking s.7.04(b):** Landlord may not impose any charges for parking without HBC approval.
- (11) **Parking Ratios s.7.04(c)(2):** Landlord is to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.
- (12) **Restrictions on landlord's Rules and Regulations s.7.05:** HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.
- (13) **Restrictions on landlord Merchandising Plan s.14.01:** Landlord is obligated to comply with the Merchandising Plan when leasing to other tenants.
- (14) **Restrictions on Leasing to other Tenants s.14.00(1):** Landlord to lease only in accordance with Merchandising plan and, and if the tenant will be within 100 feet of the HBC store, HBC must approve the tenant;
- (15) **Restrictions on Provisions in leases with other Tenants s.14.02:** Landlord is to ensure that, subject to certain exceptions, leases with other tenants prohibit such tenants from assigning their leases including changing the identity of the tenant without landlord consent, and no landlord consent to be granted without HBC approval.
- (16) **Prohibited Uses s.14.04:** Landlord is not to lease to tenants for listed prohibited uses, including department stores or businesses who's merchandising or pricing methods likely to lower the "character" of the shopping centre.
- (17) **Restrictions on Outdoor selling areas s.17.01:** Outdoor selling areas of other departments stores not to exceed 8,000 SF.
- (18) **Expansion Rights s.19.00:** HBC is granted the right to alter, reconstruct or expand the HBC store.

- (19) **Restrictions on Landlord rights to expand the Shopping Centre s.20.00 and 21.00:** Landlord redevelopment rights for the shopping centre are limited and require HBC's consent.
- (20) **No Build Areas s.21.01(3):** No buildings permitted on specified area on Schedule B, subject to approval of HBC which may be arbitrarily withheld.

59. Once again, the monthly minimum rent is very low compared to rates that would be negotiated today due to the time that this lease was negotiated and the anchor status of the lessee, that enabled them to negotiate a long initial term with rights to a series of fixed rate, flat options, that provided the lessee the significant benefit of a long term low rate rent structure. In this regard, market rents for these four shopping centres range from \$15.00-\$25.00 psf.

60. The special lease restrictions and terms listed above, granted in favour of HBC are not granted to other non-anchor tenants. In fact, no other anchor tenants have such significant/expansive restrictions over what Morguard can and cannot do in and with the shopping centre. These provisions were granted to HBC as it was a nationally recognized brand, that would act as the anchor tenant of the shopping centre driving sales, contributing to the first class mall character and drawing foot traffic into the shopping centre.

#### **HBC's failure to maintain its Leased Locations.**

61. Although HBC was obligated to repair and maintain each of the store premises, HBC failed to do so such that the stores are now in need of significant costly repairs. In April 2025 Morguard wrote to the Monitor to advise it of the numerous repair deficiencies in each of the HBC locations and to ensure any prospective purchaser was aware of such obligations.

Appended to my affidavit as **Exhibit "I"** is a copy of four letters to the Monitor: BCC dated April 7, 2025; St. Laurent Centre dated April 10, 2025;

Coquitlam Centre dated April 2, 2025; and Centrepoint mall dated April 10, 2025.

62. Morguard obtained a Building Condition Assessment for its HBC store at Centerpoint Mall. As noted in the report, the deficiencies are numerous and extensive. **The estimated cost to remedy the deficiencies that must be addressed immediately (within one year) is in excess of \$11M.** The estimated cost to address repair obligations does not take into account the cost that will be required to fixture the store in a first class manner – which fixturing costs will be many millions of dollars. It is my understanding from my dealing with Target when it came to Canada, that Target expended more than \$10M per location to ready the stores in Canada. Based on my experience, if the HBC stores are to be repaired and fixtured to a first class standard, an investment of at least \$15M per location will be necessary.

Appended to my affidavit as **Exhibit “J”** is a copy of the Building Assessment Report of RJC Engineers for the HBC store at Centrepoint mall dated May 28, 2025.

63. Regarding Coquitlam Centre, HBC failed to maintain its HVAC (air conditioning system) such that the store was unbearably hot and could not open for business for several weeks in July of 2024. The extreme heat in the store caused the floor to heave and tiles to crack. – both of which posed a tripping hazard throughout the store. By letter dated July 23, 2024, Morguard demanded that HBC undertake the necessary and required repairs. To date the floors were repaired in part, and repairs were completed on the HVAC system, but as these systems are at end-of-life expectancy, a complete new system is warranted. Further Morguard believes that the electrical panel system and the passenger and freight elevators are also at the end of their useful life.

Morguard estimates the cost to repair these deficiencies alone would be \$8M and that the sums allocated by Liu CIC are either insufficient or neglected for these areas.

Appended to my affidavit as **Exhibit “K”** is a copy of Morguard’s letter dated July 23, 2024 to HBC demanding that HBC repair the floor, tiles and HVAC system in the store and the cost estimates to replace electrical, elevators, HVAC.

64. With regard to the HBC stores in BCC and St. Laurent Centre, similar issues of disrepair exist. I note that Mr. Ampas, who swore an affidavit for HBC, does not list any of Morguard’s locations as being in an acceptable state of repair.

65. Morguard requested that PCL Construction Services (an established construction company) attend at both the BCC and St Laurent Centre to inspect and provide cost estimates to remedy deficiencies. The total “hard” costs estimate for BBC was \$8,215,424 and \$4,277,482 for St. Laurent Centre. When soft costs and contingencies are added, the costs increase to \$10,680,051 for BCC and \$5,560,776 for St. Laurent.

Appended to my affidavit as **Exhibit “L”** are copies of the PLC estimates for BCC and St. Laurent and photos of deficiencies at BCC prepared by Andrew Butler, General Manger of BCC dated March 20, 2025.

### **Ruby Lui’s Bid for 25 Leases**

66. Late in May 2025 Morguard learned that HBC had entered into one or more Asset Purchase Agreements (each an “**APA**”) with Liu CIC, an entity related to Central Walk (the “Purchaser”) and owned by Ms Liu, for the purchase of 28 HBC leases.

67. Central Walk's web page indicates that it is the owner/manager of three shopping malls in B.C. (Mayfair Shopping Centre, Tsawwassen Mills and Woodgrove Centre) and a golf course, Arbutus Ridge Gold Club.

68. I immediately noted that neither Central Walk, Ruby Liu nor Liu CIC have operated retail stores, let alone large anchor stores.

69. Following HBC's selection of Liu CIC as the successful bidder, Morguard was invited to meet with Ms Liu and certain of her team members, along with HBC and its counsel, representatives of Oberfeld, and representatives of the Monitor and its counsel. The purpose of the meeting was purportedly to provide Morguard with information regarding Liu CIC and to respond to questions we may have regarding the proposed assignment of our leases to Liu CIC. On June 2, 2025, I, along with Robert Mah (Director-Asset Management), Andrea Rossanese (Senior Director, Legal Services) and John Ginis (Vice President – Asset Management), Jenny Schmoisch (Vice President, Retail Leasing) and Chloe Zheng (Legal Counsel) from Morguard, attended the meeting with Ms Liu and her teams.

70. Within minutes of attending the meeting it was clear that Ms Liu and her team were totally unaware of even the most basic understanding of how to operate retail locations or what landlords would require before consenting to an assignment of lease to a new tenant. We were not provided with any of the standard information we would typically receive from prospective new tenants: no business plan, no financial information, no merchandising plan.

71. Morguard was provided with a pamphlet depicting the proposed business. The pamphlet was surprisingly deficient and superficial and frankly, puerile. I was immediately

deeply concerned at the prospect that HBC wished to assign its leases for anchor premises to such a tenant.

Appended to my affidavit as **Exhibit “M”** is a copy of the Pamphlet provided by Ms Liu when we met with her team at the end of May/early June 2025.

72. Following our meeting with Ms Liu, Robert Mah, Morguard’s Director-Asset Management sent an email to Ms Qin (Central Walk’s CEO) on June 2, 2025 advising her that it was a pleasure meeting with her team and that Morguard looked forward to learning more about the plan for their locations. Ms Qin responded to the email making comments such as *“one of the rarest and most precious things in life is to be truly understood by others”*, *“Ruby’s vision and dedication to transforming and elevating the Canadian retail industry were finally seen and understood”*, *“the email you sent me ...brought me strength and support”*, and ***“we are confident that we will be a great compliment (sic) to your shopping malls, we will bring traffic to your malls, and we will help increase property values”***. However no information was ever provided to confirm and support the reality of the “vision” or the assertions that the concept would bring traffic to our malls and increase property values.

Appended to my affidavit as **Exhibit “N”** is a copy of Robert Mah’s email to Ms Qin dated June 2, 2025 and Ms Qin’s responding email.

73. By email dated June 5, 2025, Andrea Rossanese, Morguard’s Senior Director, Legal Service, sent a list of questions to Oberfeld Snowcap regarding Ms Liu’s proposed plan. The information requested in the email was required to enable Morguard to assess the appropriateness of Liu CIC as a tenant. Morguard never received a response to the email and never received answers to the questions posed.

Appended to my affidavit as **Exhibit “O”** is a copy of Andrea Rosanese’s email dated June 5, 2025 to Jay and Jeff of Oberfeld.

74. By letter dated June 6, 2025, Morguard received correspondence from Miller Thomson LLP, Ruby Liu’s then counsel, (the “**MT Letter**”) requesting that Morguard consent to the assignment of our HBC lease to Liu CIC. This letter appended documentation entitled “financial forecasts”. While the letter provided some additional information, it too lacked the most basic information necessary to assess the proposed business. The financial forecasts for Morguard’s stores showed alarmingly poor sales - so poor that the proposed operation could not drive foot traffic or increase property values as stated by Ms Qin in her email – to the contrary, in our view, the operation was destined to fail.

Appended to my affidavit as **Exhibit “P”** is a copy **is a copy of the June 6, 2025 MT Letter sent to Morguard with the appended financial information.**

75. By letter dated June 13, 2025, Morguard responded to Miller Thomson’s letter advising that due to the lack of information provided, Morguard would not consent to the assignment of its leases.

Appended to my affidavit as **Exhibit “Q”** is a copy Morguard’s letter to Miller Thompson dated June 13, 2025.

76. Over the next several weeks, no additional information was provided to Morguard save for an email dated June 25, 2025, from Ms Qin sent to our external counsel Linda Galessiere advising that as part of Ruby Liu’s revitalization strategy, “*Ms Liu proposes the following three-tiered approach*”:

### *1. Flagship Stores*

*Ruby intends to select up to eight locations to develop into flagship stores in collaboration with the respective landlords. With the support and approval of landlords, for each of these flagship locations, she plans to invest approximately \$30 million in renovation and redevelopment.*

### *2. Operational Continuity Stores*

*Ten stores will undergo essential repairs to ensure they are functional and customer-ready. These locations are expected to reopen to the public within three months and will operate in a format similar to the original HBC stores.*

### *3. Enhanced Retail Experience Stores*

*The remaining stores will undergo interior renovation and visual merchandising upgrades to offer an enhanced retail experience. The estimated investment for each of these locations ranges from \$5 million to \$10 million, with a targeted reopening timeline of six months.*

Appended to my affidavit as **Exhibit “R”** is a copy of **Ms Qin’s June 25, 2025, email to our counsel Linda Galessiere. I am advised by Linda Galessiere that she did not response to this letter as Ms Liu was represented by counsel.**

77. Rather than providing clarity, Ms Qin’s email raised additional concerns as now Liu CIC required three concepts, three plans, and three financial models. We were not advised which of our locations were allotted to which concept.

78. In mid July we learned that Ms Liu and Ms Qin had privately corresponded directly with Justice Osborne. I reviewed a redacted copy of the correspondence. The fact that the two top persons on Liu CIC’s executive management team would engage in such inappropriate conduct is very worrisome. The lack of judgment is clear. Engaging in inappropriate (if not unethical conduct) is anathema to the qualities Morguard looks for in the management teams of its retailers.

79. In addition, the information appended to Ms Liu's correspondence to the court gives me grave concerns regarding the reliability of the information produced by Liu CIC in support of HBC's motion to assign the leases. I note that Liu CIC was told to hire people to "*pose as consultants*", and coached not to say anything in the business plan that may contravene the provision of the leases (see letter from Stikemans dated May 29, 2025 #4).

Appended to my affidavit as **Exhibit "S"** are copies of the correspondence from Ms Liu to Justice Osborne dated July 9 and 10, 2025.

80. The MT Letter and documentation appended thereto, states that Liu CIC retained the services of Wayne Drummond former Senior Vice President, Apparel for HBC, (who was also in attendance at the meeting on June 2) and appended his CV. I note that Mr. Drummond is no longer listed as a part of Liu CIC's management team. The new management team includes Franco Perugini and Elias Ampas from HBC. It is likely these two persons are also only temporary consultants retained only to assist with the pending motion.

### **Liu CIC is Not an Appropriate Tenant for Morguard's Shopping Centres**

81. Morguard operates each of the shopping centres referenced above as first class regional shopping centres. We carefully select our tenants to ensure they fit our merchandising mix, will be a best in class retailer, will enhance our shopping centre atmosphere and character and will drive sales in the malls. For tenants wishing to lease large anchor tenant space, the proposed tenant must have both a strong brand and a proven track record of financial success. The proposed assignee Liu CIC, fails in every respect. I have reviewed Liu CIC's proposed business plan and it is lacking in every category.

### **No Retail Experience**

82. Liu CIC has no prior experience as a retailer. This fact alone would disqualify this tenant from leasing the most coveted space in our shopping centres. Morguard is obligated to our investors and landlords (including pension funds) to optimize market positioning and value of our portfolio. Morguard would be remiss in its obligations if it leased the largest anchor tenant locations in its shopping centres to an unknown tenant with no retail experience.

### **No Brand Recognition**

83. The proposed banner “Ruby Liu” has no brand recognition whatsoever. It is impossible for this tenant to fulfill an anchor tenant role which includes being a major source of foot traffic in the mall when there is no brand recognition. HBC was the most recognized department store brand in Canada. In contrast, Ruby Liu is a totally unknown brand.

### **Weak Financial Covenant**

84. I was advised by Linda Galessiere that Liu CIC was incorporated in May of 2025 for the purpose of assuming the HBC leases. Although Ms Liu claims she will invest \$375M into the company, there is no legal or contractual obligation requiring that she do so. And even if this capital is made available, it will be insufficient to execute the vision outlined in their business plan, allow commencement of business in a timely manner, and allow the assignee to consistently meet the financial and operating obligations of the lease and make landlords whole if the leases are breached.

85. As noted above, the terms remaining on our HBC leases extend for many years. If Liu CIC should fail, Morguard will be unable to recover its losses from Liu CIC – a shell company.

Any tenant with a poor financial covenant and/or poor track record for sales in Canada would be required to post a letter of credit or provide a guarantee from principal or parent company. Target, a well established billion dollar company in the U.S. - but new to Canada - was required to provide guarantees from its parent company to secure the obligation of Morguard's leases.

### **No discernible Merchandising Plan**

86. In every case we carefully select our tenants to ensure they fit our merchandising mix and plans. This includes understanding which items will be sold by the retailer, their suppliers and vendors and price points for items that will be sold. So important is the merchandising mix of a shopping centre, that several of HBC's leases prohibited Morguard from altering its plans without the approval of HBC. Morguard could not, for example, elect to lease space to a dollar store or restaurant unless approved by HBC.

87. Liu CIC has no discernible merchandising plan. It is impossible for Morguard to assess if the proposed merchandising of the stores will complement existing retailers. No information regarding the size of departments, the assortment of goods in the departments, the quality of goods, the display of such goods has been provided. The problem is exacerbated by the fact that Liu CIC states there will be three store models. Which model will be implemented in our stores is unknown.

88. In contrast, when we met with representatives of Target regarding their desire to open in Canada, Target had merchandising plans, department store layout, price points for its products, estimated sale based on historical data from its US stores, and even with all this information, we sent a team to the U.S. to inspect their stores and meet top management. We also required its parent company to guarantee the leases.

89. In Liu CIC's business plan there is reference to J2 Retail Management ("J2") as ready to assist Liu CIC with merchandise. While it appears that Liu CIC's merchandising plan is to outsource a portion of the plan to whatever J2 is able to supply (which is an unacceptable plan for Morguard – at the very least J2 would now need to submit a merchandising plan), given that Liu CIC is proposing to assume over 3.8M SF of retail space, even if every item in J2's 90,000 SF storage facility were shipped to the stores (which items are presumable already allocated to other retailers), Liu CIC still requires goods to fill 2.9M SF (excluding the three stores in Central Walk's portfolio).

90. The lack of a clear merchandising plan and any reasonable prospect of implementing such plan, is not acceptable to Morguard. Morguard has never approved a tenant to lease a premises in its shopping centres without a clear merchandising plan.

91. With regard to Liu CIC's possible vendors, I note that none of the vendors who have expressed an interest in supplying Liu CIC are high end or designer vendors – vendors that typically would be sold in a first class department store. Morguard would expect to see signed commitments from designer brands to support Liu CIC's stated intention to operate as a first class department store.

92. I have appended to my affidavit, press releases from HBC regarding some of the brands it carried and a list of some of the designer brands and price points which I obtained from Renate Minicucci, an employee that worked for HBC for more than 12 years. Ms Minicucci sold the brands listed. Based on the list of vendors provided by Liu CIC, none of these designer vendors have expressed an interest in selling their apparel in Liu CIC's store. How does Liu CIC intend to

operate as a first class department store and drive sales and foot traffic in the mall without the sale of designer items?

Appended to my affidavit as **Exhibit “T”** are copies of HBC press releases dated September 15, 2020, September 17, 2020, October 6, 2020, October 26, 2020, March 30, 2023 and a list of designer brands sold by HBC in its stores.

93. Without a clear merchandising plan, Morguard is unable to determine what goods or services Liu CIC proposes to implement that Morguard may be prohibited from permitting due to exclusive uses contractually given to other tenants.

#### **Insufficient Time to repair and Install Fixtures- Breach of Operating Covenant**

94. Based on my many years of experience dealing with tenants retrofitting stores, Liu CIC’s proposed timelines for repairing and fixturng the stores is impossible to meet. While I note several of the timelines state they begin to run when building permits are obtained, there is nothing in the plan that indicates the months of work, planning, development drawing and obtaining engineered stamped plans that must be undertaken before permits can be applied for. This will add a minimum of an additional six months delay to the opening of the stores. Even if trades and employees are available now, there is no assurance they will be available in 12-18 months.

95. By way of comparison, when Target filed for insolvency protection, Morguard consented to the assignment of its lease in the Coquitlam Centre to Walmart (116,270 SF). At the time the lease was assigned, the premises was in excellent condition – no immediate repairs were required as Target had fully upgraded and repaired the premises prior to opening its doors a few years prior. Walmart, who did not require any building permits, took 8 months to simply fixture and ready the location for opening. It should be noted that Walmart had a full and extensive team

in place to commence retrofitting the space immediately. In contrast, Liu CIC has no pre-set store configuration that can be adjusted for each location, no arrangements with designers, no architects, no contract with a reputable fixture manufacture and supply company familiar with its fixturing needs. Simply putting a team together will take months.

96. In addition to assigning a Target lease to Walmart, Morguard also consented to the assignment of its Target lease at Aurora Centre to Canadian Tire. Canadian Tire requested 24 months to fixture the premises.

97. With regard to elevators and escalators, I am advised by my risk management department that HBC terminated its service agreements for this equipment. For the St. Laurent Centre, the equipment has been “tagged” and a full inspection and likely reconditioning of the escalators will be required (all steps must be removed, the chassis of the escalators inspected, cleaned, lubed and reassembled) before they can be put back into use. If parts are required, the delay will be significant as such parts are in short supply. If store openings are delayed, the financial projections will be significantly impacted.

98. Each of our leases require that the HBC store be continually operated. Liu CIC will be in breach of its operating covenant within months of acquiring the stores.

### **Likely Breach of Use Clause**

99. Although Ms Liu now claims that she will honour the use clauses stipulated in the leases, she has given numerous interviews to the press indicating otherwise. In these statements to the press she has stated there will be a children’s play ground, space for cosplay, educational facilities, entertainment facilities, restaurants, grocery stores, extensive food halls. During our

meeting with Ms Liu and her team on June 2, 2025, these uses, and this vision appeared to be at the very core of what was being promoted, and recent claims call into question the commitment to any vision or game plan. Several of the proposed uses are prohibited or limited in our leases (grocery stores and the sale of food) and others are not in keeping with a first class department store.

100. Given the lack of a merchandising plan and floor layouts for the stores, and that Ms Liu was coached not to reveal her true intentions (see letter from Stikemans dated May 29, 2025), I expect that Liu CIC plans will be in breach of the use clauses for our locations (which require a first class department store to be continually operated from the premises), as evidenced by their persistent disregard for protocol in repeatedly contacting the presiding judge during an ongoing case, despite clear and repeated directives to refrain from such conduct.

101. As noted above, when we initially met with Ms Liu's team, we were provided with a "pamphlet" (**appended as Exhibit "M"**) depicting her proposed use of the premises. The pamphlet does not support a first class department store.

#### **Allotted \$120M for costs to repair, replace and fixture the Stores Insufficient**

102. As noted above, it is my understanding from my various discussions with Target, that Target expended in excess of \$10M to retrofit the leased locations. Liu CIC proposes to expend a total of \$120M – being an average of \$4.8M per store. In my experience dealing with hundreds of retailers that have built out their stores, it will be impossible for Liu CIC to repair and/or replace its building support systems (HVAC, plumbing, electrical, elevators, escalators) and implement first class finishes (as depicted in her business plan) for 25 very large stores for

\$120M. The building assessment report for Centrepoint Mall alone indicates that in excess of \$11M will be needed to remedy immediate issues for that one location.

103. If Liu CIC intends to implement the finishes shown in the renderings in her business plan, she will need to bring each location back down to base building (remove all items currently in the stores down to the studs). For our HBC Coquitlam Shopping Centre store, we were advised by PCL Construction Services (an established construction company that toured the premises) that the costs to return the store to base shell condition and installing new painted drywall would be \$7,532,000 (being \$62.77 SF). This cost does not include the costs for exterior façade and entrance upgrades, which would be required for branding and functionality. After expending these funds, Liu CIC would then need to undertake the costs and time needed to repair/replace building systems at the end of their serviceable life and then install first class fixtures. For example, new hydraulic controls are needed for the passenger and freight elevators, so an additional \$1.65M will be required. If new escalators are required, an additional \$1.1M will be needed

104. As noted above Morguard obtained a Building Condition Assessment for its HBC store at Centrepoint Mall (appended as **Exhibit “J”** to my affidavit). **The estimated cost to remedy the deficiencies that must be addressed immediately (within one year) is in excess of \$11M.** The estimated cost to address repair obligations does not take into account the cost that will be required to fixture the store in a first class manner – which fixturing costs will be many millions of dollars.

105. Morguard also received estimated costs to repair BCC and St. Laurent, which estimates were \$8,215,424 for BCC and \$4,277,482 for St. Laurent Centre. When soft costs and

contingencies were added, the costs increase to \$10,680,051 for BCC and \$5,560,776 for St. Laurent (see **Exhibit “L”** to my affidavit).

106. The proposed budget of \$120M is wholly insufficient to undertake the repairs/replacements required and to retrofit and install first class fixtures as shown in the renderings in Liu CIC’s business plan.

107. Based on my experience, only the costs of purchasing first class fixtures and furnishings (what fixtures are currently in the stores are damaged, many years old and unlikely to be appropriately integrated into a first class department store) will exceed the total budget of \$120M.

108. I note that there is nothing in the budget allocated for Central Walk’s three stores. I expect that Ms Liu will need to finance these three stores too with the limited cash she has available to her.

**Forecasted sale are very poor – insufficient to drive sale and foot traffic in the Mall.**

109. Liu CIC’s financial projections—based on hypothetical sales—forecast \$420 million in sales by 2027, averaging just \$16.8 million per store. For a retail space exceeding 100,000 square feet, **these figures represent exceptionally weak performance.** By comparison, numerous tenants within our portfolio operating in significantly smaller premises achieve sales that far surpass these projections. Such modest expectations raise serious concerns about Liu CIC’s potential as an anchor tenant and suggest a high risk of underperformance or failure. Morguard would not consider a permanent lease commitment to an anchor tenant with such unremarkable and unproven revenue prospects.

110. I expect that if Liu CIC required funding, no first rate bank in Canada would loan funds to Liu CIC based on these projected sales (or based on the business plan submitted).

111. Over the years, both I and other senior executives have had extensive discussions with HBC and other full-line department store operators regarding their leases within our malls. A consistent theme in these conversations - particularly when lease term extensions were on the table - was that landlord's of underperforming stores, typically generating less than \$14M annual sales, should expect short-term one-year renewals, rental rate re-negotiations, or the possibility of non-renewal altogether. The message was that these stores were not viable.

112. In this context, the financial projections submitted by the proposed assignee, indicating a store productivity average of \$16.8M (under \$10M for each of our locations), is cause for serious concern. These sales hovers near the historical threshold where the risk of enterprise failure becomes significantly pronounced. These concerns are further validated by the actual 2024 sales performance of HBC stores—immediately prior to the company's bankruptcy, which exceed the proposed assignee's projections. While this data represents only a portion of HBC's broader portfolio at the time, such dismal performance made the company's financial collapse unsurprising. It would be unrealistic to expect a more favorable outcome from a successor, with no brand recognition, replicating the same underwhelming performance trajectory.

113. In the financial information appended to the MT Letter, the projected sales for Morguard's four locations were provided. The projected sales were as follows:

	Area (sf)	Liu CIC Projected Sales)	Sales (psf)	HBC 2024 Sales
Coquitlam	120,086	\$7,393,487	\$61.57	\$11,759,720
Bramalea	131,438	\$9,332,007	\$71.00	\$14,081,450
Centrepont	122,502	\$3,076,363	\$25.11	\$5,313,795
St.Laurent	145,074	\$3,080,061	\$ 21.23	\$9,617,660

114. Annual projected sales ranging from \$3M - \$9M are catastrophically low. These sales are lower than HBC's 2024 sales for each store.<sup>1</sup> **There is no way this business will succeed in our shopping centres with these projected sales. There is no way this business will draw foot traffic or increase the value of our asset.** To the contrary, this tenant will not boost foot traffic, but will impair other leasing efforts in our shopping centres.

115. By way of comparison, our CRU (commercial retail unit) average sales at Coquitlam Shopping Centre is \$1,021psf. Sales of \$61.57 psf (the best psf sales in Liu CIC's projections for Morguard's locations) is less than 10% of the psf CRU tenant sales in the shopping centre. This very poor performance translates into a gross occupancy cost to sales ratio of approximately 14%, whereas most department store operators target a ratio closer to 5% as a healthy rent level, especially for a low volume operator.

116. Liu CIC is not an appropriate tenant to assume Morguard's HBC leases.

#### **No fully formed Logistics Management Plan – No Inventory IT program**

117. Liu CIC does not have a fully formulated logistics management plan, and this will likely result in stocking issues. Most retailers that we have dealt with take great care to ensure

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<sup>1</sup> HBC's 2024 financial per Store were disclosed by HBC in landlord request for documents

these channels are in place and highly functioning before stores are launched, whereas for Liu CIC's, it appears to be an afterthought.

118. We rarely see operations of this scale entirely rely on third party logistics firms to manage the entirety of their warehousing and inventory needs. Liu CIC has only provided a high-level proposal with no detail, in the absence of a proven track record of delivery. J2's proposal and website indicate they cater to small and medium-sized businesses whereas the proposed Liu CIC venture is clearly a large-scale operation. The J2 proposal indicates that its current core services include providing third party logistics in Toronto and Montreal. It is unclear whether or when they could stand up the ability to provide similar services in the other locations in Canada, and 10 of the 25 stores in the proposed assignment are in Alberta and British Columbia. The unusual approach to managing this function and the lack of detail do not provide a level of confidence that the proposed assignee will be able to ensure product replenishment at a reliable level.

119. Liu CIC does not have a fully formulated logistics management plan, and this will likely result in understocked shelves at launch. There are 1000s of kilometers between Ontario and B.C. Even if J2 assists with its apparel inventory (J2 has its primary operations in Toronto and Montreal), Liu CIC will need to source and deliver merchandise to fill its \$2.9M SF of retail space (after deducting 90,000 SF of J2 merchandise).

120. While Liu CIC list IT software companies, there is no software in place to assure required deliveries are made when needed.

121. I recall that one of the most significant challenges to Target's operations was its inability to re-stock its shelves.

### **Insufficient Employees and Inventory**

122. Liu CIC projects the need to hire 1800 staff for 25 stores (being 72 employees per store). This number seems very low to staff a first class department store in excess of 100,000SF.

123. I note that HBC reported in its CCAA court documents that it employed 9346 people (or 97 per store based on a store count of 96 including the Saks and Off 5th stores). HBC was notorious for understaffing its stores. There is no explanation how Liu CIC can operate a first class department store with 25% less employees.

124. I note that Liu CIC has inexplicably low “Selling Payroll (Store)” and “Other Payroll (Store)” expenses as compared to the amounts expended by HBC and disclosed in its “Actual 2024 HBC Financials on a per Store Basis”.

125. I am confident that when landlords redemise and re-let their HBC locations, the new tenants over the 25 locations will employ more than Liu CIC’s projected 1800 employees.

126. With regard to inventory, Liu CIC estimates lower inventory levels than HBC’s 2023 levels. In the financial information appended to the MT Letter, Liu CIC included “Inventory” information for the 25 stores as compared to HBC 2023 inventory levels. The average 2023 HBC inventory levels were approximately \$7M per store, while Liu CIC’s peak inventory per store level is \$5.4M. This too is a 25% reduction in what HBC’s inventory levels were.

### **Conclusion**

127. In summary, Liu CIC is proposing to operate a business under an unrecognized banner, with a business plan that is not fully conceived and is short on the details which typically

dictate success in the sector. The plan proposes a lighter stock counts than HBC, utilizing fewer number of employees than HBC, with no traffic generating designer brands in its stores. The stores will have only minimal leasehold improvements all of which is inconsistent with the vision presented in its store concept renderings.

128. HBC was Canada's most recognized national department store – and it failed. Liu CIC, with a business plan that is not fully conceived, is unlikely to succeed and is not an appropriate tenant for Morguard's HBC anchor leases.

129. As previously noted, a weak or failing anchor tenant undermines our goal of maintaining a high-performing, thoughtfully curated shopping centre. It negatively impacts our ability to attract and retain quality tenants and ultimately erodes asset value. From a strategic standpoint, it is far more prudent to forgo short-term rental income and temporarily close the premises, while proactively pursuing a stronger, long-term tenant partnership. This approach avoids the long-term consequences associated with the foreseeable failure of an underperforming business.

130. Morguard has already suffered as a result of HBC's insolvency filing and replacing HBC with another poor tenant will significantly exacerbate such harms. Not only will Morguard be left with a tenant with no financial covenant (like HBC), it will incur additional costs to address the demise of Liu CIC, suffer the further negative impact of another failing tenant which will further delay the implementation of appropriate re-demising and re-leasing efforts.

131. To reduce the harms suffered as a result of HBC's insolvency, Morguard needs to immediately re-demise and re-let the locations to "best in class" tenants that meet our merchandising plans for each shopping centre.

132. Although the cost to re-demise, construct and re-tenant these locations will far exceed any increase in rent that Morguard may charge new tenants (such was the case in both Target and Sears locations), (Morguard anticipates redevelopment costs to exceed \$20M per shopping centre), the harm that will be visited on Morguard and each of the shopping centres if the HBC stores are assigned to an uncertain, untested, unknown retailer in an anchor tenant location will negatively impact the mall for many, many years to come and will likely far exceed the costs to be expended by Morguard in redeveloping the space and executing its merchandising plan.

133. I make this affidavit in support of the relief requested here in and for no other or improper purpose.

SWORN remotely by David Wyatt  
stated as being located in the City of  
Vancouver, in the Province of British  
Columbia, before me at the City of  
Toronto in the Province of Ontario, on  
8<sup>th</sup> day of August, 2025 in accordance  
with O. Reg. 431/20, Administering  
Oath or Declaration Remotely.

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DAVID WYATT

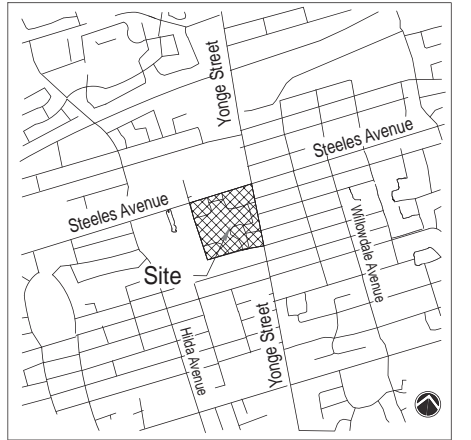
Commissioner for Taking Affidavits  
Linda Galessiere

**THIS IS EXHIBIT "A" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**



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**Commissioner for Taking Affidavits  
Linda Galessiere**



**THIS IS EXHIBIT "B" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**



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Commissioner for Taking Affidavits  
Linda Galessiere

copy of signed  
Bay Lease.

TO BE USED  
FOR REFERENCE  
PURPOSES  
ONLY.

original to  
Great-West  
Oct-1980

BAY LEASE

I N D E X

Article 1 - Definitions, Schedules, Landlord's  
Representations, Initial Construction

1.00

Definitions:

- (1) "Adjusted Gross Leaseable Area"
- (2) "Bay Department Store Building"
- ✓(3) "Bay Department Store Lands"
- (4) "Bay Lease"
- (5) "Bay Malt Bar"
- (6) "Bay Malt Bar Site"
- ✓(7) "Bay Outdoor Selling Area"
- (8) "Common Facilities"
- (9) "Common Facilities Lands"
- (10) "Common Facilities Operating Cost"
- (11) "Common Utilities"
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BAY LEASE - TOWNE & COUNTRYE SQUARE  
SHOPPING CENTRE

THIS LEASE is made as of the 3rd day of April,  
1974,

B E T W E E N :

THORNETOWNE PROPERTIES LIMITED  
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY (also known as  
the HUDSON'S BAY COMPANY)

(hereinafter called the "Tenant")

OF THE SECOND PART

This Bay Lease and the respective covenants and agreements of the parties hereto is entered into by the parties in consideration of the rents, covenants and agreements herein and in the Construction Agreement contained.

ARTICLE 1

DEFINITIONS, SCHEDULES AND INITIAL  
CONSTRUCTION

Defini-  
tions

1.00 In this Bay Lease the terms defined in this clause  
1.00 are used with the meanings so defined, as follows:

- (1) "Adjusted Gross Leaseable Area" means, with respect to each building or portion thereof in the Shopping Centre, the Gross Leaseable Area of each storey of such building or portion thereof having its floor area level at the level of the Mall and fifty percent (50%) of the Gross Leaseable Area of any storeys of such building or portion thereof having their floors or levels above or below the level of the Mall;

- (2) "Bay Department Store Building" means the department store building constructed on the Bay Department Store Lands, as from time to time altered, reconstructed or expanded;
- (3) "Bay Department Store Lands" means the land (being part of the Shopping Centre Lands) which includes the site of the Bay Department Store Building and which is shown outlined in red on the Site Plan and is described in Part 2 of Schedule A annexed to this Bay Lease;
- (4) "Bay Lease" means this Lease as from time to time amended;
- (5) "Bay Malt Bar" means the separate sales bar which the Tenant may from time to time have and maintain in the Mall upon the Bay Malt Bar Site, if and when constructed, and as from time to time altered or reconstructed;
- (6) "Bay Malt Bar Site" means the area and location in the Mall in the immediate vicinity of the Mall entrance to the Bay Department Store Building having an area of approximately 400 square feet, which is or is to be (subject to certain conditions of this Bay Lease) the site of the Bay Malt Bar, and which site shall be as may be agreed between the Landlord and the Tenant, but in the absence of such agreement shall be the site shown coloured in red on the Site Plan;
- (7) "Bay Outdoor Selling Area" means the area in the Parking Facilities contiguous to the Bay Department Store Building having an area of approximately but not exceeding 10,000 square feet which the Tenant may from time to time use seasonally as an outdoor selling area as provided in this Bay Lease, and the

site of which shall be as may be agreed between the Landlord and the Tenant, but in the absence of such agreement such site shall be the area shown cross-hatched in red on the Site Plan;

- (8) "Common Facilities" means all improvements which are intended and available for common use and enjoyment of all tenants of the Shopping Centre including the Tenant and their respective employees and those having lawful business with them including customers and which are constructed on the Shopping Centre Lands, including the Parking Facilities, Mall and Common Utilities and including such improvements (if any) as may from time to time be constructed on the Bay Department Store Lands exterior to the Bay Department Store Building, but excluding such improvements (if any) which are not constructed on the Shopping Centre Lands, any plant and equipment which provides heating and air-conditioning to rentable areas (and, in the case of any plant and equipment providing heating and air-conditioning to both rentable areas and Common Facilities, that proportion, equitably determined, of such plant and equipment which is attributable to rentable areas) and any such improvements (such as, but not limited to, truck docks, service corridors and loading, receiving and shipping areas) which are for the benefit of one or some (but not all) of the tenants of the Shopping Centre;

- (9) "Common Facilities Lands" means the lands which are the site of Common Facilities (including that portion of the Bay Department Store Lands which is occupied by Common Facilities including Parking Facilities), but in the case of lands which are the site of both Common Facilities and rentable areas or other improvements which are

not Common Facilities, shall include only that portion of such lands, equitably determined, which is attributable to Common Facilities;

- (10) "Common Facilities Operating Cost" means all costs, charges and expenses of operating and maintaining all Common Facilities, all computed on a net basis and without any duplication, and includes without limitation:

- (i) the cost of operating and maintaining the Common Utilities including the cost of utilities (including electricity for lighting) supplied thereby to, and consumed in, Common Facilities, and the operating cost of heating and air-conditioning enclosed portions of the Common Facilities;
- (ii) the cost of cleaning and other janitor services in, removing snow and refuse from, and supervising and policing the Common Facilities;
- (iii) the cost of operating and maintaining fixtures and other machinery, equipment and building services in Common Facilities and of maintaining (including re-striping) Parking Facilities and landscaped areas which are part of Common Facilities;
- (iv) the cost of repairs to Common Facilities including replacements necessarily made to maintain Common Facilities in good and substantial repair to the extent such replacements do not constitute an expense of a capital nature in accordance with normal accounting practice, but excluding all repairs made to remedy defects in construction;
- (v) the cost of operating and maintaining public address and background music systems in Common Facilities and the net cost (after crediting

all receipts) of operating and maintaining telephones, lockers, coat checking and information facilities provided for the public in Common Facilities;

(vi) the cost of Real Property Taxes applicable to the Common Facilities Lands and the Common Facilities (to be determined, if not separately assessed, as provided in this Bay Lease) and including business taxes (if any) levied in respect of Common Facilities, except those levied in respect of kiosks, outdoor selling areas or other facilities used for the particular benefit of any tenant or licensee thereof and not for the benefit of tenants of the Shopping Centre generally and business taxes on Parking Facilities which are directly assessed to the Tenant and other tenants of the Shopping Centre;

(vii) the cost of premiums for fire and public liability insurance in respect of Common Facilities which the Landlord is required to maintain pursuant to this Bay Lease or shall reasonably maintain;

(viii) periodic depreciation at standard rates upon equipment used for cleaning and maintaining Common Facilities; and

(ix) the direct costs to the extent allocable of management and supervision in connection with the operation and maintenance of Common Facilities;

But there shall be excluded therefrom (or deducted therefrom to the extent otherwise included);

(a) all monies which are recoverable (or which would have been recoverable if the Landlord had complied with its obligations to insure under this Bay Lease) under policies of insurance, and which are recovered (or which reasonably ought to have been recovered) under claims for damage or indemnity from third parties responsible, with respect to

damage to Common Facilities, to the extent applicable to repairs to Common Facilities the cost of which would otherwise be included hereunder;

(b) recoveries made by the Landlord under warranties and construction warranties relating to Common Facilities, to the extent applicable to defects the cost of repair of which would otherwise be included hereunder;

(c) ~~all revenue received by the Landlord from any special merchandising or promotional activity in the Mall which is permitted by and referred to in paragraph (4) of clause 7.01,~~

*AB added to draft lease*

~~all contributions toward Common Facilities Operating Cost received by the Landlord from tenants or licensees of outdoor selling areas or other facilities (except kiosks) in Common Facilities used for the particular benefit of any tenant or licensee thereof and not for the~~

*including rental charge??*

~~benefit of tenants of the Shopping Centre generally, and all other recoveries, contributions,~~

~~rebates and savings whatsoever in respect of any costs and expenses included hereunder (other than contributions by the Tenant and other tenants, not made in respect of outdoor selling areas or other facilities (except kiosks) in Common Facilities used for the particular benefit of any tenant or licensee thereof and not for the benefit of tenants of the Shopping Centre generally, of a shared portion of net costs of operating and maintaining Common Facilities); and~~

(d) the costs of improvements, additions, capital replacements and other expenses which are of a capital nature in accordance with normal accounting practice, and the costs of management and supervision (other than as provided in paragraph (ix) of this subclause), administration, depreciation (except as provided in

*Examples = ?  
Tenant (a) sells Christmas trees  
Tenant (b) carnival, rides,  
shopping centre promotions*

paragraph (viii) of this clause), other<sup>59</sup> overhead and indirect costs, interest, debt, service, capital amortization and other similar costs;

- (11) "Common Utilities" means the plant, systems and equipment for the distribution within the Shopping Centre of utilities including water, electricity, drains and sewers, gas and such other utilities as may from time to time be provided, but excludes plant and equipment providing heating or air-conditioning to rentable areas, and in the case of any plant and equipment providing heating and air-conditioning to both rentable areas and Common Facilities, that proportion equitably determined of such plant and equipment which is attributable to rentable areas, all utility systems within any rentable areas, and all systems for the supply to any one or more tenants of the Shopping Centre of any utility which is not generally available to tenants of the Shopping Centre but fulfills special requirements of such tenants receiving it;
- (12) "Construction Agreement" means the agreement made between the Landlord and the Tenant of even date herewith relating to construction to be performed by the Landlord and the Tenant and other matters pertaining to the Shopping Centre and this Bay Lease;
- (13) "Gross Leaseable Area" means, with respect to each building or portion thereof in the Shopping Centre, the number of square feet of floor space within such building or portion thereof which is intended to be leased, including kiosks, and shall include space within any building which, although not demised to a tenant, is for the exclusive use of or exclusively benefits a tenant or a specific group of tenants (such as any truck docks, service corridors and loading, receiving and shipping areas serving premises of tenants in the Shopping Centre shown cross-hatched in green on the Site Plan and improvements from time to time existing similar thereto, and which shall be deemed to be Gross

Leaseable Area and shall be apportioned equitably amongst the premises of tenants using or benefiting therefrom, but shall exclude all areas exterior to buildings such as, without limitation, outdoor selling areas. Gross Leaseable Area shall be calculated by measuring from the exterior surfaces of exterior walls and interior walls or barriers separating areas intended to be leased from Common Facilities and other space not intended to be leased, and from the centre line of party or demising walls separating areas intended to be leased from other areas intended to be leased;

- (14) "Landlord" means Thorntowne Properties Limited and its successors and assigns as owners of the Shopping Centre;
- (15) "Leased Premises" means the premises demised to the Tenant under this Bay Lease comprising the Bay Department Store Lands (upon a portion of which the Bay Department Store Building is constructed) but excluding the buildings and improvements including the Common Facilities thereon, and including where the context requires or permits the right and license of the Tenant to use and enjoy the Bay Outdoor Selling Area and to have and maintain the Bay Malt Bar on the Bay Malt Bar Site, all as provided by this Bay Lease, and the appurtenant rights, easements and licenses of the Tenant in respect of Common Facilities, all as provided in this Bay Lease;
- (16) "Mall" means the enclosed pedestrian concourses which are from time to time constructed as part of the Shopping Centre, and being part of the Common Facilities, as from time to time altered, reconstructed or expanded, including the enclosed pedestrian concourses initially constructed and shown hatched in brown on the Site Plan;

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- (17) "Merchandising Plan" means the plan allocating permitted types of use to various store locations in the Shopping Centre which has been prepared by the Landlord and approved by the Tenant, as from time to time amended by the Landlord with the approval of the Tenant pursuant to the provisions of this Bay Lease;
- (18) "Opening Date" means April 3, 1974 (being the date upon which the Tenant opened for business in the Bay Department Store Building, and also being the date of commencement of the Term);
- (19) "Parking Facilities" means the improvements from time to time in the Shopping Centre, and being part of the Common Facilities, which are from time to time intended and available for the parking of motor vehicles (whether on pavement at grade level or in parking decks or structures), as from time to time altered, reconstructed or expanded, and includes such parking decks or structures, all entrances, exits, roads, ramps, pedestrian sidewalks, curbs, dividers and other means of access to and improvements associated with parking (including landscaped areas) which are within the Shopping Centre, and includes the parking areas and roads and other means of access thereto and improvements associated therewith initially constructed in the Shopping Centre and which are shown outlined in brown on the Site Plan;

- (20) "Real Property Taxes" means all general and school taxes, levies, rates and charges from time to time imposed against real property by municipal or other governmental authorities having jurisdiction, but excludes local improvement rates and taxes (except for local improvement rates and taxes which may be imposed after the Opening Date for the construction of municipal works which do not exist on the Opening Date but are constructed thereafter) and business taxes;
- (21) "Shopping Centre" means the Shopping Centre Lands and all the buildings and improvements from time to time erected thereon including all Common Facilities and all rentable premises thereon, and the appurtenances thereto from time to time existing, together constituting Towne & Country Square Shopping Centre;
- (22) "Shopping Centre Lands" means the lands which are the site of Towne & Country Square Shopping Centre, and which are shown outlined in yellow on the Site Plan and are more particularly described in Part 1 of Schedule A annexed to this Bay Lease;
- (23) "Site Plan" means the site and location plan of the Shopping Centre Lands and improvements initially constructed thereon, and which is annexed as Schedule B to this Bay Lease;
- (24) "Tenant" means the Hudson's Bay Company and its successors and assigns as tenant under this Bay Lease;
- (25) "Term" means the entire term of this Bay Lease including the original term as described under clause 3.00, every renewal term as described under clause 3.01 resulting from the exercise of any of the Tenant's options thereunder, and any period of overholding to which clause 3.02 applies; and

- (26) "Unavoidable Delay" means any prevention, delay, stoppage or interruption in the performance of any obligation of the parties hereunder due to strike, lockout, labour dispute, act of God, inability to obtain labour or materials, application of laws, regulations or orders of governmental authorities, or the occurrence of fire or other casualty, condition or cause which is beyond the reasonable control of the party obligated to perform despite all reasonable efforts of such party to perform (but shall not include any inability to perform because of any lack of funds or any financial condition).

Schedules 1.01 The Schedules to this Bay Lease form part hereof and are as follows:

Schedule A - Part 1 - Description of Shopping Centre Lands

Part 2 - Description of Bay Department Store Lands

Schedule B - Site Plan

Initial Construction 1.02 The Landlord covenants to complete construction of Phase II of the Shopping Centre (as defined and described in the Construction Agreement) and all the buildings and improvements comprised therein (other than the Bay Department Store Building) and the Tenant covenants to complete construction of the Bay Department Store Building, in each case in accordance with all of the covenants, provisions and terms of the Construction Agreement, and each of the Landlord and the Tenant covenant to observe and perform all their respective covenants and obligations pertaining thereto as set out in the Construction Agreement.

## ARTICLE 2

### DEMISE AND GRANT OF RIGHTS

Demise of Bay Department Store Lands 2.00 The Landlord leases to the Tenant for the Term, upon and subject to the covenants and provisions expressed in this Bay Lease, and subject to the reservation set out in clause 2.04, the Bay Department Store Lands, for use from time to time by the Tenant for the purpose of constructing

and maintaining thereon the Bay Department Store Building and also to use the same for all other purposes provided and permitted in this Bay Lease.

Rights to Bay Malt Bar 2.01 The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Bay Lease, and subject also to the condition set out in clause 16.00, the right and license at any time and from time to time during the Term to construct and maintain the Bay Malt Bar upon the Bay Malt Bar Site, and from time to time to alter, reconstruct, remove and replace the Bay Malt Bar thereon, and from time to time to have the exclusive use and enjoyment of the Bay Malt Bar for the purposes provided in this Bay Lease.

Rights to Bay Outdoor Selling Area 2.02 The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Bay Lease, the right and license at any time and from time to time during the Term (but subject always to the provisions of clause 17.00), to occupy and use for the Tenant's exclusive benefit the Bay Outdoor Selling Area.

Rights to Common Facilities 2.03 The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Bay Lease, for use by the Tenant and its employees and those having lawful business with it including its customers, in common with the Landlord and other tenants of the Shopping Centre and their respective employees and those having lawful business with them including their customers, the right, easement and license to use the Common Facilities for the purposes of which such Common Facilities are intended and provided; and in particular, without limiting the generality of the foregoing, such right, easement and license of use shall include:

- (1) the right to use the Parking Facilities (including the means of pedestrian and vehicular access and the entrances and exits to and from the Shopping Centre included therein, but excluding those portions of the Parking Facilities which are

occupied by the Bay Outdoor Selling Area and other outdoor selling areas permitted under this Bay Lease, while so occupied) for the purpose of pedestrian and vehicular access to and from the Shopping Centre and the parking of vehicles in parking spaces provided therein;

(2) the right of pedestrian passage and re-passage through every portion of the Mall (excluding those portions thereof which are occupied by the Bay Malt Bar and other kiosks permitted under this Bay Lease while so occupied) for the purpose of access to or from every portion of the Shopping Centre including the Bay Department Store Building and the Bay Malt Bar;

(3) the right to use and benefit of the Common Utilities in accordance with the provisions of this Bay Lease; and

(4) the right to use the corridors, entrances and exits to buildings, public washrooms and all other facilities provided for common use and enjoyment as part of the Common Facilities.

Landlord's  
Reser-  
vations in  
Bay Depart-  
ment Store  
Lands

2.04 The Landlord reserves to itself, upon and subject to the covenants and provisions expressed in this Bay Lease, for use by the Landlord and other tenants of the Shopping Centre and their respective employees and those having lawful business with them including their customers, but subject to a like use in common with them by the Tenant and its employees and those having lawful business with it including its customers, the right, easement and license to use those portions of the Common Facilities which are from time to time located upon the Bay Department Store Lands, exterior to the Bay Department Store Building, for their intended purposes.

ARTICLE 3TERM, RENEWALS AND  
RIGHT OF TERMINATION

Term 3.00 The original term shall be a term of thirty (30) years and twenty-eight (28) days, commencing on the 3rd day of April, 1974, and ending on the 30th day of April, 2004.

Renewal 3.01 The Tenant shall have the options:  
Terms

- (1) first, to renew this Bay Lease for a first renewal term of ten (10) years commencing on the expiration of the original term referred to in clause 3.00, and
- (2) second, if such previous option shall have been exercised, to further renew this Bay Lease for a second renewal term of ten (10) years commencing on the expiration of the first renewal term, and
- (3) third, if such previous options shall both have been exercised, to renew this Bay Lease for a third renewal term of ten (10) years commencing on the expiration of the second renewal term, and
- (4) fourth, if such previous options shall all have been exercised, to renew this Bay Lease for a fourth renewal term of ten (10) years commencing on the expiration of the third renewal term, and
- (5) fifth, if such previous options shall all have been exercised, to renew this Bay Lease for a fifth renewal term of ten (10) years commencing on the expiration of the fourth renewal term, and
- (6) sixth, if such previous options shall all have been exercised, to renew this Bay Lease for a sixth renewal term of ten (10) years, commencing on the expiration of the fifth renewal term, and

- (7) seventh, if such previous options shall all have been exercised, to renew this Bay Lease for a seventh and final renewal term of ten (10) years commencing on the expiration of the sixth renewal term;

Each option of renewal granted to the Tenant by this clause 3.01 shall be deemed to have been exercised by the Tenant, without the need for any written notice of exercise or other notice or action by the Tenant, unless the Tenant gives written notice to the Landlord that it does not desire the exercise of such option of renewal, which notice of non-exercise by the Tenant shall be given at least one (1) year prior to the end of the original term in the case of the first of such options, or at least one (1) year prior to the end of the then current renewal term in the case of any of the six subsequent options (and in which event only, such option of renewal shall be deemed not to have been exercised, the Term shall expire at the expiration of the original term or the then current renewal term, as the case may be, and there shall be no further or other right of the Tenant to exercise any option of renewal, and the Tenant shall deliver up vacant possession of the Leased Premises upon the date of such expiration). All of the covenants, conditions and provisions of this Bay Lease, including the stipulation as to rent and other payments and contributions by the Tenant hereunder and the Tenant's rights of termination pursuant to clause 3.03, shall apply during each renewal term specified in this clause 3.01, except that there shall be no options to renew beyond the seven renewal options provided for in this clause 3.01.

Over-  
holding

3.02 If the Tenant shall remain in possession as an overholding tenant without objection by the Landlord after the original term or any renewal term, save pursuant to a renewal term which has been deemed to have been exercised or other agreement between the Landlord and the Tenant, the Tenant shall be deemed to be a tenant from year to year at a rent which shall be at the same rate (whether monthly or annual) as provided in clause 4.01 applicable to the period

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immediately preceding the commencement of such overholding and otherwise upon all the terms and provisions of this Bay Lease, modified as is appropriate to such a yearly tenancy.

Tenant's  
Right to  
Terminate      3.03      The Tenant, in addition to its rights of assignment as provided in this Bay Lease, shall have the option to terminate this Bay Lease upon ninety (90) days' prior written notice to the Landlord if at any time during the original term specified in clause 3.00 (but not thereafter) there shall cease to be in actual and active operation in the Shopping Centre, in addition to the Bay Department Store Building, either (i) the Sayvette department store shown on the Site Plan, and being operated by Sayvette Limited or in similar manner by a comparable operator, or (ii) another full line retail department store in the Shopping Centre having a Gross Leaseable Area comparable to that of the Sayvette department store, and being operated in similar manner by a comparable operator, in either case together with other supporting retail premises occupied by tenants conducting retail or service shops actively doing business with the public whose premises have in the aggregate not less than seventy per cent (70%) of the Gross Leaseable Area in the Shopping Centre as initially completed pursuant to clause 1.02, the operation of which does not contravene any provision of this Bay Lease, except if and while the actual and active operation contemplated hereby is prevented by an Unavoidable Delay (which shall include the Landlord's inability to obtain a suitable tenant for any department store which has become vacant)

unless prevented by such Unavoidable Delay for a period in excess of one (1) year.

#### ARTICLE 4

##### RENT

Payment  
of Rent

4.00 The Tenant covenants and agrees to pay to the Landlord during the Term rent for the Bay Department Store Lands and the appurtenant rights granted to the Tenant under this Bay Lease (other than for the right and license in respect of the Bay Malt Bar and the Bay Malt Bar Site, for which an additional license fee is payable as provided in clause 16.00) in the amount set out in clause 4.01. Rent shall be payable in lawful money of Canada and without any deduction or abatement except as expressly provided under this Lease, at the office of the Landlord in the Shopping Centre or at such other place as the Landlord may designate in writing from time to time, without any prior demand therefor. During the original term referred to in clause 3.00, during which a monthly rent is expressed to be payable pursuant to subclause 4.01(b), such rent shall be payable monthly in advance on the Opening Date and on the first day of each calendar month thereafter during such original term (except that rent payable on the Opening Date for the broken portion of a calendar month immediately ensuing thereafter shall be appropriately apportioned). During each renewal term referred to in clause 3.01, during which an annual rent is expressed to be payable pursuant to subclause 4.01(c), such rent shall be

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payable for each Lease Year (as defined in subclause 4.01(a)) in equal monthly instalments in advance on the first day of each calendar month during such Lease Year. During any period of overholding referred to in clause 3.02 the rent (whether monthly or annual, as may be applicable and as provided by clause 3.02) shall be payable monthly, or by monthly instalments, as the case may be, on the first day of each calendar month during the period of overholding. If and whenever this Bay Lease shall be terminated pursuant to any provision hereof prior to the end of any calendar month or Lease Year, as the case may be, rent shall be appropriately apportioned, paid and adjusted up to the date of termination.

Amount  
of Rent

4.01 The amount of rent payable by the Tenant for the Bay Department Store Lands shall be determined in accordance with the following provisions:

(a) In this clause 4.01 the following expressions shall have the following meanings:

- (1) "Lease Year" means each successive period of twelve (12) calendar months during all that part of the Term which is after the Opening Date, each of which shall commence upon May 1st (being the day following the expiration of the preceding Lease Year) and shall end on the next ensuing April 30th, except that the first Lease Year shall commence on April 3, 1974 (the Opening Date) and end on April 30, 1975 (and thus shall include in addition to twelve (12) calendar months the broken portion of the month of April, 1974, immediately ensuing after the Opening Date);
- (2) "Applicable Interest Rate" means, with respect to

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each renewal term referred to in clause 3.01, the lesser of the prime rate of annual interest of Central Mortgage and Housing Corporation or its successor body applicable to normal first mortgage loans upon private commercially developed residential real estate (as distinguished from public or government sponsored or subsidized urban redevelopment projects) in the area which comprises at the date of this Bay Lease Metropolitan Toronto, and the mean rate of annual interest of conventional institutional lenders (such as banks, trust companies and life insurance companies) applicable to normal first mortgage loans upon such private commercially developed residential real estate; in each case prevailing as of a date six (6) months prior to the commencement of such renewal term; but not to be any less than eight percent (8%) per annum or any more than ten percent (10%) per annum; and

- (3) "Applicable Appraised Value of the Bay Department Store Lands" means, with respect to each renewal term referred to in clause 3.01, the market value of the Bay Department Store Lands (excluding the value of all buildings and improvements thereon) determined as of a date six (6) months prior to the commencement of such renewal term by an appraiser agreed upon by the Landlord and Tenant (or failing such agreement within a reasonable time, by an appraiser nominated after application by either party upon notice to the other, by the President or senior executive officer of the Appraisal Institute of Canada or its successor body, or failing that, of a similar institute or body), such appraisal in each case to be binding on the parties and to be obtained at the expense of the parties equally.

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(b) During the original term referred to in clause 3.00 the rent for the Bay Department Store Lands shall be:

- April 8/74 - April 30/79* (1) for the portion of the original term from the Opening Date to the end of the fifth Lease Year, a monthly rent of \$5,833.33;
- May 1/79 - April 30/84* (2) for the portion of the original term from the commencement of the sixth Lease Year to the end of the tenth Lease Year, a monthly rent of \$6,166.67;
- May 1/84 - April 30/89* (3) for the portion of the original term from the commencement of the eleventh Lease Year to the end of the fifteenth Lease Year, a monthly rent of \$6,500.00;
- May 1/89 - April 30/94* (4) for the portion of the original term from the commencement of the sixteenth Lease Year to the end of the twentieth Lease Year, a monthly rent of \$6,833.33;
- May 1/94 - April 30/99* (5) for the portion of the original term from the commencement of the twenty-first Lease Year to the end of the twenty-fifth Lease Year a monthly rent of \$7,166.67; and
- May 1/99 - April 30/2004* (6) for the portion of the original term from the commencement of the twenty-sixth Lease Year to the end of the thirtieth Lease Year (being the end of the original term) a monthly rent of \$7,600.00.

(c) During the renewal terms referred to in clause 3.01 rent for the Bay Department Store Lands shall be:

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- (1) during the first renewal term, an annual rent of the greater of

(A) \$90,000.00 or

(B) the lesser of

(i) the Applicable Appraised Value of the

Bay Department Store Lands or

(ii) \$3.25 times the area in square feet of

the Bay Department Store Lands,

multiplied by the Applicable Interest Rate;

- (2) during the second renewal term, an annual rent in respect of the Bay Department Store Lands, of the greater of

(A) the rent determined under subparagraph (1) of subclause 4.01(c) or

(B) the lesser of

(i) the Applicable Appraised Value of the

Bay Department Store Lands or

(ii) \$3.50 times the area in square feet of

the Bay Department Store Lands,

multiplied by the Applicable Interest Rate; and

- (3) during the third renewal term and all subsequent renewal terms, an annual rent of the greater of

(A) the rent determined under subparagraph (2) of subclause 4.01(c) or

(B) the lesser of

(i) the Applicable Appraised Value of the

Bay Department Store Lands or

(ii) \$3.75 times the area in square feet of

the Bay Department Store Lands,

multiplied by the Applicable Interest Rate.

ARTICLE 5GENERAL COVENANTS

Covenants 5.00  
of Tenants

The Tenant covenants with the Landlord:

- (1) to pay the rent and all other sums from time to time due to the Landlord under this Bay Lease, and
- (2) to observe and perform all the covenants and obligations of the Tenant under this Bay Lease.

Covenants 5.01  
of Landlord

The Landlord covenants with the Tenant:

- (1) for quiet enjoyment, and
- (2) to observe and perform all the covenants and obligations of the Landlord under this Bay Lease.

ARTICLE 6OCCUPANCY OF LEASED PREMISES

Use of 6.00  
Leased  
Premises

Except with the prior written consent of the Landlord:

- (1) the Bay Department Store Building shall always be used and operated as a first-class, high quality retail department store (which may include as part thereof one or more restaurants provided that prior to December 31, 1995 (i) any such restaurant or restaurants shall occupy all, part or parts of the space in the Bay Department Store Building originally allocated, at the date of this Bay Lease, for cafeteria and food service facilities, and not any other space in the Bay Department Store Building, nor shall such space as originally allocated be enlarged or relocated, and (ii) no liquor or other alcoholic beverages shall be sold in such restaurant or restaurants), and furthermore, unless and until the Tenant shall assign

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this Bay Lease in accordance with the provisions hereof, shall be used and operated as a typical Hudson's Bay Company department store.

- (2) the Bay Malt Bar, if and while operated, shall be used and operated for the sale of any type or types of merchandise normally sold in department stores (except for those items of merchandise the sale of which would breach certain covenants which have been entered into by the Landlord with other tenants of the Shopping Centre and which are referred to in clause 16.00) and, subject to the conditions referred to in clause 16.00 being fulfilled, may also be used as a malt bar (including

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but not limited to use for the sale of milk and malt shakes, ice cream and other milk products, beverages including tea, coffee and soft drinks, and hot dogs, doughnuts and other food items appropriate for sale at a malt bar); and

- (3) the Bay Outdoor Selling Area shall be used and operated for the sale of any type or types of merchandise normally sold by department stores and appropriate for outdoor sale, including without limitation garden supplies and recreational and sports equipment.

Name of  
Business

6.01 Unless and until the Tenant shall assign this Bay Lease in accordance with the provisions hereof, the name under which the Bay Department Store Building and the Bay Outdoor Selling Area shall be operated by the Tenant shall contain the words "Bay" or "Hudson's Bay Company" or such other word or words as shall be the dominant word or words in the name under which the department store business of the Tenant is from time to time being carried on in Southern Ontario.

Hours of  
Business

6.02 From and after the Opening Date and during the Term the Tenant shall actively and diligently carry on business in not less than ninety per cent. (90%) of the portion of the Bay Department Store Building initially constructed and (if and while operated) in the Bay Malt Bar and (if and while seasonally operated) in the Bay Outdoor Selling Area. The Bay Department Store Building shall be operated and open to the public for business during those minimum hours of business for the Shopping Centre as may from time to time be established by the regulations of the Landlord, provided that such regulations shall be reasonable, of uniform application, consistent with the provisions of this Bay Lease, and not such as to prevent or interfere with the proper and reasonable conduct of the Tenant's ordinary business, and that nothing herein shall require the Bay Department Store Building to be operated and open to the public for business unless other major

department stores and at least seventy-five per cent (75% of the premises occupied by retail and service tenants (other than major department stores) in the Shopping Centre are open for business, or during hours of business which are not those from time to time established by the Tenant as being the hours of business of its other comparable department stores in Metropolitan Toronto, or when prevented by by-law or other legal restriction or by Unavoidable Delay. During those hours when the Bay Department Store Building is required to be open to the public for business pursuant to the foregoing provision, the doors of the Bay Department Store Building intended for customer access thereto, including those giving access to and from the Mall, shall be unlocked and available for use. The Landlord shall consult periodically with the Tenant with regard to Shopping Centre hours of business and give reasonable consideration to the suggestions and recommendations of the Tenant pertaining thereto, and shall give reasonable notice to the Tenant of any change from time to time in the Landlord's policy and regulations pertaining to Shopping Centre hours of business.

Display  
Window  
Lighting

6.03 The Tenant shall keep the display and other windows of the Bay Department Store Building suitably illuminated during all hours when the Shopping Centre shall be open to the public for business.

Nuisance,  
etc.

6.04 The Tenant shall not use or permit any part of the Leased Premises to be used in such a manner as to cause a nuisance or cause or permit any annoying noises, vibrations or odours (having regard to the purposes for which the various portions of the Leased Premises are permitted to be used). The Tenant shall not permit any debris or refuse to accumulate in the Leased Premises, but shall cause the same to be stored in suitable receptacles and regularly removed. The Tenant will not permit to be stored in or about the Bay Department Store Building or the Bay Malt Bar any dangerous or inflammable thing to which the insurers of the Tenant or of the Landlord have reasonable cause for objection, having due regard to the purposes for which such parts of the Leased Premises are permitted to be used.

Receiving  
and  
Shipping

6.05 The Tenant shall not load or unload any merchandise, supplies or other materials or any debris or refuse except in

the truck receiving area designated for the exclusive use of the Bay Department Store Building, but this shall not apply to manual deliveries or shipments of small parcels to and from the Bay Department Store Building where it is not practical or desirable to handle them through such receiving area so long as there is no obstruction of any entrances or of the Mall, nor shall it apply to deliveries to and shipments from the Bay Malt Bar or the Bay Outdoor Selling Area.

Merchan- 6.06 The Tenant shall not carry on any merchandising  
dising  
Activities activities or display any merchandise in the Common Facilities  
in Common  
Facilities other than in the Bay Malt Bar or the Bay Outdoor Selling Area  
or as part of a promotion approved by the Landlord.

Signs 6.07 The Tenant shall be entitled to have identification  
signs upon the exterior of the Bay Department Store Building  
facing toward Yonge Street upon or over each entrance to the  
Bay Department Store Building from the exterior and from the  
Mall, upon the Bay Malt Bar and upon the Bay Outdoor Selling  
Area, in each case similar in size and character to those  
generally used at the other department store buildings, malt  
bars and outdoor selling areas, as the case may be, operated  
in Canada by the Tenant or its subsidiaries, and such other  
signs as it may desire to have and which are consistent with  
the Landlord's general sign policy and have been approved by  
the Landlord, which approval shall not be unreasonably with-  
held. Illuminated signs shall be lighted during all hours  
when the Shopping Centre shall be open to the public.

Heating 6.08 The Tenant shall heat and air-condition the Bay  
and  
Air-Con- Department Store Building (other than portions thereof which  
ditioning are not designed to be heated or air-conditioned) whenever  
reasonably required and in such manner that there will be no  
direct or indirect appropriation of heating or cooling from  
the Mall, but subject to Unavoidable Delay.

## ARTICLE 7

### OPERATION OF SHOPPING CENTRE

Operation 7.00 The Landlord shall throughout the Term cause the  
of Shopping  
Centre

Shopping Centre to be continuously used and operated as a first-class regional shopping centre, and not for any other purpose without the consent of the Tenant.

Standards  
of  
Operation

7.01 The Landlord shall manage, operate and maintain the Shopping Centre in accordance with the best standards of shopping centre management and in accordance with standards of operation and maintenance which have been adopted by first-class shopping centres in Canada, and without limiting the generality of the foregoing, the Landlord shall:

- (1) maintain a management office either at the Shopping Centre or elsewhere in Metropolitan Toronto in reasonable proximity thereto, and a competent full-time manager and a sufficient staff of management, operating and maintenance personnel to adequately perform the proper management, maintenance and operation of the Shopping Centre;
- (2) keep or cause to be kept the Shopping Centre including the Mall, Parking Facilities and all other Common Facilities, and all buildings and improvements thereon other than the Leased Premises clean, tidy and well maintained, and in this connection maintain in force and take all reasonable action to enforce provisions of all leases to tenants of the Shopping Centre requiring such tenants to keep their respective premises clean, tidy and well maintained;
- (3) take all such action as may reasonably be required to prevent the use of any premises in the Shopping Centre for any purposes which contravene any provision of this Bay Lease or which is a nuisance or annoyance or is not in keeping with the standards of first-class regional shopping centres, and to prevent the carrying on in any such premises of any use or type of business or activity which

travenges any provision of this Bay Lease, any fire sale (other than a sale of merchandise actually damaged in a fire occurring on the premises in the Shopping Centre from which they are being sold), any bankruptcy or "going out of business" sale (other than a bona fide bankruptcy sale conducted by a trustee or receiver), any auction sale (other than a special promotion conducted by a tenant who does not conduct such sales in the regular line of business); any sale of second-hand or surplus merchandise or any other activity whatsoever which is not in keeping with the character of the Shopping Centre, or the display of any signs or advertising in respect of any of the foregoing prohibited activities;

7.01

(4)

prohibit any display or sale of merchandise in the Common Facilities or in any other place in the Shopping Centre outside the confines of rentable premises therein, consisting of stores within buildings, other than in the Bay Malt Bar and kiosks in the Mall which are expressly permitted under this Bay Lease, or in the Bay Outdoor Selling Area and other outdoor selling areas expressly permitted under this Bay Lease, or as part of any general shopping centre promotion approved by the Landlord and to which the Tenant has no reasonable objection, or as part of any special merchandising or promotional activity in the Mall which is occasional, temporary and of the nature of a special event (e.g., a flower sale booth in connection with the celebration of Mother's Day, an art show which includes the sale of works of art), is of a type which is generally conducted in malls of first-class shopping centres, and is one to which the Tenant has no reasonable objection; and

(5) implement and enforce a landlord's sign policy which shall be consistent with a first-class regional shopping centre and applicable to all

*see Bay agreement  
file July 1977*

*rebate 19.48%  
of total income  
of Mall temporary  
tenants other than  
Mall promotion participants  
less 15% administration  
& collection fee*

*\$*

tenants of the Shopping Centre and governing signs which may be displayed on or in their premises (and which sign policy shall be consistent with the provisions of this Bay Lease, shall have been established by the Landlord and approved by the Tenant, and may be altered by the Landlord from time to time with the approval of the Tenant, such approval in no case to be unreasonably withheld), and prohibit all signs which violate such sign policy (saving the rights in respect of signs of tenants under leases of premises in the Shopping Centre which are in effect at the date of this Bay Lease), and prohibit all signs in the Common Facilities, other than signs on the Bay Malt Bar and on other kiosks which are expressly permitted under this Bay Lease and on the Bay Outdoor Selling Area and other outdoor selling areas which are expressly permitted under this Bay Lease and which signs are in each case permitted by the sign policy of the Landlord which has been approved by the Tenant, signs in connection with any general shopping centre promotion permitted hereunder, signs in the Parking Facilities regulating direction and speed of travel or other use of the Parking Facilities as may be necessary or appropriate, and pylon or other identification signs which identify and promote the Shopping Centre (but do not identify, advertise or promote any particular tenant or tenants therein unless the Tenant shall consent thereto) of which the Tenant shall have approved (such approval not to be unreasonably withheld).



Hours of  
Business

7.02

The Landlord shall keep the Shopping Centre open for business on at least those days of every week and during at least those hours on and during which other similar shopping centres in the same trading area are open for business, and shall establish and maintain a policy and regulations regarding hours of business which is consistent

with such obligation after consultation with the Tenant as provided by clause 6.02. The Landlord shall cause as many tenants as possible, and at least substantially all of the merchandising tenants on the Mall, including tenants of all major department stores, to remain open for business during such established hours of business, subject to compliance with governmental regulations from time to time in effect applicable thereto and to Unavoidable Delay.

Mall 7.03 The Landlord shall maintain and operate the Mall and have the same open including the entrances and other means of access thereto during all hours when the Shopping Centre or the Bay Department Store Building is open for business, shall keep the Mall properly lighted and shall heat and air-condition the Mall as may be required so as to maintain therein reasonable standards of comfort, subject only to Unavoidable Delay.

Parking  
Facilities

7.04 The Landlord shall comply with the following obligations with respect to the Parking Facilities:

- (a) The Landlord shall:
  - (i) maintain and operate the Parking Facilities and have them open, including the means of access thereto, at all times when the Shopping Centre or the Bay Department Store Building is open for business;
  - (ii) cause the Parking Facilities to be adequately lighted whenever required to facilitate their use during hours of darkness;
  - (iii) keep parking spaces and aisles properly striped and otherwise marked and maintain the appropriate traffic and direction signs;
  - (iv) adequately supervise the flow of traffic therein whenever reasonably required and otherwise police and supervise the Parking Facilities in accordance with the standards of first-class regional shopping centres;
  - (v) keep the Parking Facilities free of refuse and debris and take all appropriate measures to keep them reasonably free of snow and ice during winter months; and

*concludes parking*

(vi) ~~take whatever steps are appropriate and reasonable to prevent the use of the Parking Facilities for any purpose not permitted hereunder and to prevent the use of the Parking Areas by persons other than the Landlord, tenants of the Shopping Centre and their employees, invitees and customers;~~

(b) No charges shall be imposed for the use of parking spaces in the Parking Facilities by the Tenant and other tenants of the Shopping Centre and their employees, customers and those having business with them, without the written consent of the Tenant.

If it becomes necessary to impose parking charges upon persons other than the Tenant and other tenants of the Shopping Centre and their employees, customers and those having business with them to prevent or control the use of Parking Facilities by persons not entitled thereto, the Landlord may impose such parking charges as are reasonable and necessary to prevent or control such unauthorized parking, provided that a system of validation or other similar system which has in each case been approved by the Tenant is put into effect to ensure that parking charges will not be imposed upon persons having the right to use the Parking Facilities without charge, and provided that all net revenue derived from the imposition of such charges shall be applied and credited to reduce Common Facilities Operating Cost as and when received; and

(c) The Landlord shall at all times provide and maintain in the Parking Facilities to be constructed and maintained in accordance with the provisions of this Bay Lease sufficient parking spaces to

(1) meet all legal requirements, and

(2) provide by way of a minimum "parking ratio" at least a number of car spaces which is not fewer than the aggregate of:

- (i) 5.3 (or such other ratio as shall have been approved by the Tenant) spaces for each 1,000 square feet of rentable space which is used for retail purposes in the original Shopping Centre as constructed and existing at the date of this Bay Lease (the Tenant hereby acknowledging that it has approved the plan and layout of the parking areas of the Shopping Centre as actually constructed as at the date of commencement of the Term of this Bay Lease, as being a sufficient compliance with the above requirement as to minimum "parking ratio"), and
- (ii) 5.5 spaces (or such other number of spaces if any as may be agreed between the Landlord and Tenant) for each 1,000 square feet of Gross Leaseable Area of rentable space which is used for retail purposes in any addition to or enlargement or expansion of the Shopping Centre;

together with adequate access thereto

(for the purposes of this paragraph (2)

"retail purposes" includes any business providing any of the goods or services to the public of the nature provided by businesses of the types commonly found at mall level of shopping centres, including retail shops, sales outlets, service establishments such as banks, trust companies, dry cleaners, barbers, eating establishments such as snack bars and restaurants and similar types of business, but excludes

commercial offices, and "rentable space" shall exclude outdoor selling areas and basement areas used for storage only);

(but except for Parking Facilities to be provided by and at the expense of the Tenant in connection with an expansion of the Bay Department Store Building as provided by clause 19.00).

~~The design and layout of Parking Facilities including the size and arrangement of parking spaces therein and the means of access thereto, and any changes therein from time to time, shall be subject to the approval of the Tenant (not to be unreasonably withheld).~~

Landlord's  
Rules and  
Regulations

7.05 The Landlord may from time to time establish reasonable rules and regulations, which shall not be inconsistent with the terms of this Bay Lease and shall be subject to the approval of the Tenant (such approval not to be unreasonably withheld), applicable to all tenants in the Shopping Centre and governing the use of Common Facilities. ~~The Tenant shall comply with such rules and regulations so long as the same are uniformly enforced throughout the Shopping Centre and are not contrary~~ to any governmental regulation from time to time in effect applicable to the Tenant. The Landlord shall use its reasonable efforts to enforce such rules and regulations.

#### ARTICLE 8

##### UTILITIES AND SERVICES

Utilities  
and  
Services

8.00 The Landlord shall provide electrical service, water service, storm and sanitary sewers, and (to the extent available to the Shopping Centre Lands at the date of this Bay Lease) other utilities and services (other than heating, ventilating and air-conditioning) which are from time to time required for the proper conduct of the Tenant's business in the Leased Premises and each and every portions thereof, and including every expansion of the Bay Department Store Building which is permitted hereunder, subject to the payment by the Tenant of normal non-capital consumption charges due to public

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utilities or services or other suppliers for electricity, water, gas and other utilities and services actually consumed by the Tenant, and also to the payment by the Tenant of the capital cost required to be incurred to increase the capacity of or alter any utilities or services in order to meet the requirements of any such expansion of the Bay Department Store Building. For this purpose the Landlord will provide or arrange for public utilities or services or other suppliers to provide, without expense to the Tenant except as above provided, means of bringing such utilities and services (if and to the extent required in each case) to a reasonably convenient point at or within the limits of each of the Bay Department Store Building and the Bay Malt Bar through the appropriate pipes, conduits or other appropriate means of distribution thereto in and through the Shopping Centre. Such pipes, conduits and other means of distribution shall be (both as to nature and capacity) such as to provide adequate utilities and services for every reasonable use made of each portion of the Leased Premises, and the Landlord shall at all times cause such repairs to be performed thereto and do all other acts and things as may be necessary to ensure the continuous availability and adequate capacity of such utilities and services, subject only to Unavoidable Delay.

#### ARTICLE 9

##### TAXES

Tenant's  
Taxes

9.00

The Tenant shall pay or cause to be paid:

- (1) all Real Property Taxes imposed from and after the Opening Date and thereafter during the Term in respect of the Bay Department Store Lands (but excluding those portions of the Bay Department Store Lands which consist of Common Facilities Lands) and all Real Property Taxes imposed during the Term in respect of the Bay Department Store Building, the Bay Malt Bar and (in respect of

periods while they are seasonally used and occupied by the Tenant) the Bay Outdoor Selling Area and the improvements thereon; and

- (2) all business taxes imposed during the Term by municipal or other governmental authorities having jurisdiction in respect of the business and activities carried on by the Tenant and its assignees, subtenants and concessionaires in or upon the portion of the Bay Department Store Lands occupied by the Bay Department Store Building, the Bay Malt Bar and (while seasonally used and occupied by the Tenant) the Bay Outdoor Selling Area and the improvements thereon, including business taxes on Parking Facilities but which are directly assessed to the Tenant;

but nothing herein shall require the Tenant to pay any taxes, rates or charges levied against or in respect of the income or capital of the Landlord, or any local improvement rates and taxes which are expressly excluded from Real Property Taxes. All Real Property Taxes and business taxes payable by the Tenant hereunder, including each and every instalment thereof, shall be paid when due, subject only to the right of the Tenant to defer payment thereof in certain circumstances as provided by clause 9.03. The Tenant shall also pay all penalties and interest imposed with respect to arrears of such payments. Whenever the Landlord shall reasonably request the Tenant shall exhibit to the Landlord receipts or other appropriate evidence as to the due payment of such Real Property Taxes and business taxes. In the event that the Tenant shall fail to pay any Real Property Taxes or business taxes payable under this clause 9.00 when due the Landlord, after written notice to the Tenant and if the Tenant shall fail to pay the same within ten (10) days after receipt of such notice, may pay the same and the amount so paid by the Landlord shall be repaid by the Tenant to the Landlord within thirty (30) days after demand therefor.

Landlord's 9.01  
Taxes

The Landlord shall pay or cause to be paid:

- (1) all Real Property Taxes in respect of the Shopping Centre except those payable by the Tenant pursuant to paragraph (1) of clause 9.00, and all local improvement rates and taxes in respect of the Shopping Centre which are not included in Real Property Taxes payable by the Tenant;
- (2) all business taxes imposed by municipal or other governmental authorities having jurisdiction in respect of all business and activities carried on in or upon the Shopping Centre and which are or may become a lien, charge or claim against the Shopping Centre Lands, save those in respect of the Leased Premises and business taxes on Parking Facilities which are directly assessed to the Tenant, and which are payable by the Tenant pursuant to paragraph (2) of clause 9.00.

All Real Property Taxes, local improvement rates and taxes and business taxes payable by the Landlord hereunder, including each and every instalment thereof, shall be paid when due, subject only to the right of the Landlord to defer payment thereof in certain circumstances as provided by clause 9.03. The Landlord shall also pay all penalties and interest imposed with respect to arrears of such payments. Whenever the Tenant shall reasonably request the Landlord shall exhibit to the Tenant receipts or other appropriate evidence as to the due payment of such Real Property Taxes, local improvement rates and taxes and business taxes. In the event that the Landlord shall fail to pay any Real Property Taxes, local improvement rates and taxes or business taxes payable under this clause 9.01 when due the Tenant after written notice to the Landlord and if the Landlord shall fail to pay the same within ten (10) days after receipt of such notice, may pay the same and the amount so paid by the Tenant shall be repaid by the Landlord to the Tenant within thirty (30) days after demand therefor.

Determina-  
tion of  
Assess-  
ments

9.02 For the purpose of establishing the amount of Real Property Taxes payable by the Tenant pursuant to clause 9.00 and the amount of Real Property Taxes to be included in the Common Facilities Operating Cost to which the Tenant contributes under clause 10.00, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such Real Property Taxes and the provisions of this Bay Lease pertaining thereto are based, being the assessment in the first case of the Bay Department Store Lands excluding those portions of the Bay Department Store Lands which consist of Common Facilities Lands, the Bay Department Store Building, the Bay Malt Bar and (in respect of periods while they are seasonally used and occupied by the Tenant) the Bay Outdoor Selling Area and the improvements thereon, and in the second case of the Common Facilities Lands and the Common Facilities. If such separate assessments or any of them are not made by the municipal or other governmental authorities imposing such Real Property Taxes, the Landlord and the Tenant shall use their best efforts to have such separate assessments made or, failing that, sufficient official information to determine what such separate assessments would have been if they had been made, and if assessments are made on a basis different from the basis contemplated by this Bay Lease (for example, if the Common Facilities Lands or Common Facilities or any of them are not separately assessed but allocated in portions to the assessments of the Tenant or other tenants) the Landlord and the Tenant shall use their best efforts to have such basis of assessment converted to the basis contemplated by this Bay Lease. However, in the event and to the extent that assessments consistent with the basis contemplated by this Bay Lease cannot be obtained from the municipal or other governmental authorities imposing them, the Landlord and the Tenant shall allocate the total assessment of the Shopping Centre in a manner which is equitable and consistent with the basis of assessment contemplated by this Bay Lease so as to

such determination has been made, the Landlord may make a reasonable estimate of the allocation which shall not bind the parties but shall nevertheless be adopted for the basis of the interim payment of Real Property Taxes respectively payable by them, and when the allocation of assessments has been finally determined and Real Property Taxes respectively payable by them finally computed, the parties shall promptly make the appropriate readjustment and make any required additional payment by the Tenant, or repayment to the Tenant, as the case may be.

Tax  
Appeals

9.03 The Landlord may appeal any official assessment, or the amount of any Real Property Taxes, local improvement rates and taxes or business taxes relating to the Shopping Centre, and the Tenant may appeal any official assessment or any Real Property Taxes or business taxes relating to the Leased Premises or, where the Tenant's obligations are directly or indirectly affected thereby, relating to any other portion of the Shopping Centre including the Common Facilities Lands and the Common Facilities. In connection with any such appeal, the party appealing may defer payment of any Real Property Taxes, local improvement rates and taxes or business taxes, as the case may be, payable by it under the provisions of this Article 9 to the extent permitted by law and provided that no part of the Shopping Centre is thereby rendered subject to sale or forfeiture, that such deferment does not cause a breach of the Landlord's obligations under any mortgage of the Shopping Centre, that the appeal is diligently prosecuted to completion and, in the case of a deferral by the Tenant, that such security as the Landlord or any mortgagee of the Shopping Centre may reasonably require is given for the payment of any Real Property Taxes or business taxes payable by the Tenant including penalties or interest resulting from deferred payment. Neither the Landlord nor the Tenant shall institute any appeal without notice to the other and, where their interests do not conflict and in particular where the

appeal is being made in order to achieve a re-assessment which is consistent with the basis contemplated by this Bay Lease, each shall extend its co-operation and assistance to the other in respect to such appeal.

#### ARTICLE 10.

##### COMMON FACILITIES OPERATING COST

Tenant's  
Contri-  
bution

10.00 The Tenant shall pay to the Landlord from and after the Opening Date and thereafter during the Term as additional rent an amount equal to the proportion of the Common Facilities Operating Cost incurred by the Landlord with respect to or attributable to all the Common Facilities which the Adjusted Gross Leaseable Area of the Bay Department Store Building and the Bay Malt Bar bears to the sum of the Adjusted Gross Leaseable Areas of all rentable space in the Shopping Centre (including the Bay Department Store Building, the Bay Malt Bar and all other kiosks in Common Facilities, but excluding unenclosed rentable areas such as the Bay Outdoor Selling Area and all other outdoor selling areas) as from time to time constituted. The Tenant's contributions to Common Facilities Operating Cost shall be payable by periodical instalments and subject to adjustment all as provided by clause 10.01.

Payments  
and Adjust-  
ments

10.01 The Tenant's contributions to Common Facilities Operating Cost pursuant to clause 10.00 shall be paid and adjusted with reference to a fiscal year of 12 calendar months, which shall be a calendar year unless the Landlord shall have selected a fiscal year which is not a calendar year by written notice to the Tenant prior to the Opening Date. On or before the Opening Date the Landlord shall advise the Tenant in writing

of its estimate of Common Facilities Operating Cost to be incurred for the fiscal year or broken portion of the fiscal year, as the case may be, to commence upon the Opening Date, and on or before the commencement of each succeeding fiscal year which commences thereafter during the Term, the Landlord shall advise the Tenant in writing of its estimate of Common Facilities Operating Cost to be incurred in such fiscal year or (if applicable) the broken portion of a fiscal year immediately prior to the end of the Term. Such estimate shall in every case be a reasonable estimate and based wherever possible upon previous operating experience, and shall be accompanied by reasonable particulars of the manner in which it was arrived at. The contributions to Common Facilities Operating Cost payable by the Tenant pursuant to clause 10.00 shall be paid in equal monthly instalments in advance on the first day of each and every month during every such fiscal period of (if applicable) broken portion thereof, based on the Landlord's estimate of the Common Facilities Operating Cost to be incurred during such fiscal period of (if applicable) broken portion thereof. Within ninety (90) days after the end of each such fiscal period or (if applicable) broken portion thereof the Landlord shall submit to the Tenant a detailed statement of the actual Common Facilities Operating Cost incurred during such fiscal period or broken portion thereof and a calculation of the amounts payable by the Tenant with respect thereto pursuant to clause 10.00. The books and records of the Landlord relating thereto shall be open to the inspection of the Tenant or its representatives at all reasonable times and if requested by the Tenant, the Landlord shall forthwith have such statement audited by independent chartered accountants and furnish to the Tenant a copy of the audited statement. Within ten (10) days after the receipt of such statement or audited statement as the case may be the Tenant shall pay to the Landlord any amount by which the amount found payable by it with respect to such fiscal period or broken portion thereof exceeds the aggregate of the monthly payments

made by it on account thereof during such fiscal year or broken portion thereof and the Landlord shall pay to the Tenant any amount by which the amount found payable as aforesaid is less than the aggregate of such monthly payments, but if the Landlord and the Tenant fail to agree upon the proper amount of the adjustment, any dispute shall be settled by arbitration pursuant to the provisions of this Bay Lease.

#### ARTICLE 11

##### INSURANCE

Tenant's Insurance 11.00 The Tenant shall take out and at all times during the Term keep in force:

- (1) standard fire insurance and extended coverage or additional perils supplemental contracts, including sprinkler leakage and insurance against all other hazards covered by policies normally in use from time to time for buildings and improvements of a similar nature similarly situated, on the Bay Department Store Building and the Bay Malt Bar (if any) and the fixed improvements and equipment therein, in an amount equal to the full replacement cost thereof (but which may exclude the cost of foundations and excavations and permit a deductible amount not greater than that normally pertaining in similar insurance);
- (2) public liability and property damage insurance, including all risks normally insured in connection with the use and occupancy of similar premises, in respect of its use and occupancy of the Leased Premises in an amount of at least \$2,000,000.00 for claims for personal injury or property damage arising out of any one occurrence; and
- (3) if any boilers or pressure vessels are operated in the Bay Department Store Building, boiler and pressure vessel insurance in such amounts as are normally effected having regard to the nature of

the boilers and pressure vessels so operated.

Each policy of insurance referred to shall be with insurers generally acceptable to institutional lenders and upon terms which are reasonable and consistent with the provisions of this Bay Lease. Wherever the Landlord shall so require, the Landlord and any mortgagees of the Shopping Centre named by the Landlord, and wherever the Tenant shall so require, any mortgagees of the Tenant named by the Tenant, shall in each case be included as insured parties as their interest may appear under any policy effected by the Tenant pursuant to paragraph (1), but nevertheless all proceeds of insurance available in the event of any loss, damage or destruction to the Leased Premises shall be payable to the Tenant, but may be payable to any mortgagees of the Tenant's interest named by the Tenant provided such mortgagees have in every case agreed to make all proceeds of such insurance available to the Tenant for its repair or rebuilding. If the Landlord is included as an insured each policy referred to shall afford protection to the Landlord and the Tenant in respect of cross-liability between the Landlord and the Tenant, and if the Landlord is not included as an insured either such policy shall prevent the insurer exercising rights of subrogation against the Landlord, or the Tenant shall grant the appropriate release of the Landlord's liability so as to eliminate claims by the Tenant or its insurer against the Landlord in respect of any loss which the Tenant has agreed hereunder to insure. The Tenant shall from time to time whenever reasonably requested furnish to the Landlord certificates of insurance, certificates of renewal, receipt for payments of premiums and other documents appropriate to evidence the insurance from time to time in force hereunder. If the Tenant shall fail to insure as required under this clause, the Landlord after written notice to the Tenant may effect such insurance in the name of and at the expense of the Tenant, and the Tenant shall promptly repay to the Landlord all costs incurred by the Landlord in

so doing.

Landlord's  
Insurance

11.01 The Landlord shall take out or cause to be taken out and at all times keep or cause to be kept in force:

- (1) standard fire insurance extended coverage or additional perils supplemental contracts, including sprinkler leakage and insurance against all other hazards covered by policies normally in use from time to time for buildings and improvements of a similar nature similarly situated, on the Shopping Centre excluding the Bay Department Store Building, the Bay Malt Bar and the fixed improvements and equipment therein, and any improvements erected by the Tenant in the Bay Outdoor Selling Area, but including without limitation the Common Facilities and all fixed improvements and equipment therein, in an amount equal to the full replacement cost (but which may exclude the cost of foundations and excavations and permit a deductible amount not greater than that normally pertaining in similar insurance);
- (2) public liability and property damage insurance, including all risks normally insured in connection with the operation of property similar to the Shopping Centre, in respect of the Shopping Centre in an amount of at least \$5,000,000.00 for claims for personal injury or property damage arising out of any one occurrence; and
- (3) boiler and pressure vessel insurance in respect of any boiler and pressure vessels operated in the Shopping Centre (other than in the Bay Department Store Building) in such amounts as are normally effected having regard to the nature of the boilers and pressure vessels so operated.

Each policy of insurance referred to shall be with insurers generally acceptable to institutional lenders and upon terms which are reasonable and consistent with the provisions of this Bay Lease. All proceeds of insurance available under any policy which the Landlord effects or causes to be effected pursuant to paragraph (1) in the event of loss, damage or destruction to the Shopping Centre shall be payable to or available either to the Landlord or where appropriate in the case of loss, damage or destruction to any major department store the tenant of which is obligated to repair or rebuild the same, to such tenant, and any mortgagees of the Shopping Centre named by the landlord or where appropriate any mortgagees of such tenant's interest named by such tenant may in each case be included as insured parties as their interests may appear, provided such mortgagees have in every case agreed to make all proceeds of such insurance available in the event of loss, damage or destruction to the Shopping Centre available to the Landlord or such tenant, as the case may be, for the purpose of its repair or rebuilding (except in the case of The Equitable Life Assurance Society of the United States in respect of two registered mortgages existing at Opening Date which do not so provide, the Landlord nevertheless agreeing to use its best efforts to cause The Equitable Life Assurance Society of the United States to so agree). Either each policy referred to shall prevent the insurer exercising rights of subrogation against the Tenant, or the Landlord (or where appropriate, such tenant) shall grant the appropriate release of the Tenant's liability so as to eliminate claims by the Landlord or such tenant or their insurer against the Tenant in respect of any loss which the Landlord has agreed hereunder to insure or cause to be insured. The Landlord shall from time to time whenever reasonably requested furnish to the Tenant certificates of insurance, certificates of renewal, receipts for payments of premiums and other documents appropriate to evidence the insurance from time to time in force hereunder. If the Landlord shall fail to insure as required under this

clause, the Tenant after written notice to the Landlord may effect such insurance in the name of and at the expense of the Landlord, and the Landlord shall promptly repay to the Tenant all costs incurred by the Tenant in so doing.

## ARTICLE 12

### REPAIRS AND REBUILDING

Repair and  
Rebuilding  
by Tenant

12.00 The Tenant shall at all times during the Term maintain and keep in a good and substantial state of repair the Bay Department Store Building, the Bay Malt Bar (while it exists) and any improvements erected by the Tenant on the Bay Outdoor Selling Area (while situated thereon), consistent with the standards of a careful owner, and accordingly the Tenant will from time to time whenever required diligently carry out all repairs thereto, major and minor, structural or otherwise, exterior or interior, including those made necessary by age and damage or destruction by casualty; provided however that:

- (1) in the course of any repair or rebuilding the Tenant may alter or expand the Bay Department Store Building, the Bay Malt Bar and the Tenant's improvements on the Bay Outdoor Selling Area to the extent permitted by, and subject to compliance with, the provisions of this Bay Lease pertaining thereto;
- (2) the Tenant shall have the right at any time to remove, either permanently or temporarily, the Bay Malt Bar as provided in this Bay Lease;
- (3) the Tenant shall be entitled to cease, either permanently or temporarily, its seasonal use of the Bay Outdoor Selling Area, and shall be entitled and required to remove therefrom the Tenant's improvements on each cessation of such use; and
- (4) if within the period of two (2) years immediately before the expiration of the Term (taking into

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account any renewal terms then deemed to have been exercised) the Bay Department Store Building shall be damaged or destroyed to an extent such that according to the reasonable estimate of the Tenant the cost of repairing or rebuilding it shall exceed twenty-five per cent. (25%) of the replacement cost (excluding foundations and excavations) of the Bay Department Store Building, the Tenant may, by notice in writing to the Landlord given within thirty (30) days after the happening of such destruction or damage, elect to terminate this Bay Lease, in which event this Bay Lease shall terminate as of the date of the giving of such notice, the Tenant shall be relieved of its obligation to repair or rebuild the Bay Department Store Building, the Tenant shall assign to the Landlord all its interest in all insurance policies and any proceeds which may be payable thereunder in respect of such damage or destruction free of all encumbrances or other claims, the Tenant shall within sixty (60) days after such date of termination vacate the Leased Premises and rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to the date of such vacating.

The Tenant's obligation to repair hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services including the heating and any air-conditioning equipment, electrical wiring and fixtures and plumbing of the Bay Department Store Building and the Bay Malt Bar and to make all repairs required hereunder in good and workmanlike manner, with reasonable expedition and in accordance with all laws and regulations of governmental authorities having jurisdiction applicable thereto, but subject to Unavoidable Delay. In the

event that the Tenant after reasonable written notice shall fail to proceed with reasonable expedition to comply with its obligations under this clause 12.00, the Landlord, in addition to any other remedies it may have, shall have the right to take all such action as shall be reasonably required to remedy such failure on the part of the Tenant and any costs incurred by the Landlord in so doing shall be immediately repaid by the Tenant to the Landlord.

Landlord's  
Repairs and  
Rebuilding

12.01 The Landlord shall at all times during the Term maintain and keep or cause to be maintained and kept in a good and substantial state of repair the Shopping Centre including without limitation the Common Facilities including the Mall, Parking Facilities and the Common Utilities and all utilities and services necessary for the operation of the Shopping Centre (but excluding the Bay Department Store Building, the Bay Malt Bar and any improvements erected by the Tenant on the Bay Outdoor Selling Area) consistent with the standards of a careful owner, and accordingly the Landlord will from time to time whenever required diligently carry out or cause to be carried out all repairs thereto, major and minor, structural or otherwise, exterior or interior, including those made necessary by age and damage or destruction by casualty; provided however that:

- (1) in the course of any repair or rebuilding the Landlord may alter or expand the Shopping Centre to the extent permitted by, and subject to compliance with, the provisions of this Bay Lease pertaining thereto; and
- (2) if within the period of two (2) years immediately before the expiration of the Term (taking into account any renewal terms then exercised and any renewal terms remaining unexercised unless the Tenant has waived its right to exercise them as provided in this clause):

- (i) the building and improvements constituting the Shopping Centre (other than the Bay Department Store Building, the Bay Malt Bar and the improvements erected by the Tenant on the Bay Outdoor Selling Area) shall be damaged or destroyed to an extent such that according to the reasonable estimate of the landlord the cost of repairing or rebuilding them exceeds twenty-five percent (25%) of the replacement cost (excluding foundations and excavations) of all of such buildings and improvements, in the aggregate;
- (ii) the Landlord is not then obligated to any other tenant of the Shopping Centre or any mortgagee of the Shopping Centre to repair or rebuild such buildings or improvements or if obligated, such obligation has been waived or released;
- (iii) the Landlord shall have determined, and shall so agree with the Tenant, to abandon the continued use of the Shopping Centre as a shopping centre and either to demolish it or convert it to some other use and not to use it or permit it to be used for shopping centre purposes for at least ten (10) years; and
- (iv) if the Tenant shall have available to it any further option to renew the Term pursuant to clause 3.01, the Tenant shall have agreed with the Landlord to waive its right to exercise such option;

the Landlord may, by notice in writing to the Tenant given within thirty (30) days after the

happening of such damage or destruction elect to terminate this Bay Lease, in which event this Bay Lease shall terminate upon the expiration of such secondly mentioned period of thirty (30) days, the Landlord shall be relieved of its obligation to repair or rebuild the Shopping Centre, the Tenant shall within sixty (60) days after such date of termination vacate the Leased Premises and rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to the date of such vacating.

The Landlord's obligations to repair hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services including the heating and air-conditioning equipment, electrical wiring and fixtures and plumbing of the Shopping Centre (other than the Bay Department Store Building and the Bay Malt Bar), and to keep the Mall well decorated and attractive and all paving in Parking facilities in good repair and condition and properly striped, and to make all repairs required hereunder in good and workmanlike manner, with reasonable expedition and in accordance with all laws and regulations of governmental authorities having jurisdiction applicable thereto but, subject to Unavoidable Delay. In the event that the Landlord after reasonable written notice shall fail to proceed with reasonable expedition to comply with its obligations under this clause 12.01, the Tenant, in addition to any other remedies it may have, shall have the right to take all such action as shall be reasonably required to remedy such failure on the part of the Landlord and any costs incurred by the Tenant in so doing shall be immediately repaid by the Landlord to the Tenant, and failing such repayment may be deducted by the Tenant from contributions to Common Facilities Operating Cost as such contributions become due pursuant to clause 10.00.

ARTICLE 13COMPLIANCE WITH STATUTES AND BY-LAWS

Tenant's  
Compliance  
with  
By-laws

13.00 The Tenant shall comply with all legal requirements (including statutes, laws, by-laws, regulations, ordinances and orders of every governmental authority having jurisdiction) from time to time affecting the condition, equipment, maintenance, use or occupation of the Bay Department Store Building, the Bay Malt Bar and, as to the Tenant's improvements thereon and use and occupation thereof, the Bay Outdoor Selling Area. The Tenant shall have the right to contest the validity of any such legal requirement and to defer compliance therewith to the extent permitted by law pending any proceedings taken to contest the same, provided that such proceedings are prosecuted with due diligence and that such deferment of compliance does not subject any part of the Shopping Centre to forfeiture or sale or prevent the continued use and occupation of every part thereof. If the Tenant shall fail to comply with the provisions of this clause, the Landlord shall have the right, after written notice to the Tenant and unless the Tenant shall have within thirty (30) days thereafter commenced and proceeded diligently to remedy such failure, to take any necessary action to cause such failure to be remedied, and all costs incurred by the Landlord in so doing shall be promptly repaid by the Tenant to the Landlord.

Landlord's  
Compliance  
with  
By-laws

13.01 The Landlord shall comply with or cause to be complied with all legal requirements (including statutes, laws, by-laws, ordinances, regulations and orders of every governmental authority having jurisdiction) affecting the condition, equipment, maintenance, use or occupation of the Shopping Centre (other than the Leased Premises). The Landlord shall have the right to contest the validity of any such legal requirement and to defer compliance therewith to the extent permitted by law pending any proceedings to contest the same, provided that such proceedings are prosecuted with due diligence and that such deferment of compliance does not subject any part of the Shopping Centre to forfeiture or sale or prevent the continued use and occupation of every part thereof. If the Landlord shall fail to comply with

the provisions of this clause and such failure shall materially adversely affect the Tenant, the Tenant shall have the right, after written notice to the Landlord and unless the Landlord shall have within thirty (30) days thereafter commenced and proceeded diligently to remedy such failure, to take any necessary action to cause such failure to be remedied, and all costs incurred by the Tenant in so doing shall be promptly repaid by the Landlord to the Tenant.

ARTICLE 14

LEASES TO OTHER TENANTS

Merchandising Plan

14.00 (a) In making any lease (which expression includes any license or permit for use or occupancy) of any rentable space in the Shopping Centre (other than the Leased Premises, but including all kiosks in the Mall other than the Bay Malt Bar and all outdoor selling areas, and except for leases entered into by the Landlord prior to the commencement of the Term) the Landlord shall in all respects comply with the Merchandising Plan (as from time to time amended pursuant to this clause) and good leasing practice in first-class regional shopping centres. Accordingly the Landlord agrees that, without the written consent of the Tenant, no lease of any space or location in the Shopping Centre shown on the Merchandising Plan shall be made other than

- (1) for a type and quality or class of use which is designated for such space or location on the Merchandising Plan, and
- (2) to a tenant whose business and reputation is consistent with such type and quality or class of use and with good leasing practice in first-class regional shopping centres, and in the case of a lease of a space or location within 100 feet of any main entrance to the Bay Department Store from the Mall, whose identity has been approved by the Tenant (which approval may be arbitrarily withheld).

(b) Upon any expansion of the Shopping Centre occurring as permitted by this Bay Lease, the Landlord and the Tenant shall agree upon additions to the Merchandising Plan extending it to apply to all newly constructed space intended for occupancy by retail and service tenants, and such additions shall be made in accordance with good leasing practice for first-class regional shopping centres and so as to maintain in all material respects a fair balance of customer attraction throughout the Shopping Centre, and shall be consistent with the principles adopted by the parties in agreeing upon the original Merchandising Plan and with all the provisions of this Bay Lease, and both parties shall act reasonably in reaching such agreement.

(c) If the Landlord despite its best efforts is unable to lease any location or space in accordance with the Merchandising Plan it may apply in writing to the Tenant requesting the Tenant's consent to a change in the Merchandising Plan as to the type and quality or class of use for which such location or space is to be leased. Such application shall be accompanied by particulars of the proposed type and quality or class of use and (if known) the proposed tenant therefor, and shall state the Landlord's opinion that the requested change would be in the best interests of the Shopping Centre and in accordance with good leasing practice for first-class regional shopping centres. The Tenant's consent to any such requested change shall not be / unreasonably withheld so long as the proposed change is in accordance with good leasing practice in first-class regional shopping centres, but nevertheless the Tenant's consent may at all times be arbitrarily withheld if:

(1) the space or location in question is within 100 feet of any main entrance to the Bay Department Store Building from the Mall, or

(2) the requested change, taking into account the

proposed type and quality or class of use, would not maintain in all material respects a fair balance of customer attraction throughout the Shopping Centre, or would violate any provision of this Bay Lease.

The Tenant shall promptly consider every such application and, where it declines to consent, shall state its reasons except where such consent may be arbitrarily withheld.

Required  
Lease Pro-  
visions and  
Enforcement

14.01 In every lease which the Landlord shall make to any tenant of the Shopping Centre other than the Tenant, and except for leases entered into by the Landlord prior to the commencement of the Term, the location or space leased shall be required to be used only for the type and quality or class of use required by the Merchandising Plan (as from time to time amended pursuant to clause 14.00) and for no other use whatsoever, and every such lease shall contain covenants by such tenant which are consistent with the covenants of the Landlord to the Tenant contained in this Bay Lease and which, among other things, are effective to prevent any uses, misuses, abuses or nuisances or other activities inconsistent therewith or with the conduct of a first-class regional shopping centre. Except in the case of any lease to a tenant of a major department store (which may contain covenants respecting assigning, subletting and the granting of concessions or permits for occupancy no more favourable to the tenant than those contained in this Bay Lease) the Landlord shall use its best efforts to obtain in every such lease covenants by the tenant to prevent assigning, subletting or the granting of concessions or permits for occupancy by such tenant otherwise than with the consent of the Landlord which may be arbitrarily withheld. The Landlord will take all reasonable action necessary to enforce compliance by all tenants of the Shopping Centre with the provisions required to be contained in leases pursuant to this clause, and with comparable provisions contained in leases entered into by

the Landlord prior to the commencement of the Term if and to the extent there are such comparable provisions, including appropriate and prompt action to restrain or cure any breach thereof or if necessary to terminate any lease under which such breach has occurred, where such breach is substantial or has a material and adverse effect upon the Shopping Centre.

Assigning  
and Sub-  
letting by  
Other  
Tenants

14.02 The Landlord shall not permit any tenant of the Shopping Centre (other than the Tenant whose rights and obligations are governed by this Bay Lease, tenants of other major department stores referred to in clause 14.03 and whose respective rights are governed by their respective leases and to which clause 14.03 applies, and tenants under leases entered into by the Landlord, either prior to the commencement of the Term or after the commencement of the Term but in compliance with clause 14.01, if and to the extent such leases do not contain provisions requiring or enabling the Landlord to refuse such permission) to assign its lease, or sublet any portion of its premises, or grant any concession or permit any person other than such tenant to occupy or carry on business in any portion of the premises leased to such tenant, or do any other act or thing which would result in a change in the type and quality or class of use specified for the location or space leased to such tenant or a change in the identity of the person occupying or carrying on business therein, without the written consent of the Landlord. Such consent of the Landlord shall not be given without the written approval of the Tenant in every circumstance where the consent or approval of the Tenant would have been required in order for the Landlord to lease the space or location in question for the type and quality or class of use which will result and to the tenant or occupant who will carry on business in such space or location if such consent of the Landlord is given.

Major  
Department  
Stores

14.03 The Landlord will take all reasonable action necessary to enforce the provisions of every lease to a tenant of a major department store (other than the Bay Department

Store Building) in the Shopping Centre (and being the Sayvette and Miracle Mart department stores shown on the Site Plan) requiring such tenant to carry on therein the business of a major department store, and not to assign or sublet without the consent of the Landlord except where by the terms of such lease such consent is not required (and which consent, where the Landlord is entitled by the terms of such lease to withhold it, will not be given by the Landlord without the written approval of the Tenant).

Prohibited  
Uses

14.04

The Landlord will not permit any of the following businesses to be carried on in any part of the Shopping Centre:

- (1) any business involving the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, or merchandise damaged by fire or purported to be damaged by fire unless actually damaged by a fire on the premises;
- (2) any business other than in the Miracle Mart department store conducted in whole or principally as a discount operation or in part as a discount operation so as to give the impression that it is being conducted principally as a discount operation, unless approved by the Tenant in writing (except to the extent that a discount store type of operation is expressly indicated as being permitted in a certain location in the Shopping Centre by the Merchandising Plan or is expressly permitted by the terms of any lease, or renewal thereof similarly providing, where in each case the original lease was entered into by the Landlord prior to the commencement of the Term);
- (3) any auction or pawnshop, or any business in connection with which fraudulent or deceptive advertising or selling procedures are adopted, or any business which because of the merchandise likely to be sold or the merchandising or pricing methods likely to be used would tend to lower the

character of the Shopping Centre;

- (4) any department store or order office for a department store, except in the Bay Department Store Building, the department stores identified on the Site Plan as existing department stores, the proposed Cardinal Catalogue Store as shown on the Merchandising Plan and any future department store buildings which may be permitted to be constructed in any expansion of the Shopping Centre with the approval of the Tenant pursuant to the express provisions of this Bay Lease; and
- (5) any business which constitutes a nuisance.

#### ARTICLE 15

##### MERCHANTS' ASSOCIATION

Merchants' Association 15.00 The Landlord has caused to be formed, and shall cause to be continued, a Merchants' Association of the Shopping Centre, the objects of which are to encourage its members in fair and courteous dealing with the public, to foster ethical business practices, to advertise and promote the Shopping Centre and in general to aid the common interest of its members. The Landlord shall require all tenants of the Shopping Centre whose business is merchandising and retail service, other than banks, theatres, purveyors of liquor or beer, government agencies and other tenants prevented by law or established and generally recognized policy from belonging thereto, to join and maintain membership in the Merchants' Association, and shall use its best efforts to cause other tenants whose business is not merchandising and retail service, but who do business with the public and are appropriate for membership, and who are not prevented from doing so by law or other circumstances beyond their control, to join and maintain membership in the Merchants' Association.

Tenant's Membership 15.01 The Tenant will upon or promptly after the Opening Date join and thereafter maintain membership in the Merchants' Association of the Shopping Centre, abide by its constitution (including its by-laws and rules and regulations) and contribute by way of dues the Tenant's fair proportion of its annual budget,

but provided that

- (i) the constitution (including by-laws, rules and regulations) of the Merchants' Association shall be reasonable and non-discriminatory and shall not impose any unreasonable requirement upon the Tenant;
- (ii) all tenants of other major department stores and of the food supermarket and at least 90% (both by number and according to the Gross Leaseable Area of premises occupied) of the other retail and service tenants of the Shopping Centre not prevented from belonging thereto by law or established and generally recognized policy from belonging thereto shall join and maintain membership in the Merchants' Association, abide by its constitution (including by-laws, rules and regulations) and contribute by way of dues their fair proportion of its annual budget (and, in the case of tenants of other major department stores in the Shopping Centre, on a basis not more favourable to such tenants than the basis of contributions by the Tenant under this Bay Lease); and
- (iii) the maintenance of the Tenant's membership in the Merchants' Association shall not require the Tenant to adopt business practices inconsistent with its established standards, inhibit it in the full exercise of its rights under this Bay Lease, or require contributions from it in excess of those paid per square foot of Gross Leaseable Area by tenants of other major department stores in the Shopping Centre or (unless the Tenant shall consent otherwise) in excess of 10¢ per annum per square foot of Gross Leaseable Area of the Bay Department Store Building.

Landlord's  
Support of  
Merchants'  
Association

15.02 The Landlord shall actively support the Merchants' Association, whether as a member or as owner of the Shopping Centre, and shall contribute to its annual budget an amount which is not less than the proportion of such annual budget which is usually contributed from time to time by the owners of first-class regional shopping centres in the trading area.

#### ARTICLE 16

#### BAY MALT BAR AND OTHER MALL KIOSKS

Bay Malt  
Bar

16.00 The following additional provisions shall apply to the Bay Malt Bar, and the Tenant shall comply therewith in the exercise of the rights granted to it pursuant to clause 2.02, and in addition to compliance with the other provisions of this Bay Lease applicable to the Bay Malt Bar including the provision as to use thereof in paragraph (2) of clause 6.00, as to signs thereon in clause 6.07, as to taxes thereon in clause 9.00 and as to the repair thereof in clause 12.00:

*outdoor  
selling* →

*any type of sales*

- (1) The right of the Tenant to sell certain particular items of merchandise in the Bay Malt Bar is acknowledged by the Tenant to be subject to certain restrictions contained in covenants which the Landlord has prior to the date of this Bay Lease entered into with certain other tenants of the Shopping Centre, and the particulars of which have been notified to the Tenant by the Landlord prior to the execution of this Bay Lease. Further, the right of the Tenant to use the Bay Malt Bar for the sale of food is acknowledged by the Tenant to be subject to the ability of the Landlord to obtain consent from another tenant of the Shopping Centre with whom the Landlord has prior to the date of this Bay Lease entered into covenants restricting the sale of food in the Shopping Centre (other than in certain locations including the Bay Department Store Building) and

if and to the extent that such consent is unobtainable the right of the Tenant to sell food may be prevented or limited. The Landlord shall use its best efforts to obtain the necessary consent of such other tenant to permit the sale of food in the Bay Malt Bar, but if such consent cannot be obtained the Tenant agrees to limit the sale of food in the Bay Malt Bar to whatever extent is necessary to avoid a breach of the Landlord's covenant referred to, and in any such event shall use the Bay Malt Bar for the sale of merchandise normally sold in department stores which is other than food and not prohibited by any of the restrictions referred to;

- (2) The Bay Malt Bar Site shall be an area and location in the Mall in the immediate vicinity of the Mall entrance to the Bay Department Store Building having an area of approximately 400 square feet, the site of which shall be as selected by the Tenant and approved by the Landlord (such approval not to be unreasonably withheld), but shall be the site shown coloured in red on the Site Plan if no other site shall have been selected by the Tenant which the Landlord shall approve or be obligated to approve hereunder. The Bay Malt Bar Site thus determined may be relocated from time to time by the Tenant to an alternative site complying with the criteria mentioned selected by the Tenant provided such alternative site has been approved by the Landlord (such approval not to be unreasonably withheld);
- (3) The Tenant may construct and from time to time alter, reconstruct, remove and replace the Bay Malt Bar provided that the Bay Malt Bar shall always be located upon the Bay Malt Bar Site, the

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Bay Malt Bar shall consist of a structure appropriate for its permitted use, the design thereof shall be architecturally compatible with the Mall, and such design shall be subject to the approval of the Landlord (such approval not to be unreasonably withheld);

- (4) The Tenant may at any time and from time to time cease or abandon its use of the Bay Malt Bar, without prejudice to the Tenant's right at any later time and from time to time to recommence and continue such use, but provided that whenever the Tenant shall cease its use (other than while prevented by Unavoidable Delay) or shall abandon such use, the Tenant shall remove the Bay Malt Bar from the Bay Malt Bar Site and leave the Bay Malt Bar Site in its original condition as part of the Mall available for common use;

- Bay Malt Bar*  
*Landlord's Work*
- (5) The Landlord shall initially install at the Bay Malt Bar Site a drain, cold water line and the means of obtaining electrical service sufficient to operate lighting and other electrical equipment in the Bay Malt Bar, but water and electrical consumption therein shall be paid for by the Tenant;

- Bay Malt Bar rent*
- (6) During each and every period during the Term in which the Tenant shall have and use on the Bay Malt Bar Site the Bay Malt Bar, the Tenant shall pay to the Landlord a monthly license fee which shall be as follows, according to the portion of the Term within which such period falls:

Portion of TermMonthly License Fee

From the date upon which the Bay Malt Bar first opens for business (herein referred to as the "Initial Opening Date") until the day preceding the fifth anniversary of the Initial Opening Date \$500.00

From the fifth anniversary of the Initial Opening Date until the day preceding the tenth anniversary of the Initial Opening Date \$533.33

From the tenth anniversary of the Initial Opening Date until the day preceding the fifteenth anniversary of the Initial Opening Date \$566.67

From the fifteenth anniversary of the Initial Opening Date until the day preceding the twentieth anniversary of the Initial Opening Date \$600.00

From the twentieth anniversary of the Initial Opening Date until the day preceding the twenty-fifth anniversary of the Initial Opening Date \$633.33

From the thirtieth anniversary of the Initial Opening Date until the day preceding the thirtieth anniversary of the Initial Opening Date \$666.67

From and after the thirtieth anniversary of the Initial Opening Date, the monthly license fee shall be a sum which represents a fair monthly fee in all the circumstances, to be determined as of the thirtieth anniversary of the Initial Opening Date, but to be redetermined at five (5) year intervals thereafter, and to be determined by arbitration pursuant to the provisions of clause 22.01 if any determination or redetermination thereof as may be required has not been agreed between the Landlord and the Tenant after a reasonable period of negotiation.

Such license fee shall be payable to the Landlord monthly in advance at the commencement of each such period of use and on the first day of each calendar month thereafter during such period of use, in the same manner as rent pursuant to clause 4.00 and subject to a like adjustment

in the case of any broken portion of a calendar month included in any such period of use; and

- (7) In any period or periods within the Term during which the Tenant does not elect to have and use the Bay Malt Bar upon the Bay Malt Bar Site, the Landlord shall (notwithstanding paragraph (1) of clause 16.01) have the right to use the Bay Malt Bar Site for the purpose of constructing a kiosk for lease or license by the Landlord to a tenant or licensee, provided that:

- (i) the Landlord shall first have ascertained, by enquiry of the Tenant, that the Tenant does not propose to commence or recommence the use of the Bay Malt Bar Site for purposes of a Bay Malt Bar for a period of at least one year;
- (ii) the Landlord shall have obtained the approval of the Tenant to the design of the kiosk proposed to be constructed by the Landlord, the proposed use thereof, and the proposed lessee or licensee thereof; and
- (iii) the Landlord shall enter into a lease or license of such kiosk in compliance with the Tenant's approval, and which shall provide that such lease or license shall be terminable by the Landlord upon six months notice to the tenant or licensee thereof (although the Landlord may agree that such termination shall not be effected in less than one year);

but in such event the Tenant, if it elects to commence or recommence the use of the Bay Malt Bar Site, may require the Landlord to terminate the lease or license made by the Landlord and above referred to, in accordance with the terms thereof.

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Other Mall  
Kiosks

16.01 The Landlord may from time to time place or permit kiosks in the Mall (in addition to the Bay Malt Bar) subject to the following provisions:

- (1) Such kiosks shall not be placed within 100 feet of any entrance to the Bay Department Store Building from the Mall, but may otherwise be placed in the locations designated therefor on the Merchandising Plan, or such other locations compatible with pedestrian traffic flow and the maintenance of a fair balance of customer attraction within the Mall as the Tenant may from time to time approve (such approval not to be unreasonably withheld);
- (2) Kiosks shall be limited to a reasonable number and shall be of a design which is suitable for their permitted use and compatible with the architecture of the Mall, and such design shall be approved by the Tenant (such approval shall not be unreasonably withheld); and
- (3) Kiosks shall be used only for retail and service purposes compatible with a first-class regional shopping centre, and the use of each kiosk, if other than a use which has been designated on the Merchandising Plan, shall be approved by the Tenant, and in each case the identity of the tenant or occupant of each kiosk shall be compatible with good leasing practice in first-class regional shopping centres and shall be approved by the Tenant (such approval in each case not to be unreasonably withheld).

ARTICLE 17BAY AND OTHER OUTDOOR SELLING AREAS

Bay Outdoor 17.00      The following additional provisions shall apply  
Selling Area      to the Bay Outdoor Selling Area, and the Tenant shall comply  
therewith in the exercise of the rights granted to it pursuant to clause 2.03, and in addition to compliance with the other provisions of this Bay Lease applicable to the Bay Outdoor Selling Area including the provision as to the use thereof in paragraph (4) of clause 6.00, as to signs thereon in clause 6.07, as to taxes thereon in clause 9.00 and as to the repair of improvements erected by the Tenant thereon in clause 12.00:

- (1)      The Bay Outdoor Selling Area shall be an area in the Parking Facilities contiguous to the Bay Department Store Building having an area not exceeding 10,000 square feet, the site of which shall be as selected by the Tenant and approved by the Landlord (such approval not to be unreasonably withheld), but shall be the site shown cross-hatched in red on the Site Plan if no other site shall have been selected by the Tenant which the Landlord shall approve or be obligated to approve hereunder;
- (2)      The use of the Bay Outdoor Selling Area permitted by paragraph <sup>3</sup>~~4~~ of clause 6.00 shall be a seasonal use limited to the period from April 1st to October 31st in each year unless the Landlord shall approve a more extended period of use (such approval not to be unreasonably withheld having regard to the practice current from time to time in first-class regional shopping centres);
- (3)      The Tenant may construct and from time to time alter, reconstruct, remove and replace minor structures, including fences, awnings, kiosks and lighting fixtures, on the Bay Outdoor Selling Area provided such structures are affixed so as to cause a minimum of damage to the paving thereon,

and upon each cessation or abandonment of the Tenant's use (including its seasonal cessation of use) of the Bay Outdoor Selling Area the Tenant shall remove all such structures and restore the paving including any striping thereon to a condition suitable for the resumption of its use as part of the Parking Facilities;

(4) The Tenant may at any time and from time to time cease or abandon its seasonal use of the Bay Outdoor Selling Area, without prejudice to the Tenant's right at any later time and from time to time to recommence and continue such use; and

(5) The Landlord shall furnish electrical service to the Bay Outdoor Selling Area sufficient to operate lighting and other electrical equipment thereon, but the cost of installing such electrical service thereto and the cost of electrical consumption thereon during the Tenant's use and occupancy thereof shall be paid for by the Tenant.

Other Outdoor  
Selling  
Areas

17.01 In addition to the Bay Outdoor Selling Area the Landlord may from time to time permit each tenant of a major department store existing at Opening Date, each tenant of any future major department store having a Gross Leaseable Area of not less than 100,000 square feet and the tenant of the food supermarket in the Shopping Centre to operate an outdoor selling area. Such outdoor selling areas shall be located in the Parking Facilities and, in the case of outdoor selling areas occupied by tenants of major department stores existing at Opening Date shall be located in the respective areas designated for such use on the Site Plan, in the case of an outdoor selling area occupied by the food

supermarket tenant shall be located in an area or areas immediately contiguous to the food supermarket, and in the case of outdoor selling areas occupied by future major department store tenants shall be located in areas reasonably contiguous to their respective department stores and shall not exceed in any case an area greater than 10,000 square feet or eight per cent (8%) of the Gross Leaseable Area of the department store with which it is associated. Each such outdoor selling area shall be used only as an outdoor selling area, to be operated only by the tenant entitled to occupy it seasonally during periods not commencing earlier than April 1st or ending later than October 31st in any year or such more extended period of use as may represent current practice from time to time in first-class regional shopping centres. The outdoor selling area occupied by the tenant of the food supermarket shall be used only for the purpose of selling any type of merchandise normally sold by food supermarkets and appropriate for outdoor sale, and the outdoor selling areas occupied by the tenants of major department stores shall be used only for the purpose of selling any type or types of merchandise normally sold by department stores and appropriate for outdoor sale, including without limitation garden supplies and recreational and sports equipment, and in each case shall be licensed to such tenant for such purpose upon terms not more favourable to such tenant than the provisions of this Bay Lease applicable to the licensing to the Tenant of the Bay Outdoor Selling Area.

ARTICLE 18

AUTOMOTIVE CENTRE

18.00 If at any time the Tenant so desires (provided the Landlord, having complied with clause 18.02, shall not have previously entered into an agreement for an automotive centre with any other party), the Landlord shall negotiate with the Tenant in good faith with a view to reaching agreement with the Tenant for the lease to the Tenant of a suitable site located upon the Shopping Centre Lands (and to be

Negotia-  
tions  
with  
Tenant

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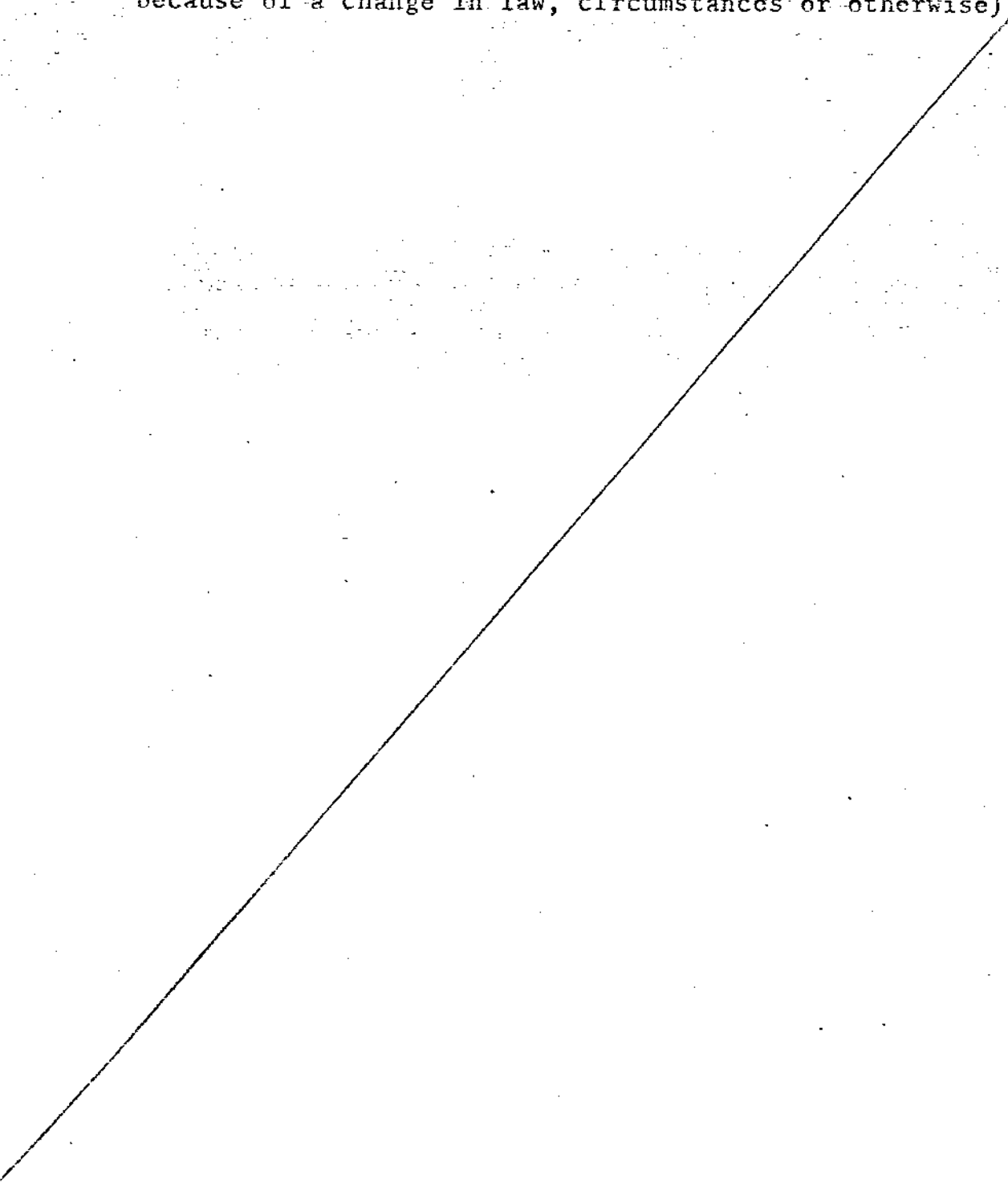
determined as provided in clause 18.01) for an automotive centre for the sale of tires, batteries and automotive accessories (but which may include gasoline pumps and facilities for servicing vehicles), and shall use its best efforts to reach such agreement with the Tenant, and shall not enter into any negotiations with any other party pertaining to any such site or automotive centre unless, despite such best efforts, agreement with the Tenant shall not have been reached upon the expiration of three (3) months after the commencement of negotiations between the Landlord and Tenant (which agreement must necessarily however be conditional upon legal approval being obtainable for a suitable site, as provided in clause 18,01 if such legal approval does not then exist or is not then available).

Site for  
Automotive  
Centre

18.01 If the Landlord and Tenant shall reach agreement as contemplated by clause 18.00, the Tenant shall use its best efforts to obtain legal approval (consisting of all necessary amendments to municipal zoning and building by-laws and other applicable statutes and regulations and all necessary consents and approvals thereunder) necessary to permit the one acre site located on the Shopping Centre Lands and shown coloured in brown on the Site Plan to be used for the construction of the automotive centre, and the Landlord shall co-operate fully with the Tenant and give all necessary consents in connection with the obtaining of such legal approval. In the event that such legal approval cannot, despite such best efforts, be obtained for the site above mentioned, the Tenant shall similarly use its best efforts to obtain such legal approval for an alternative site, if one is available elsewhere on the Shopping Centre Lands, which is suitable for the purpose, comparable to the original site, such as not to detract from the function and use of the Shopping Centre, and has been approved by each of the Landlord and

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the Tenant (who shall each act reasonably in giving such approval). If after the use by the Tenant of its best efforts for a reasonable period of time, legal approval to a site meeting the requirements of this clause cannot be obtained, any agreement between the Landlord and the Tenant reached pursuant to clause 18.00 shall be regarded as frustrated and be at an end (but this shall not prevent the Tenant again requiring negotiations pursuant to clause 18.00 at a later date, if the Tenant reasonably believes at such later date that such legal approval might be obtainable, because of a change in law, circumstances or otherwise).



Negotiations 18.02  
with Other  
Parties

If the Landlord shall not have been required by the Tenant to negotiate with it pursuant to clause 18.00, or shall have been so required but agreement shall not have been reached despite the good faith of the parties within the time allotted therefor by clause 18.00, the Landlord shall be entitled to negotiate with other parties with respect to the site for the automotive centre or in any wise concerning an automotive centre, but if the Landlord shall reach an agreement (subject to the Tenant's rights under this clause 18.02) with any other party, the Landlord shall, prior to entering into any agreement with such other party, offer to lease such site or automotive centre or as the case may be to the Tenant on the same terms as the proposed agreement with such other party, and such offer shall be open for acceptance by the Tenant for sixty (60) days. If the Tenant shall not accept such offer within such period of sixty (60) days, the Landlord may enter into an agreement with such other party (but only upon the same terms as were offered to the Tenant and not on any terms substantially different therefrom or more favourable in any material respect to such other party, unless the Landlord shall again make an offer to the Tenant in similar manner). In any agreement which the Landlord may enter into relating to an automotive centre, appropriate provisions shall be contained to ensure that the automotive centre is on a suitable site as contemplated by clause 18.01 and shall be architecturally compatible with the other buildings in the Shopping Centre, that the use of such site shall be limited to an automotive centre as previously described and controlled so as not to interfere with the function and use of the Shopping Centre, including the access thereto and traffic circulation thereof, and that all parking which is required for the proper operation of such automotive centre and to meet all municipal requirements thereof shall be contained on such site and no added burden shall be imposed thereby upon the Parking Facilities provided for other buildings in the Shopping Centre, and the Landlord shall provide any additional parking spaces in the Parking Facilities on the Shopping Centre Lands (other than on such site) as may be

required in order to replace any parking spaces displaced by the creation of such site and to meet all the requirements of this Bay Lease relating to the provision of Parking Facilities.

ARTICLE 19

EXPANSION AND ALTERATION OF  
BAY DEPARTMENT STORE BUILDING

Expansion and Alteration of Bay Department Store Building 19.00 The Tenant shall have the right at any time and from time to time to alter, reconstruct or expand the Bay Department Store Building, but subject to the following provisions:

- (1) The Bay Department Store Building shall be at all times a department store building appropriate for its intended use, shall be architecturally compatible with the Shopping Centre and shall be integrated with the Mall in the manner in which it was to integrated at the time of its original construction;
- (2) Any expansion of the Bay Department Store Building shall be limited to a vertical expansion by the addition of a third level thereto, and the Bay Department Store Building shall always have a Gross Leaseable Area not less than that which it had when initially constructed and shall never have a Gross Leaseable Area greater than 190,000 square feet;
- (3) In the case of any substantial alteration or any reconstruction or expansion of the Bay Department Store Building, the plans and specifications therefor shall be submitted to the Landlord for its approval, but such approval shall not be unreasonably withheld provided the requirements of this clause are otherwise complied with;
- (4) Any substantial alteration and any reconstruction or expansion of the Bay Department Store Building shall be performed in accordance with the plans and specifications which have been approved by the

Landlord, and in the performance of every such alteration, reconstruction or expansion the Tenant will perform all work involved with reasonable expedition (but subject to Unavoidable Delay) and in a good and workmanlike manner and in accordance with the general standards which were applicable to the initial construction of the Bay Department Store Building and will comply with all applicable municipal by-laws and other legal requirements pertaining to such work; and

(5) In the event of an expansion of the Bay Department Store Building the Tenant shall at its own expense construct such additional Parking Facilities, either at grade level or if necessary in parking decks or structures, and (unless the Landlord shall otherwise agree) to be constructed on the Bay Department Store Lands, as may be necessary to furnish sufficient additional parking spaces such that:

- (i) the number of car spaces in the Parking Facilities on the Bay Department Store Lands including such additional Parking Facilities constructed by the Tenant (wherever situated), calculated and determined on the basis that such number of car spaces is allocated only to the Bay Department Store Building and the expansion thereof, and not to any other rentable space in the Shopping Centre, is sufficient to meet all legal requirements in respect of such expansion; and
- (ii) provide by way of a "parking ratio" at least 5.5 additional spaces (or such other number of spaces if any as may have been agreed

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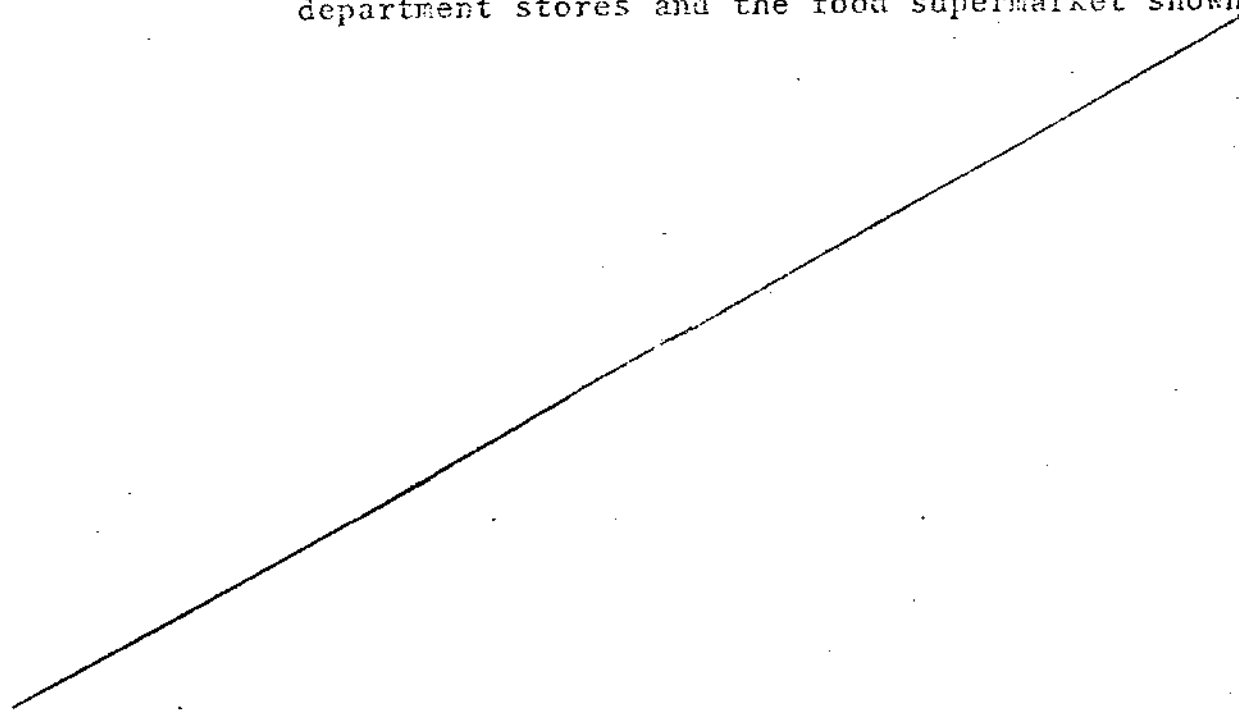
between the Landlord and the Tenant in respect of any previous addition to or enlargement or expansion of the Shopping Centre or as may then be agreed) for each 1,000 square feet of Gross Leaseable Area of rentable space which is used for retail purposes in such expansion.

ARTICLE 20

EXPANSION AND ALTERATION  
OF SHOPPING CENTRE

Permitted  
Alterations  
and  
Expansions

20.00 The Landlord shall have the right at any time and from time to time, where not otherwise prohibited by any provision of this Bay Lease, and subject to the additional conditions in clause 20.01, to alter, reconstruct or expand the buildings and improvements in the Shopping Centre, including the Common Facilities but excluding the Leased Premises, as follows:

- (1) The two department store buildings designated on the Site Plan as the Sayvette and Miracle Mart department stores and the food supermarket shown
- 

on the Site Plan may in each case be altered or expanded to the extent that the tenants thereof have the right to alter or expand their respective premises under the leases entered into by the Landlord prior to the commencement of the Term, and in any event the Landlord may permit the construction of one additional storey to each of such two department stores whether or not permitted by such leases thereof; provided that such premises shall at all times be appropriate for their intended uses and architecturally compatible with the Shopping Centre, shall be integrated with the Mall in the manner in which they were so integrated at the time of their original construction, shall be located upon their present sites and shall continue to have Gross Leaseable Areas not less than that which they had when initially constructed;

- (2) No major department stores or food supermarkets shall be constructed in the Shopping Centre without the consent of the Tenant, other than the Bay Department Store Building and the other department store buildings and the food supermarket referred to in paragraph (1) (but this shall not prevent the renovation or reconstruction of any of the department stores or food supermarket mentioned provided the requirements of paragraph (1) are complied with);
- (3) The premises in the Shopping Centre intended for occupancy by retail and service tenants, other than the Bay Department Store Building and the other department store buildings and the food supermarket referred to in paragraph (1), may from time to time be altered, reconstructed or expanded, including construction of additional retail and service premises, subject as follows:

(i) the retail and service premises existing at the Opening Date shall not be reduced in size or substantially altered, either as to design or location, without the consent of the Tenant; and

(ii) any expansion of retail and service premises, and any additional retail and service premises constructed, shall be subject to the Tenant having first approved in principle such expansion or additional construction and, having been so approved, shall be designed and located in accordance with plans which have been approved by the Tenant (such latter approval not to be unreasonably withheld provided the criteria applicable thereto set out in this clause and in clause 20.01 are complied with), shall be appropriate for their intended use and suitable for a first-class regional shopping centre, shall be architecturally compatible with the Shopping Centre and suitably integrated therewith and with the Mall and shall be constructed and leased for purposes and to tenants which are compatible with a first-class regional shopping centre and in accordance with the Merchandising Plan and the provisions of Article 14;

(4) In addition to the retail and service premises contemplated in paragraph (3), the Landlord may, subject to the Tenant having first approved in principle, and subject to compliance with the criteria set out in clause 20.01, construct on the Shopping Centre Lands buildings for office use or for other non-retail commercial uses which are compatible with and not injurious to the Shopping Centre and the conduct of a first-class regional shopping centre on the Shopping Centre Lands (but in no event to include any manufacturing or industrial undertaking,

outside storage, terminal, warehouse or lot for equipment or new or used vehicles) and which may include one only automotive service centre or other building or premises for use for any of the purposes referred to in paragraph (2) of clause 6.00, but only provided that the requirements of Article 18 have been complied with; and

(5) The Common Facilities may from time to time be altered, reconstructed or expanded, subject as follows:

- (i) the Common Facilities shall be at all times suitable for their intended purpose, appropriate for a first-class regional shopping centre and in compliance with all the provisions of this Bay Lease;
- (ii) the Mall as it existed on Opening Date shall not be substantially altered without the consent of the Tenant, but may be extended subject to the criteria set out in clause 20.01; and
- (iii) the Parking Facilities including as to the number of parking spaces to be available therein and as to the approval of the Tenant to the design and layout thereof as provided in subclause 7.04(c), shall at all times be in compliance with all the provisions of this Bay Lease; and
- (iv) additional parking spaces may be provided in the Parking Facilities by means of grade level or deck parking, but the design and location of the Parking Facilities including any parking structures shall be such as to maintain a fair balance of the availability of parking in the Shopping Centre and an adequate and unimpeded traffic flow and access to such parking and to all retail and service premises in the Shopping Centre including the Leased Premises; and shall have been approved by the Tenant (such approval not to be unreasonably withheld).

Additional  
Conditions  
on  
Expansions

20.01 In connection with any expansion of the buildings and improvements in the Shopping Centre permitted by clause 20.00, the following additional requirements shall be complied with:

- (1) All construction shall be architecturally compatible with the buildings from time to time existing in the Shopping Centre;
- (2) All new construction on the Shopping Centre Lands including extensions of the Mall and retail space associated therewith, alterations or additions to Parking Facilities and all other new construction including the expansion of any existing premises (but except expansions of the Bay Department Store Building permitted hereunder and expansions of the two department store buildings and the food supermarket permitted by paragraph (1) of clause 20.00) shall be such as to maintain a fair balance between the various portions of the Shopping Centre from time to time existing, having regard to all relevant factors including customer attraction, accessibility, the type, convenience and quantity of parking available in Parking Facilities, traffic flow and the facility of access by vehicles and pedestrians;
- (3) Notwithstanding any other provision of this Bay Bay Lease, except for the Bay Department Store Building and any expansion thereof or Parking Facilities or other improvements constructed by the Tenant, and except for the Parking Facilities initially constructed by the Landlord on the Bay Department Store Lands, no building or improvement of any nature shall (without the consent of the Tenant, which may be arbitrarily withheld) be constructed on the Bay Department Store Lands;

- (4) Outline plans and specifications for any expansion or substantial alteration which the Landlord is entitled to make hereunder shall be submitted to the Tenant for the Tenant's approval (such approval not to be unreasonably withheld provided all applicable criteria set out in this Article have been complied with); and
- (5) Any substantial alteration and any reconstruction or expansion permitted hereunder shall be performed by the Landlord with reasonable expedition and in a good and workmanlike manner and in accordance with the general standards which were applicable to the initial construction of the Shopping Centre and in compliance with all applicable municipal by-laws and other legal requirements pertaining thereto.

#### ARTICLE 21

##### ASSIGNMENTS, TRANSFERS AND ENCUMBRANCES OF INTEREST BY LANDLORD AND TENANT

Restrictions  
on Assign-  
ment, Sub-  
letting and  
Encumbering  
by Tenant

21.00 The Tenant shall not assign this Bay Lease or sublet or grant concessions or other rights of use and occupancy with respect to the whole or any part of the Leased Premises without in each case the prior written consent of the Landlord (which consent may be arbitrarily withheld) except in the following circumstances:

- (1) The Tenant may assign this Bay Lease or sublease the whole or any part of the Leased Premises to any company which is a subsidiary of the Tenant, but only on condition that such company shall remain a subsidiary or that upon ceasing to be such a subsidiary it shall re-assign or surrender its interest in the Leased Premises to the Tenant;
- (2) The Tenant may assign this Bay Lease:
- (i) to any company with which the Tenant merges or consolidates, or

(ii) to any company to which it sells all or substantially all of its retail department store business and assets in Southern Ontario;

(3) The Tenant may assign this Bay Lease free of the restrictions imposed by the preceding provisions of this clause in the event that circumstances occur which would have entitled the Tenant, had it elected to do so, to terminate this Bay Lease under the provisions of clause 3.03;

(4) The Tenant may sublease or grant concessions or licenses to use and occupy any part or parts of the Leased Premises provided that the Bay Department Store Building continues to be carried on, and retains the appearance of being carried on, as an integrated department store and that the businesses conducted in the Bay Malt Bar and in the Bay Outdoor Selling Area continue to retain an identification with the business carried on in the Bay Department Store Building; and

(5) The Tenant may assign or sublease by way of security or otherwise charge its interest under this Bay Lease to a mortgagee or creditor as security in connection with any bona fide borrowing by the Tenant (in which event such mortgagee or creditor may foreclose, take possession, exercise a power of sale or exercise any other normal remedies of a secured creditor with respect to this Bay Lease and the Leased Premises without such action constituting a breach of any of the provisions of this Bay Lease, and the mortgagee or creditor while in possession, and any purchaser from the mortgagee or creditor in exercise of the power of sale, shall be deemed to be a permitted assignee of this Bay Lease);

and in the case of any assignment of this Bay Lease, other than to a mortgagee or creditor as security, the assignee shall covenant with the Landlord to perform all of the Tenant's covenants hereunder, and in the case of any assignment or subletting by way of security or other charging of the interest of the Tenant under this Bay Lease to a mortgagee or creditor such mortgagee or creditor shall agree with the Landlord to perform all the obligations of the Tenant under this Bay Lease while in possession of the Leased Premises if it realizes upon its security by foreclosure or other taking of possession of the Leased Premises and, in the event of a sale of the security, to require the purchaser to agree to perform such obligations. The Landlord shall be furnished with copies of all agreements and other relevant documents referred to above. No assignment, subletting or encumbering by the Tenant shall release the obligations of the Tenant hereunder.

Transfers  
and Encum-  
brances  
by Land-  
lord

21.01 The Landlord may transfer, assign or encumber the Shopping Centre or sublet the whole or any part of the Shopping Centre, subject only to the following restrictions:

- (1) The Landlord may assign and transfer the Shopping Centre and all its interest therein only as a whole, but not in part either as to the property assigned or transferred or the nature of the interest assigned or transferred, with the intent that the Shopping Centre and all the interest of the Landlord therein shall remain undivided and under one ownership (but with the exception however of a sale to Sayvette Limited of the department store occupied by it, pursuant to an option granted to Sayvette Limited in 1961, if such option shall be duly exercised), and

provided also that such assignment or transfer shall be made expressly subject to this Bay Lease and all the rights of the Tenant hereunder;

(2) The Landlord may lease premises in the Shopping Centre only to tenants who will actually occupy such premises (except as to subleases and concessions which such tenants may be permitted to make pursuant to clause 14.01) and provided that all of the provisions of Article 14 are complied with; and

(3) In the case of every assignment or transfer of the Shopping Centre other than to a mortgagee or creditor as security, the assignee or transferee shall agree with the Tenant to perform all the obligations of the Landlord under this Bay Lease, and in the case of any assignment, transfer or charging of the Shopping Centre to a mortgagee or creditor such mortgagee or creditor shall agree with the Tenant to perform all the obligations of the Landlord under this Bay Lease while in possession of the Shopping Centre if it realizes upon the security by foreclosure or other taking of possession of the Shopping Centre, and in the event of a sale of the security, to require the purchaser to agree to perform such obligations. The Tenant shall be furnished with copies of all agreements and other relevant documents referred to above. No assignment, transfer or encumbering by the Landlord shall release the obligations of the Landlord hereunder, except that if the Landlord shall make an absolute assignment and transfer of all its interest in the Shopping Centre at any time after the 15th anniversary of the Opening Date to a purchaser of good reputation and of financial worth comparable to that of the Landlord who shall assume all of the obligations of the Landlord to the Tenant under this Bay Lease and covenant with the Tenant to perform all such

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obligations, and provided the Landlord is not then in default in any of such obligations, the Landlord shall be entitled to a discharge from the Tenant of the Landlord's future liabilities under this Bay Lease.

Performance  
of Mortgage  
Obligations  
by Tenant

21.02 The Tenant shall make all payments when due and otherwise perform all its obligations under any charge or other encumbrance at any time made by it upon this Bay Lease and its leasehold interest in the Leased Premises thereunder, and if the Tenant shall default therein and shall fail to remedy such default within a reasonable time after written notice from the Landlord, the Landlord may remedy such default and all expenses incurred by it in so doing shall be promptly repaid to it by the Tenant.

Performance  
of Mortgage  
and Other  
Obligations  
by Landlord

21.03 The Landlord shall make all payments when due and otherwise perform all its obligations under any charge or other encumbrance at any time made by it upon the Shopping Centre and its interest therein, and shall duly perform all its obligations under all leases to tenants of portions of the Shopping Centre (but shall nevertheless not enter into any obligation which is not consistent with, or the performance of which would entail any breach of, this Bay Lease) and if the Landlord shall default therein and shall fail to remedy such default within a reasonable time after written notice from the Tenant, the Tenant may remedy such default and all expenses incurred by it in so doing shall be promptly repaid to it by the Landlord.

## ARTICLE 22

### DETERMINATION OF CERTAIN DISPUTES

Deter-  
mination  
by Landlord

22.00 Wherever in this Bay Lease any dispute between the Landlord and the Tenant which has not been settled or agreed between them shall require, for its determination, a determination of any question which is of the nature of those

enumerated in this clause, such question shall be determined by the appropriate expert herein referred to, as follows:

- (1) By a shopping centre consultant, if the question to be determined is one involving matters relating to any general standard of shopping centre operation and practice (including but not limited to the reasonableness of any rules and regulations enacted by the Landlord pursuant to clause 6.02 or clause 7.05, the reasonableness of the Landlord's sign policy and regulations pursuant to clause 7.01, the reasonableness of the Landlord's withholding of approval to any sign of the Tenant pursuant to clause 6.07, the operating standards of practices in first-class regional shopping centres as contemplated by clauses 7.01 and 7.04, the applicable general standards of repair contemplated in Article 12, the reasonableness of any withholding of consent by the Tenant to leases pursuant to Article 14, and as to the adequacy of traffic flow or accessibility and the fair balance of customer attraction pursuant to Article 20);
- (2) By a shopping centre accountant, if the question to be determined is one involving matters relating to normal accounting practices and procedures including the determination of capital items in any calculation of Common Facilities Operating Cost pursuant to clause 10.00;
- (3) By a shopping centre insurance consultant, if the question to be determined is one involving matters relating to standards of insurance and whether any insurance complies with the provisions of Article 11;
- (4) By a shopping centre architect, if the question to be determined is one involving matters relating to the suitability of the design of any improvement for its intended purpose or its architectural

compatibility with the Shopping Centre arising under clause 16.00 or Articles 19 or 20;

- (5) By an assessment expert, if the question to be determined is one involving matters relating to the allocation of assessments arising under clause 9.02; and

- (6) By an appraiser appointed pursuant to clause 4.01, if the question to be determined is one of market value of lands arising under clause 4.01 and provided to be so determined.

Each such expert shall be one having wide experience in the field, and who shall be independent of either party. Wherever a party, in connection with any dispute, shall desire the determination of any of the above questions involved therein, it shall give written notice to the other, and if after a reasonable period the parties have not agreed upon the appointment of the appropriate expert, to determine the question, the appointment of such expert shall be made, upon the application of either party, by the chief officer in Canada for the time being of the International Council of Shopping Centres or its successor body (except in the case of an appraiser referred to in clause 4.01, who shall be appointed as therein provided). The expert so appointed shall determine the question requiring such determination having regard to the provisions of this Bay Lease and to any other agreements which the parties may have made respecting the question in dispute or its determination.

Determination 22.01  
by Arbitration

Wherever in this Bay Lease it is provided that any matter in dispute between the Landlord and the Tenant, if not settled or agreed between them, is to be determined by arbitration, and if and to the extent the matter is not a question to be determined by an expert as provided in clause 22.00, then the dispute shall be determined by arbitration, as follows:

- (1) Either party may give written notice to the other of its desire to arbitrate such dispute, and shall in such written notice give notice of the appoint-

ment of an arbitrator chosen by the party giving such notice. The party receiving such notice shall within fifteen (15) days after the receipt thereof give a written notice to the party giving the first notice of the appointment of an arbitrator chosen by the party giving the second notice. The two arbitrators so chosen shall jointly appoint a third arbitrator;

(2) If a party required to appoint an arbitrator shall fail to do so within such period of fifteen (15) days, or if each party has appointed an arbitrator and such arbitrators fail to agree upon a third arbitrator within fifteen (15) days after both have been appointed, then any party not in default may apply to a Judge of the Supreme Court of Ontario for the appointment of an arbitrator on behalf of the party in default, or the appointment of the third arbitrator, as the case may require; and

(3) The three arbitrators so appointed shall determine the dispute having regard to the provisions of this Bay Lease and to any other agreements which the parties may have made respecting the arbitration of the matter in dispute and the decision of any two of them shall bind the parties. Subject to the provisions of this clause, the arbitration shall be conducted in accordance with the provisions of The Arbitration Act of Ontario.

Costs 22.02 In any proceedings under clause 22.00 or 22.01 to determine any question or dispute, each party shall pay the fees and expenses of an arbitrator chosen by it or on its behalf and one-half of the fees and expenses of the third arbitrator, or of the independent expert, as the case may be, and of all other expenses of such proceedings.

Judicial Remedies Preserved 22.05 The provisions of this Article regarding the determination of certain questions or matters in dispute by an

independent expert or by arbitration, as the case may be, are acknowledged by the parties to have the intended purpose of providing, where applicable, an equitable and rapid determination, but are not intended and shall not be interpreted as excluding recourse by any party to the Courts as to any matter not expressly required to be determined by an expert by arbitration pursuant to clauses 22.00 or 22.01, or recourse by any party to any of the remedies available at law or in equity including damages or injunction, and such recourse may be taken notwithstanding the provisions of clauses 22.00 or 22.01 in respect of any matter where the substantial rights of a party are involved and might be prejudiced or impaired if such recourse is not taken, notwithstanding that the determination of such matter may involve a question for determination by the Court which would otherwise fall for its determination within the provisions of clauses 22.00 or 22.01, but in such case any determination which has already been made pursuant to clauses 22.00 or 22.01 shall be binding upon the parties.

#### ARTICLE 23

##### TENANT'S PURCHASE RIGHTS

23.00 The Landlord agrees with the Tenant that if, during the portion of the Term prior to the eighth anniversary of the Opening Date, the Landlord shall determine at any time to sell or otherwise dispose of all its interest in the Shopping Centre, or at any time and from time to time to sell or otherwise dispose of any lesser interest in the Shopping Centre (excluding a mortgage or a lease to a tenant of rentable premises in the Shopping Centre intended for actual occupation by such tenant, and any sale to Sayvette Limited of the department store occupied by it pursuant to the option referred to in paragraph (1) of clause 21.01) the Landlord shall first cause all the terms and arrangements concerning the proposed sale or disposition to be incorporated into a written offer to the Landlord, and if the Landlord has otherwise determined to accept such offer the Landlord shall first provide the Tenant with a copy of such offer and offer to sell or dispose of the interest which is the subject of the offer to the Tenant on the same terms and arrangements

Tenant's  
Purchase  
Rights

(which offer to the Tenant shall be open for acceptance by the Tenant for ninety (90) days). If the Tenant shall reject such offer from the Landlord, or shall not have accepted it within such period of ninety (90) days, the Landlord shall then be free within ninety (90) days thereafter to accept the first mentioned offer, but no acceptance shall be made by the Landlord thereafter, and no material change in such first mentioned offer or the terms and arrangements of the sale or disposition by the Landlord shall be made unless in each case a fresh offer on the same terms and arrangements shall have been made to the Tenant in accordance with the foregoing provisions.

#### ARTICLE 24

##### REMEDIES AND DEFAULTS

Particular  
Remedies of  
Landlord

24.00 The Landlord, in addition to all other remedies it may have under the express provisions of this Bay Lease and (to the extent not expressly excluded hereby) under the general law, shall have the right:

- (1) In the event of any default of the Tenant hereunder, and unless the Tenant has commenced to remedy such default within thirty (30) days after written notice from the Landlord specifying such default (or within such other period of time as may be expressed as being applicable to the remedying of such default under any other provision of this Bay Lease) and shall thereafter proceed diligently to remedy such default, to take such reasonable steps as may be necessary to remedy such default, and for that purpose to have entry to all parts of the Leased Premises, and any costs incurred by the Landlord in so doing shall be promptly repaid to it by the Tenant;
- (2) In the event of the failure of the Tenant to pay any amount due to the Landlord under any provision of this Bay Lease when due, whether or not such amount is expressed to be rent, the Landlord shall

have all remedies for the recovery of the same as are available in the case of any non-payment of rent; and

- (3) If the Tenant shall be in default under this Bay Lease and, if the default is in the payment of rent or any other amount payable by the Tenant to the Landlord hereunder and the Tenant shall have failed to remedy such default by making payment thereof within thirty (30) days after receipt of written notice from the Landlord, and if the default is in the performance of any other obligation of the Tenant hereunder and the Tenant shall fail to remedy such default within sixty (60) days (or such longer period as may reasonably be necessary therefor having regard to the nature of such default and the occurrence of any Unavoidable Delay), but not otherwise, the Landlord may at its option, and in addition to such other remedies as it may have hereunder including the right to damages or specific performance, enter into and upon the Leased Premises and terminate this Bay Lease; provided that such right of entry and termination shall not be exercised until the Landlord shall have first given notice of its intended exercise thereof to every mortgagee or creditor of the Tenant having security upon the Tenant's interest under this Bay Lease and if such mortgagee or creditor shall within a reasonable time thereafter, and with or without taking possession and agreeing to perform all the obligations of the Tenant hereunder in compliance with clause 21.00, shall commence to remedy and thereafter proceed to remedy with reasonable diligence such default.

may have under the express provisions of this Bay Lease and (to the extent not expressly excluded hereby) under the general law, shall have the right:

- (1) Subject to any other provision of this Bay Lease expressly limiting the right of the Tenant in any particular circumstance to remedy the Landlord's default, in the event of any default of the Landlord hereunder, and unless the Landlord has commenced to remedy such default within thirty (30) days after written notice from the Tenant specifying such default (or within such other period of time as may be expressed as being applicable to the remedying of such default under any provision of this Bay Lease) and shall thereafter proceed diligently to remedy such default, to take such reasonable steps as may be necessary to remedy such default, and for that purpose to have entry to all parts of the Shopping Centre and any costs incurred by the Tenant in so doing shall be promptly repaid to it by the Landlord; and
- (2) In the event of the failure of the Landlord to pay any amount due to the Tenant under any provision of this Bay Lease when due, the Tenant shall have the right, in addition to such other remedies as it may have hereunder, to deduct such amount from amounts due or to accrue due under this Bay Lease; provided that such right of deduction shall not be exercised against a mortgagee or other creditor of the Landlord holding security on the Shopping Centre which complies with clause 21.01 and who has become entitled to the receipt of rent and other amounts payable by the Tenant under this Bay Lease, unless such mortgagee or creditor has become obligated but failed to perform the obligations of the Landlord under this Bay Lease.

Bankruptcy  
or Insolvency  
of Tenant

24.02 If the interest of the Tenant under this Bay Lease shall be taken or seized in execution or possession of the Leased Premises shall be taken by any creditor of the Tenant, or if the Tenant shall make any general assignment for the benefit of creditors or shall wind up or be adjudicated bankrupt, then in each case (provided notice of its intended exercise thereof shall have first been given to every mortgagee or creditor of the Tenant having security upon the Tenant's interest under this Bay Lease and unless one of such mortgagees or creditors shall within a reasonable time thereafter take possession of the Leased Premises and agree to perform all the obligations of the Tenant hereunder in compliance with clause 21.00) the Landlord may at its option re-enter and terminate this Bay Lease, in which event annual rent for the three (3) months next ensuing after the then current month shall immediately become due and payable.

Interest  
on Amounts  
in  
Default

24.03 Any rent, sum, adjustment, payment or other amount which becomes due under any provision of this Bay Lease from either of the Landlord or the Tenant to the other, if not paid within three (3) days of the date upon which it was due, shall bear interest from such due date until paid at a rate equal to one percent (1%) in excess of the so-called prime rate from time to time charged by Canadian chartered banks upon demand loans to prime commercial borrowers.

#### ARTICLE 25

#### MISCELLANEOUS PROVISIONS

Unavoidable  
Delays

25.00 Whenever in this Bay Lease it is provided that any act or things to be done or performed is subject to Unavoidable Delay, the time for the doing or performance thereof shall be extended for a period equal to the period for which such Unavoidable Delay operates to delay or prevent the act or thing required to be done or performed from being done or performed, and the party obligated to do or perform such act or thing shall not be deemed to be in default until the expiration of such time as so extended. Each party shall

promptly notify the other of the occurrence of any Unavoidable Delay which might prevent or delay the doing or performance of acts or things required to be done or performed by such party.

Waiver 25.01 Any condoning or overlooking by the Landlord or the Tenant of any default, breach or non-performance by the other at any time or times in respect of any obligation contained in this Bay Lease shall not operate as a waiver of such default, breach or non-performance, and any waiver of a particular default, breach or non-performance shall not operate as a waiver of any subsequent or continuing default, breach or non-performance.

Certificates 25.02 The Tenant agrees that it will from time to time whenever reasonably required by the Landlord for the purpose of giving assurance to any third party interested (including any prospective or actual assignee or mortgagee of the Landlord) execute and deliver to the Landlord or as the Landlord may direct a statement in writing certifying to such third party whether this Bay Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and Tenant, whether or not there are any existing defaults on the part of the Landlord of which the Tenant has notice (and if so, specifying them) and as to any other matters in connection with this Bay Lease in respect of which such a certificate is reasonably requested. The Landlord agrees that it will from time to time whenever reasonably requested for the purpose of giving assurance to any third party interested (including any proposed or actual assignee or mortgagee of the Tenant) execute and deliver to the Tenant or as the Tenant may direct a statement in writing certifying to such third party whether this Bay Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and the Tenant, whether or not there are any existing defaults on the part of the Tenant of which the Landlord has

notice (and if so, specifying them) and as to any other matters in connection with this Bay Lease in respect of which such a certificate is reasonably requested. Such statements may be relied upon by (but only by) the third party for whose benefit they are given.

Approvals

25.03 Except insofar as it is otherwise provided in this Bay Lease, any approval or consent which either party may request of the other hereunder shall be either given or refused in writing within thirty (30) days of a written request therefor, and if refused and if such approval or consent is not one which the requested party can arbitrarily or unreasonably withhold, the requested party shall also give reasons for such refusal.

Ownership of  
Tenant's  
Improvements and  
Removal of  
Fixtures

25.04 It is agreed between the Landlord and the Tenant that, notwithstanding any lease and demise herein, the title to and ownership of all buildings and improvements erected by or at the expense of the Tenant (including the Bay Department Store Building, the Bay Malt Bar, and all improvements and fixtures in any of them) shall notwithstanding the manner or degree of their affixation to the freehold remain vested in the Tenant and shall not pass to or become vested in the Landlord until the expiration or sooner termination of the Term, and that upon the expiration or sooner termination of the Term and within thirty (30) days thereafter the Tenant may remove all its fixtures and improvements of the nature of trade or tenants' fixtures, and that any such fixtures or improvements not so removed prior to the expiration of such time allowed for their removal shall be deemed abandoned by the Tenant and shall vest in the Landlord free of all claims by the Tenant thereto, and the Tenant shall thereupon discharge all liens or encumbrances created by it upon the Bay Department Store Lands, the Bay Department Store Building and such fixtures and improvements.

Registration

25.05 Neither party shall register this Bay Lease without the written consent of the other, but nevertheless if either party so desires the parties shall enter into a short form of lease appropriate for registration and for the protection and recording of the interests of the parties hereunder, and which either party may register.

## Liens

25.06 Each of the Landlord and the Tenant shall so conduct any construction or other work done by it so as to minimize the possibility of any claim of lien being filed or registered against any part of the Shopping Centre, and if any such claim or lien shall be filed or registered shall forthwith take all reasonable steps to have the same discharged, but nevertheless may defer payment of any contested claim of lien if and so long as the same is being diligently contested, and provided that non-payment thereof does not render any part of the Shopping Centre liable to forfeiture or sale. In the conduct of any construction or other work each of the Landlord and the Tenant shall comply with all the provisions of applicable statute (including The Mechanics Lien Act) available to it for the protection of the Shopping Centre from claims of lien. In the event that either the Landlord or the Tenant shall make default in the payment of monies justly due in connection with any such construction or other work and a claim of lien shall be filed or registered and not promptly secured or discharged, the other party may make payment of the same, and all expenses incurred by it shall be promptly repaid to it by the party in default.

## Notices

25.07 Any notice which a party is entitled or required to give under any provision of this Bay Lease shall be deemed to have been duly given if made in writing and, if intended for the Landlord, delivered to an officer of the Landlord, or mailed in Canada by prepaid registered post addressed to the Landlord at the Landlord's office at Towne & Countryside Square, Yonge Street and Steeles Avenue, Willowdale M2M 3X4, Ontario, and if intended for the Tenant, if delivered to an officer of the Tenant, or mailed in Canada by prepaid registered post addressed to the Tenant at 2 Bloor Street East, Hudson's Bay Centre, Toronto M4W 1A8, Ontario (with a copy to the Tenant at Hudson's Bay House, 77 Main Street, Winnipeg R3C 2R1, Manitoba). Any such notice shall be deemed to have been given, if so delivered, when delivered, or if so mailed, on the second next business day following its mailing. Either

party may by notice in writing to the other change the address to which any notice mailed to it is to be given.

Interpretation  
and Con-  
struction

25.08 All of the provisions of this Bay Lease are to be construed as covenants and agreements. If any provision of this Bay Lease is illegal or unenforceable it shall be considered as separate and severable from the remaining provisions, which shall remain in force and binding as though the said provision had never been included. The headings and marginal subheadings of Articles and clauses are for convenience of reference, and are not intended to limit, enlarge or otherwise affect their meanings. References in the singular shall include the plural, where the context reasonably so requires, and vice versa.

Successors

25.09 This Bay Lease shall be binding upon the Landlord and the Tenant and their respective successors and assigns, and shall also enure to the benefit of their respective successors and assigns provided such successors and assigns are permitted successors and assigns under the provisions of Article 21.

Planning  
Act

25.10 This Bay Lease is entered into subject to the express condition that it is to be effective only if the provisions of Section 29 of The Planning Act are complied with.

IN WITNESS WHEREOF the Landlord and Tenant have executed this Bay Lease.

THORNTOWNE PROPERTIES LIMITED

*JW Blackman*  
VICE-PRES & GEN. MGR.

\_\_\_\_\_  
Landlord

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY

*J. McInnis* **PRESIDENT**

*Allen*

\_\_\_\_\_  
VICE - PRESIDENT  
Tenant

SCHEDULE APART 1 - DESCRIPTION OF SHOPPING CENTRE LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Borough of North York in the Municipality of Metropolitan Toronto, in the Province of Ontario, being composed of part of Lot 25 in Concession 1 west of Yonge Street in the original Township of York, the boundaries of the said parcel of land being described as follows:

COMMENCING at the north-easterly angle of the said parcel of land being the point of intersection of the northerly limit of the said Lot 25 with a line drawn parallel with the easterly limit of the said Lot 25 and distant ten feet (10') westerly therefrom measured on a course perpendicular thereto;

THENCE WESTERLY along the said northerly limit of Lot 25 being along the southerly limit of Steeles Avenue West, twelve hundred and eighty-one feet five inches (1281'5") to an iron bar planted;

THENCE SOUTHERLY on a course perpendicular with the said southerly limit of Steeles Avenue West, thirteen hundred and forty-one feet two and one-half inches (1341'2½") to an iron bar planted to mark a point in the southerly limit of the said Lot 25 as represented in part by the northerly limit of the lands included in a plan on file in the Registry Office for the Registry Division of Toronto Boroughs and York South as number 2366;

THENCE EASTERLY along the southerly limit of the said Lot 25 being along the said northerly limit of lands included in Plan number 2366, to and along the northerly limit of lands included in a plan on file in the said Registry Office as number 3788 representing in part the said southerly limit of Lot 25, to and along the site of the line of a former old fence representing in part the said southerly limit of Lot 25, in all a distance of eleven hundred and thirty-two feet nine inches (1132'9") to the point of intersection thereof with the parallel line hereinbefore mentioned being the westerly limit of Yonge Street as widened by the Department of Highways of Ontario Deposited Plan number 3156 on file in the said Registry Office;

THENCE NORTHERLY along the said parallel line being along the westerly limit of Yonge Street widened as aforesaid, thirteen hundred and thirty-nine feet three inches (1139'3") more or less to the point of commencement; SAVE AND EXCEPT that part of the said lands conveyed to the Corporation of the Township of North York (now the Borough of North York) for the purpose of widening Steeles Avenue which said excepted part may be more particularly described as being ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Borough of North York in the Municipality of Metropolitan Toronto, in the Province of Ontario, containing by admeasurement 0.796 acre more or less and being composed of that part of Lot 25 in the First Concession west of Yonge Street of the said Borough, more particularly described as follows:

PREMISING that the northern limit of the said lot has a bearing of North seventy-three degrees thirteen minutes (73° 13') east and relating all bearings herein thereto;

COMMENCING at the intersection of the northern limit of said lot with the western limit of The King's Highway No. 11 as widened by a plan filed in the Registry Office for the Registry Division of Toronto Boroughs and York South as number 3156;

THENCE SOUTH seventy-three degrees thirteen minutes (73° 13') west along the said northern limit, twelve hundred and eighty-one and fifty-eight one-hundredths feet (1281.58') more or less to a standard iron bar planted;

THENCE SOUTH sixteen degrees forty-seven minutes ( $16^{\circ}47'$ ) east, twenty-seven feet (27') to a standard iron bar planted;

THENCE NORTH seventy-three degrees thirteen minutes ( $73^{\circ}13'$ ) east, along a line parallel to the said northern limit, twelve hundred and fifty and fifty-nine one-hundredths feet ( $1250'59''$ );

THENCE SOUTH-EASTERLY following a curve to the right of radius twenty-five feet (25') an arc distance of forty-two and six one-hundredths feet ( $42.06'$ ) more or less to the aforesaid western limit of The King's Highway No.11, said curve having a chord equivalent of thirty-seven and twenty-seven one-hundredths feet ( $37.27'$ ) more or less on a bearing of south fifty-eight degrees thirty-five minutes ( $58^{\circ}35'$ ) east;

THENCE NORTH ten degrees twenty-three minutes ( $10^{\circ}23'$ ) west along the said western limit, fifty-five and thirteen one-hundredths feet ( $55.13'$ ) more or less, to the point of commencement.

#### PART 2 - DESCRIPTION OF BAY DEPARTMENT STORE LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Borough of North York in the Municipality of Metropolitan Toronto, in the Province of Ontario, being composed of part of Lot 25 in Concession 1 west of Yonge Street in the original Township of York, and being more particularly described as Parts 1 and 2 shown on Plan 64R-3123 filed for reference in the Registry Office for the Registry Division of Toronto Boroughs and York South.



**THIS IS EXHIBIT "C" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**

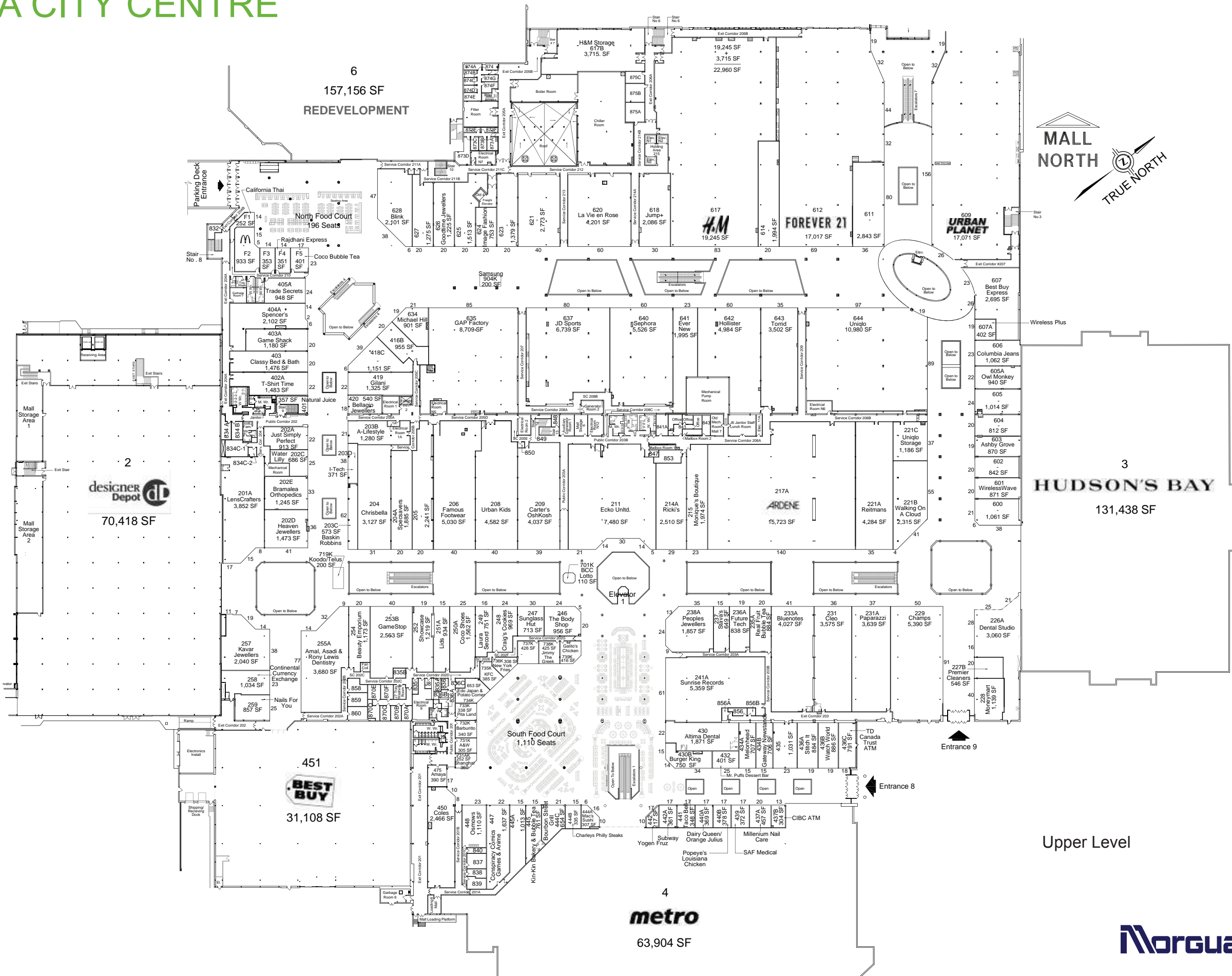


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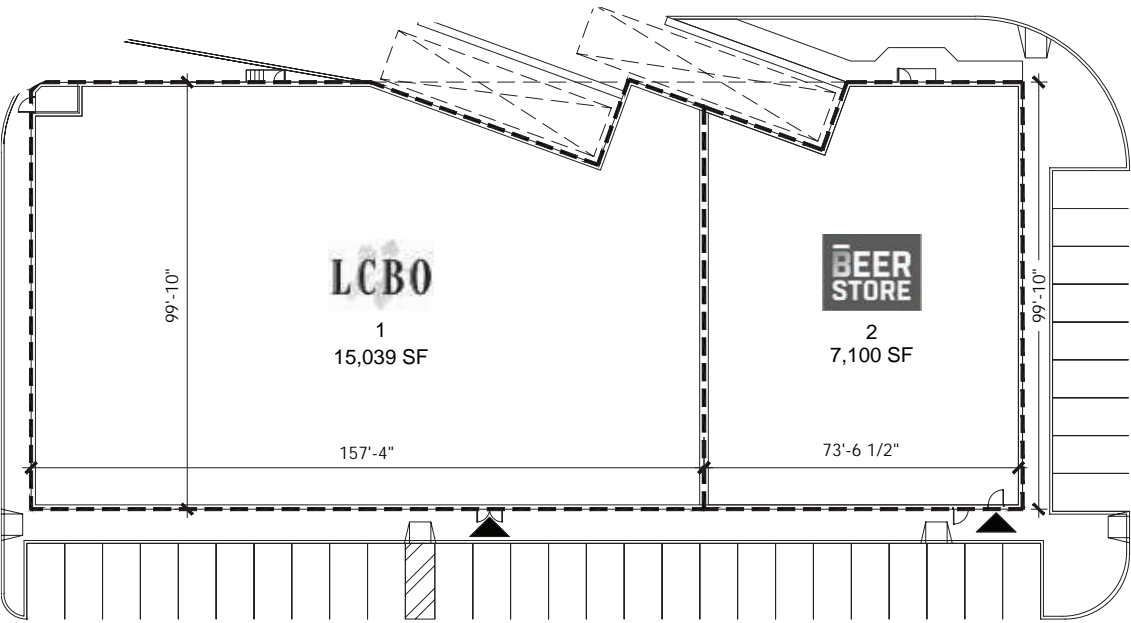
Commissioner for Taking Affidavits  
Linda Galessiere



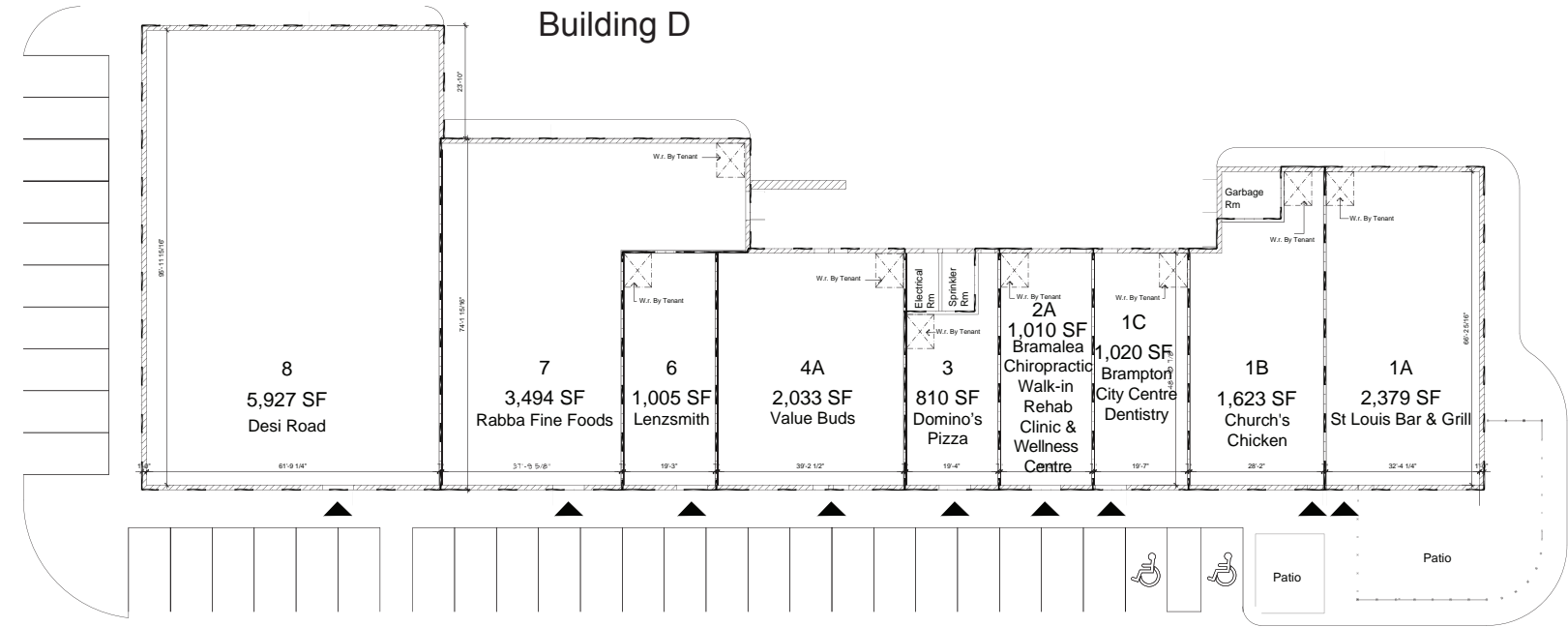
BRAMALEA CITY CENTRE



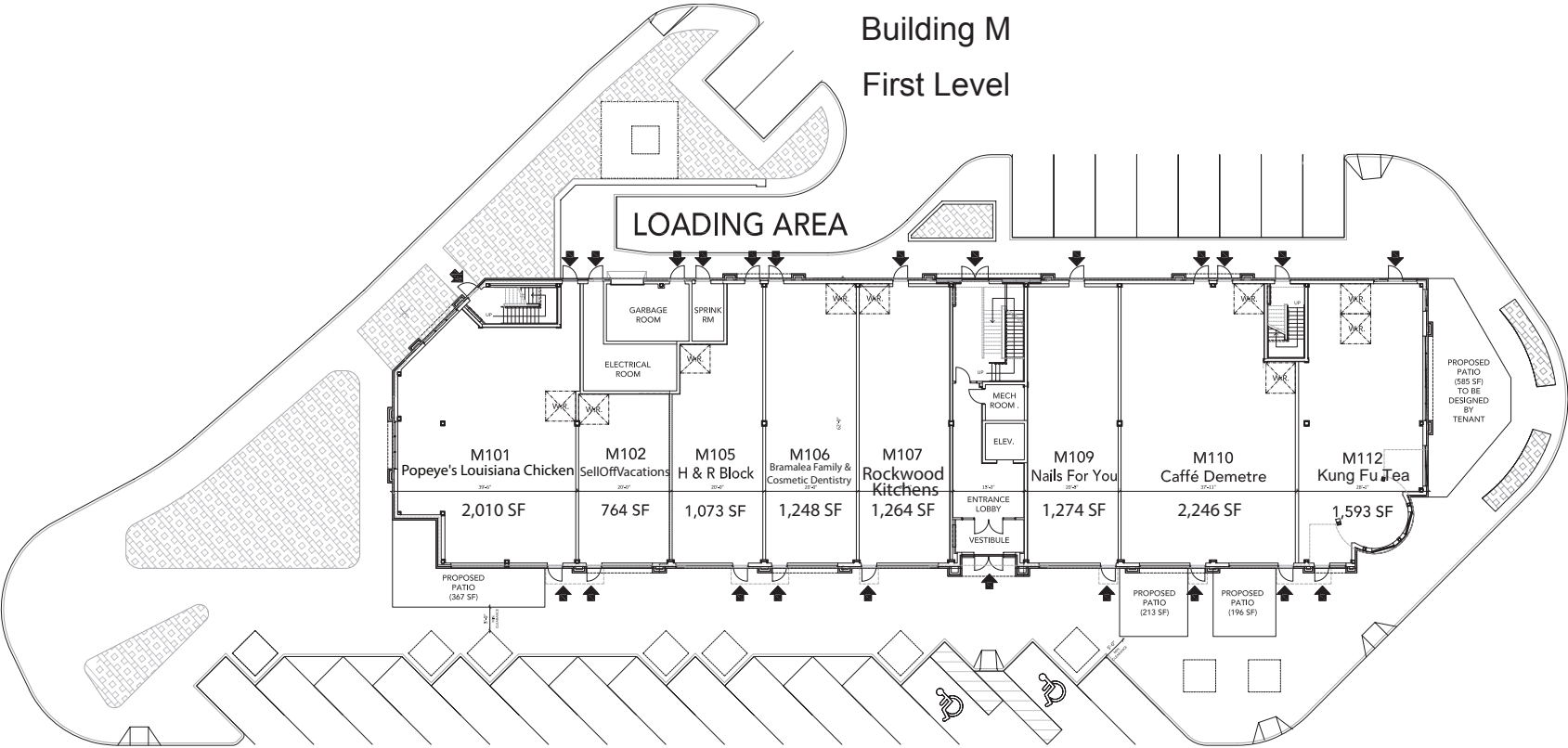
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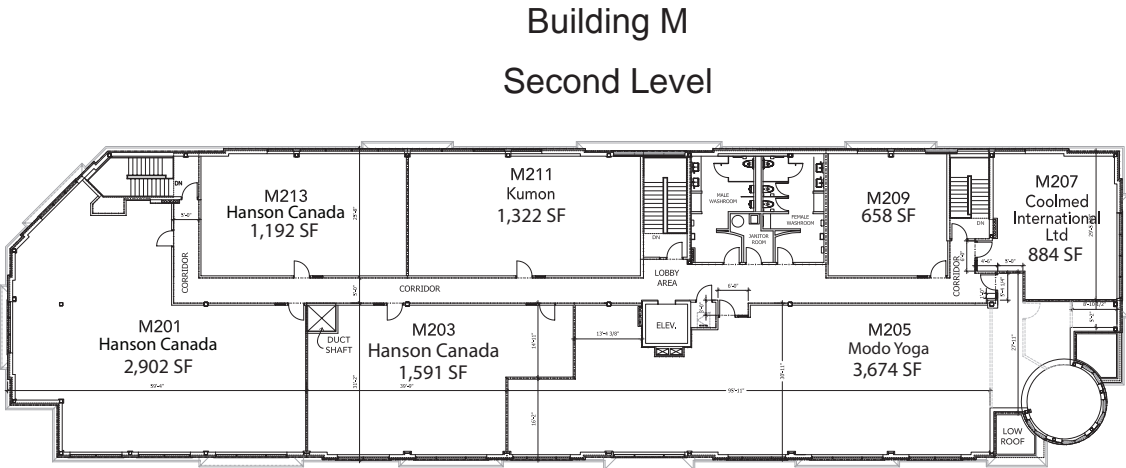
Building C



Building D

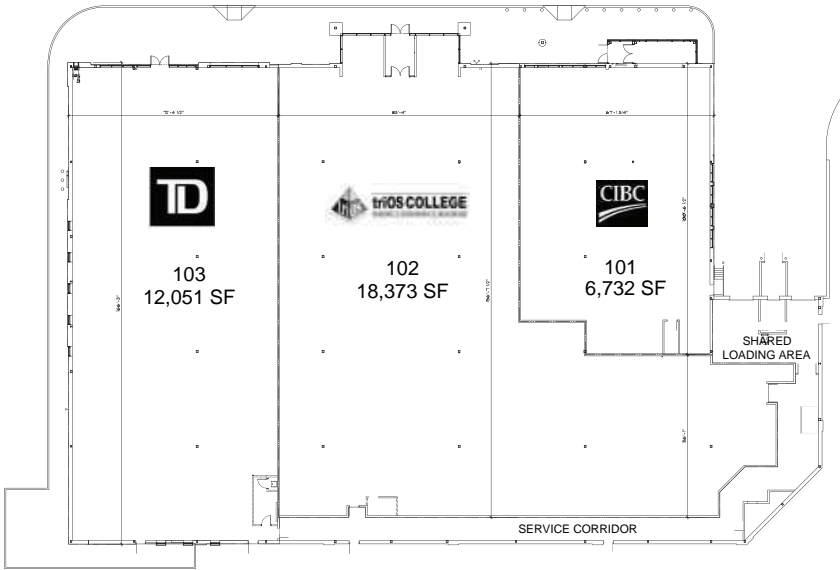


Building M  
First Level

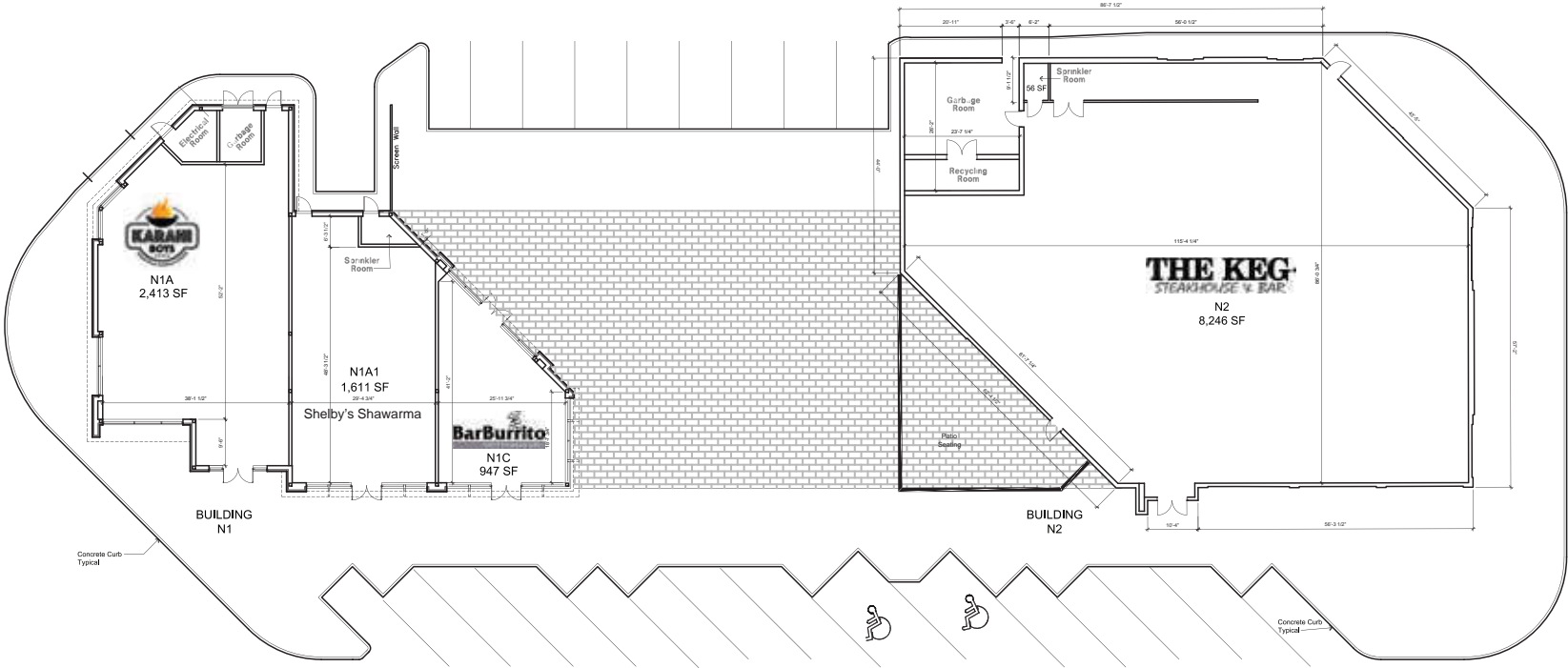


Building M  
Second Level

Building K



Building N1



Building N2

**THIS IS EXHIBIT "D" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**



---

Commissioner for Taking Affidavits  
Linda Galessiere

BRAMALEA CONSOLIDATED DEVELOPMENTS  
LIMITED.

THE HUDSON'S BAY COMPANY

BRAMALEA CITY CENTRE

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THIS LEASE made as of the 28th day of March,  
1973.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT (ONTARIO)

B E T W E E N

BRAMALEA CONSOLIDATED DEVELOPMENTS  
LIMITED, a company incorporated  
under the laws of the Province of  
Ontario,

(herein called the "Landlord")

OF THE FIRST PART;

- and -

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING INTO  
HUDSON'S BAY (also known as  
the HUDSON'S BAY COMPANY)

(herein called the "Tenant")

OF THE SECOND PART.

WITNESSETH THAT:

WHEREAS by the Construction Agreement the Landlord  
agreed to develop and construct a shopping centre in the  
Township of Chinguacousy, in the County of Peel, Province  
of Ontario, to include a department store and other facilities  
intended for occupancy by the Tenant, and to lease such de-  
partment store and other facilities to the Tenant, and this  
Bay Lease is entered into pursuant to the provisions of clause  
7.00 of the Construction Agreement;

IN CONSIDERATION of the rents, covenants and agree-  
ments herein contained and by the parties to be respectively  
paid, observed and performed, the parties hereby agree as  
follows:

ARTICLE IDEFINITIONS

## MEANING OF CERTAIN TERMS

## 1. (1) In this Bay Lease:

- (a) "Additional Rent" means the additional rent referred to in section 4(2),
- (b) "Architect's Certificate" means the certificate of an architect satisfactory to the Tenant appointed by the Landlord,
- (c) "Bay Department Store Building" means the department store building constructed within the area outlined in RED on Schedule "C", as from time to time altered, reconstructed or expanded,
- (d) "Bay Lease" means this lease as from time to time amended,
- (e) "Bramalea Lands" means the lands and premises described in the First Parcel of Schedule "A" and the buildings and improvements other than the Bay Department Store Building constructed thereon, as from time to time altered, reconstructed or expanded,
- (f) "Commencement Date" means the date referred to in section 3(1) named by the Tenant in accordance with the provisions of the Construction Agreement on which the Tenant will open the Bay Department Store Building for business,
- (g) "Common Facilities" means the common areas and utilities from time to time furnished and maintained

by the Landlord, or which the Landlord shall cause be maintained from time to time on the Bramalea Lands and on the Peripheral Lands and on the Eatons Lands for the use in common of the Tenant and all others entitled thereto and their respective officers, agents, employees, customers, invitees and licencees and without restricting the generality of the foregoing comprising the Parking Facilities, access roads, driveways, entrances and exits, sidewalks, malls, enclosed malls, ramps, landscaped areas, interior and exterior stairways, escalators, elevators, passageways, first-aid stations and comfort stations, but excluding such facilities provided exclusively in connection with buildings constructed on the Peripheral Lands.

- (h) "Construction Agreement" means the Agreement made the 5th day of May, 1972, between the Landlord and the Tenant, pursuant to clause 7.00 of which this Bay Lease was entered into,
- (i) "Demised Premises" means the lands and premises outlined in RED on Schedule "C" together with the Bay Department Store Building,
- (j) "Eatons" means The T. Eaton Company Limited or The T. Eaton Realty Company, Limited or a company in respect of which the majority of the voting shares are beneficially owned by or are directly or are indirectly controlled by The T. Eaton Company Limited or any company which might subsequently replace it from time to time as the company having control of the retail store operations in Ontario of the Eaton group of companies,

- (k) "Eatons Agreement" means the agreement made the 8th day of October, 1971, between the Landlord and The T. Eaton Company Limited and The T. Eaton Realty Company, Limited, as the same may be amended from time to time,
- (l) "Eatons Department Store" means the retail department store constructed on the Eatons Lands, as from time to time altered, reconstructed or expanded,
- (m) "Eatons Lands" means the lands and premises described in the Third Parcel of Schedule "A" and the buildings and improvements constructed thereon, as from time to time altered, reconstructed or expanded,
- (n) "Green Lands" means the lands and premises outlined in GREEN on Schedule "C",
- (o) "Landlord" means Bramalea Consolidated Developments Limited and its successors and assigns as owners of the Bramalea Lands,
- (p) "lessees" means the occupiers of any premises in the Shopping Centre, and includes owners, tenants, sub-tenants, licencees and concessionaires, and "lessee" means the singular thereof,
- (q) "Minimum Rent" means the annual minimum rent referred to in section 4(1),
- (r) "Parking Facilities" means paved parking areas provided and maintained by the Landlord or which the Landlord shall cause to be maintained from time to time on the Bramalea Lands and on the Eatons Lands and on the Peripheral Lands for transit, non-contract parkers for at least 5.5 cars per 1,000 square feet of total

leaseable area of retail premises on the Bramalea lands, all in accordance with applicable municipal requirements and in accordance with this Bay Lease,

- (s) "Peripheral Lands" means the lands and premises described in the Second Parcel of Schedule "A",
- (t) "Proportionate Share" of any amount means that portion of such amount which the total gross leaseable area from time to time of the Bay Department Store Building is of the total gross leaseable area from time to time of all retail premises in the Shopping Centre (including the Bay Department Store Building) to which such amount relates,
- (u) "Real Property Taxes" means all general taxes, local improvement rates, school taxes, levies, rates, duties, assessments and charges from time to time imposed against real property by municipal or other governmental authorities having jurisdiction, but excludes business taxes,
- (v) "retail premises" includes premises used for retail, service, governmental and commercial purposes but does not include premises used exclusively as business or professional offices and not on the same level as and directly accessible from any enclosed mall,
- (w) "Shopping Centre" means the Bramalea Lands and the Eatons Lands and the buildings and improvements constructed thereon,
- (x) "Term" means the entire term of this Bay Lease until sooner terminated, including the term as described under section 3(1), and any period of overholding to which section 3(3) applies,

### CALCULATION OF AREAS

1. (2) Wherever in this Bay Lease reference is made to the size of any area or areas or the gross leaseable area of any premises or the amount of any payment is required to be determined in reference to the size of any area or areas or the gross leaseable area of any premises, such reference in the case of any enclosed area or areas shall be deemed to mean the size of such area or areas measured from the outside surface of the exterior walls, doors and windows (including walls, doors and windows separating such premises from any mall) and from the centre line of all interior walls separating such premises from the adjacent premises. All such sizes shall be conclusively established by an Architect's Certificate.

### SCHEDULES

1. (3) The Schedules to this Bay Lease form part hereof, and are as follows:

- Schedule "A" - First Parcel - The Bramalea Lands
- Second Parcel - The Peripheral Lands
- Third Parcel - The Eatons Lands

Schedule "B" - List of tenants

Schedule "C" - Plan showing lands described in Schedule "A"

ARTICLE IIDEMISE

## DEMISED PREMISES

2. (1) The Landlord hereby leases the Demised Premises to the Tenant and the Tenant hereby leases the Demised Premises from the Landlord for the Term and upon and subject to the covenants, obligations, agreements and conditions expressed in this Bay Lease.

## COMMON FACILITIES

2. (2) As an essential term of this Bay Lease, fundamental to the execution and delivery of this Bay Lease by the Tenant and as appurtenant to the Demised Premises, the Tenant, together with and in common with all others entitled thereto and their respective officers, agents, employees, customers, invitees and licencees, shall be entitled to the use and benefit of the Common Facilities.

ARTICLE IIITERM

## TERM

3. (1) The Term shall commence on the 28th day of March 1973, and end on the 101st anniversary of the last day of the calendar month in which the day immediately preceding the date of commencement of the Term occurs.

## CANCELLATION OF TERM

3. (2) The Tenant shall have the option to terminate this Bay Lease as of the 36th anniversary of the last day of the calendar month in which the day immediately preceding the date of commencement of the Term occurs and as of each successive 10-year anniversary of such day thereafter. Such option, if exercised, shall be exercised by the Tenant by not less than 12 months' prior written notice to the Landlord.

## OVERHOLDING

3. (3) If the Tenant shall remain in possession as an overholding tenant of the Demised Premises after the Term, save pursuant to an agreement between the Landlord and the Tenant, the Tenant shall be deemed to be a tenant from month to month at a monthly rental equal to 1/12th of the annual rent applicable to the period of overholding as provided in section 4(1)(b) and otherwise upon all the terms of this Bay Lease, modified as is appropriate to such a monthly tenancy.

ARTICLE IVRENT

## ANNUAL MINIMUM RENT

4. (1) The Tenant shall pay to the Landlord in lawful money of Canada, and without deduction, abatement or set-off, an annual Minimum Rent for the Demised Premises as follows:

(a) an annual Minimum Rent of

- (i) One Hundred and Twenty-Eight Thousand, Five Hundred Dollars (\$128,500.00) per annum for that portion of the Term from the Commencement Date until the first anniversary of the last day of the calendar month in which the day immediately preceding the Commencement Date occurs;
- (ii) One Hundred and Seventy-one Thousand dollars (\$171,000.00) per annum for the next 12 months of the Term;
- (iii) One Hundred and Eighty-six Thousand Dollars (\$186,000.00) per annum for the next 12 months of the Term;
- (iv) Two Hundred and One Thousand Dollars (\$201,000.00) per annum for the next 12 months of the Term;
- (v) Two hundred and Sixteen thousand dollars (\$216,000.00) for the next 12 months of the Term;
- (vi) Two Hundred and Twenty-six Thousand Dollars (\$226,000.00) per annum for the next 372 months of the Term;
- (vii) One Hundred Thousand Dollars (\$100,000.00) per annum for the balance of the Term.

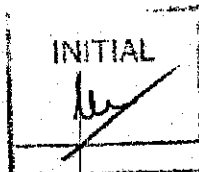
- (b) during any part of the Term which consists of a period of overholding as described in section 3(3), an annual Minimum Rent equal to the annual Minimum Rent which was applicable to the part of the Term immediately prior to the commencement of the period of overholding.

In every case such annual Minimum Rent shall be payable in equal monthly installments in advance, payable upon the first day of each calendar month during the Term, without any previous notice or demand of the Landlord, and shall be appropriately apportioned in respect of any broken portion of a year or calendar month in respect of which such annual Minimum Rent is payable.

#### ADDITIONAL RENT

4. (2) The Tenant shall pay to the Landlord in lawful money of Canada, and without deduction, abatement or set-off (except as provided in this Bay Lease), Additional Rent for the Demised Premises equal to the aggregate of

- (a) the Tenant's Proportionate Share of the amount by which the total cost and expense incurred or accrued by the Landlord or estimated by the Landlord to be required by it to operate, maintain, rebuild, replace and repair the Common Facilities exceeds insurance proceeds paid to the Landlord with respect thereto and the total amount received by the Landlord from fees charged by it to any persons using the Common Facilities except pursuant to a lease of premises in the Shopping Centre and except pursuant to the Eatons Agreement. Such cost and expense shall specifically include, without limiting the generality of the foregoing, Real Property Taxes, business taxes, promotional and advertising expenses, gardening and landscaping, insurance premiums, heating, air-conditioning, repaving, line painting, lighting, signs, sanitary control, cleaning and removal of snow.



- rubbish, garbage and other refuse, including depreciation on and/or rentals of machinery and equipment used in connection therewith, reasonable managerial and administrative expenses and the wages and salaries of personnel (including any benefits paid) to implement such services, to direct parking and to police the Common Facilities and excluding only original acquisition and construction costs, costs incurred in repairing any premises on the Bramalea Lands other than the Common Facilities and depreciation and financing and mortgage charges applicable to the Bramalea Lands or to the Common Facilities, and
- (b) the cost of providing chilled water to the Demised Premises as set out in Schedule "D".

#### CALCULATION OF ADDITIONAL RENT

4. (3) The Additional Rent shall be paid and adjusted with reference to a fiscal year of 12 calendar months, which shall be a calendar year unless the Landlord shall have selected a fiscal year which is not a calendar year by written notice to the Tenant prior to the Commencement Date. Promptly after the Commencement Date, the Landlord shall advise the Tenant in writing of its estimate of the Additional Rent for the fiscal year or broken portion of the fiscal year, as the case may be, which commenced on the Commencement Date, and on or before the commencement of each succeeding fiscal year which commences during the Term, the Landlord shall advise the Tenant in writing of its estimate of the Additional Rent for such fiscal year or (if applicable) broken portion thereof immediately prior to the end of the Term. Such estimate shall in every case be a reasonable estimate and based wherever possible upon previous operating experience, and shall be accompanied by reasonable particulars of the manner in which it was arrived at.

## PAYMENT OF ADDITIONAL RENT

4. (4) The Landlord shall forward to the Tenant periodically but not more often than quarterly a statement certified by one of the officers of the Landlord showing in reasonable detail supported by such evidence in verification thereof as the Tenant may reasonably require the amount of Additional Rent to be paid by the Tenant to the Landlord in the case of the first such statement from the Commencement Date, and in the case of each subsequent such statement from the date to which the immediately preceding such statement was made up, and within 30 days after the delivery to the Tenant of each such statement, the Tenant shall pay the amount thereby shown to be payable.

## EXAMINATION OF STATEMENTS

4. (5) At any reasonable time within 90 days after the delivery to the Tenant of the statement referred to in section 4(4), the Tenant shall have the right at its own expense by its officers or auditors to examine the records of the Landlord relating to such statement, to establish or confirm the amount of Additional Rent payable for the period to which such statement relates. Where such statement or examination discloses an overpayment by the Tenant, the amount of such overpayment shall be paid by the Landlord to the Tenant within 30 days of the date of such examination or statement. The Landlord shall ensure that all such records shall be available at the Shopping Centre or at the offices of the Landlord in Toronto or Bramalea, for examination by the Tenant during regular business hours.

## MODIFICATIONS OF ADDITIONAL RENT

4. (6) (a) In the event that any repair, replacement or re-building of the whole or any part of the Common Facilities is of capital nature, the cost of same shall be extended over a period of years based upon generally accepted accounting procedures and there shall be included in any statement of Additional Rent only that portion of such cost attributable to the period of time to which any such statement relates.

(b) In the event that the amount of the contributions payable by the Tenant pursuant to section 10(2) together with the amount of the Tenant's Proportionate Share of the promotional and advertising expenses referred to in section 4(2) exceed in the aggregate the maximum amount allowable pursuant to section 10(3), the amount of such excess shall be paid by the Landlord.

ARTICLE VOCCUPANCY OF DEMISED PREMISES

## USE OF DEMISED PREMISES

5. (1) The Demised Premises shall be used continually for the purpose of a first rate merchandising activity in the business of a retail department store under the principal name used by the Tenant in its retail department store operations, if any, in Ontario. The Bay Department Store Building shall remain open for the conduct of such business during such hours as the Tenant and the Landlord shall agree upon from time to time. In the conduct of such business for the purpose and in the manner aforesaid, the Tenant may grant licences or concessions for the use or occupation of a total of not more than 20% of the gross leaseable area of the Bay Department Store Building and the provisions of section 16(1) shall not apply to such licences or concessions.

OUTDOOR SELLING AREA

5. (2) In connection with the use of the Bay Department Store Building, the Tenant or a licensee or concessionaire of the Tenant may use a portion of the Parking Facilities not exceeding 10,000 square feet and adjacent to the Bay Department Store Building for outdoor selling, notwithstanding that such use may displace some parking, and may fence and cover the same, but provided the period of such use shall be restricted to not more than 6 successive months of each calendar year and that at the end of each such period of use such portion is restored to its condition existing prior to the commencement of such period of use, and provided also that the location of such outdoor selling area shall not unreasonably interfere with access and freedom of movement within the Shopping Centre and shall not be deemed to reduce the parking index for the Parking Facilities below the minimum required by this Bay Lease, nor shall such outdoor selling area be included in the gross leaseable area of the Bay Department Store Building.

## RESTRICTIONS

5. (3) Notwithstanding the provisions of sections 5(1) and 5(2), the Tenant shall not use or permit any part of the Demised Premises or the outdoor selling area referred to in section 5(2) to be used for or with respect to or in connection with any of the following purposes:

- (a) any purpose other than a retail department store in accordance with this Bay Lease,
- (b) a store conducted principally or in part for the sale of second-hand goods (except resale of trade-ins), war surplus articles, insurance salvage stock or fire sale of merchandise damaged by fire, except in the event of a fire taking place in the Bay Department Store Building and then only for sale of merchandise damaged by such fire during the period of 30 days immediately following such fire,
- (c) in whole or in part for a retail food supermarket,
- (d) an auction,
- (e) a pawn shop,
- (f) any operation in any line of merchandise in which operation a practice is made of fraudulent or deceptive advertising or selling procedures;

provided that after the expiry of the initial 61-year period of the Term, the Tenant shall have the right to use and operate not more than 30,000 square feet of the Bay Department Store Building as a retail food supermarket.

## SIGNS

5. (4) The Tenant shall be entitled to have identification signs, upon the exterior of the Bay Department Store Building and upon or over the entrances to the Bay Department Store Building from any mall, similar in size and character to those generally used at the other department store buildings, as the case may be, operated in Canada by the Tenant or its subsidiaries, and such other signs as it may desire to have and which are consistent with the Landlord's general sign policy and have been approved by the Landlord, which approval shall not be unreasonably withheld. Illuminated signs shall be lighted during all hours when the Shopping Centre shall be open to the public. The Landlord's sign policy for signs in the Parking Facilities and upon the exterior of all premises on the Bramalea Lands save and except department stores and food supermarkets shall be subject to the approval of the Tenant, such approval not to be unreasonably withheld.

ARTICLE VIOPERATION OF SHOPPING CENTRE

## USE OF BRAMALEA AND EATONS LANDS

6. (1) The Landlord shall cause the Bramalea Lands and the Common Facilities to be used continually as a part of the Shopping Centre in accordance with the highest standards in the shopping centre industry. The Landlord will use its best efforts to ensure that all lessees or occupants of retail premises on the Bramalea Lands and the Eatons Lands, including department stores, shall be open for business during all hours when the Bay Department Store Building shall be open for business except that no lessee or occupant nor the Bay Department Store Building shall be required to open for business during such periods when it may be unlawful to be open for business. The Landlord covenants to use its best efforts to prevent anyone from using the Common Facilities for any purposes other than those for which they were intended and except in accordance with section 6(2) and without limiting the generality of the foregoing, not to allow merchandising, promotional or advertising activity or municipal or public functions in the Common Facilities, except those which are for the benefit of the Shopping Centre as a whole and which do not unreasonably interfere with access to or the visibility of the Bay Department Store Building or with orderly merchandising activities in the Shopping Centre. The Landlord shall not permit the Bramalea Lands or the Common Facilities to be used for any other purpose.

## RESTRICTIONS

6. (2) Notwithstanding the provisions of section 6(1), the Landlord, except with the consent of the Tenant, shall not use or permit any enclosed mall on the Bramalea Lands to be used for any purpose which will obstruct such mall in any way. Notwithstanding the provisions of section 6(1), the Landlord

shall not use or permit any part of the Bramalea Lands to be used for or with respect to or in connection with any of the following purposes:

- (a) any purpose other than as part of a regional shopping centre in accordance with this Bay Lease,
- (b) a store conducted principally or in part for the sale of second-hand goods (except resale of trade-ins), war surplus articles, insurance salvage stock or fire sale stock or the sale of merchandise damaged by fire except in the event of a fire taking place in such premises, and then only for sale of merchandise damaged by such fire during the period of 30 days immediately following such fire,
- (c) an auction,
- (d) a pawn shop,
- (e) any operation in any line of merchandise in which operation the lessee is making a practice of fraudulent or deceptive advertising or selling procedures.

#### NO BARRIER BETWEEN MALLS AND BAY DEPARTMENT STORE BUILDING

6. (3) Except as otherwise provided in this Bay Lease, the Landlord shall not erect, construct or place or permit to be erected, constructed or placed or permit to continue on the Bramalea Lands any gate, door, fence, barrier or other obstacle whether fixed or moveable or alter any grade level or permit any promotional or merchandising activity which in any manner would prevent or interfere with freedom of movement by foot between any mall, passageway, or walkway and the Bay Department Store Building during the hours when the Bay Department Store Building is open for business.

## NO BARRIERS BETWEEN BAY DEPARTMENT STORE BUILDING AND MALLS

6. (4) Except as otherwise provided in this Bay Lease, the Tenant shall not erect, construct or place or permit to be erected, constructed or placed or permit to continue on the Demised Premises any gate, door, fence, barrier or other obstacle whether fixed or moveable or alter any grade level or permit any promotional or merchandising activity which in any manner would prevent or interfere with freedom of movement by foot between any mall, passageway, or walkway and the Bay Department Store Building during the hours when the Bay Department Store Building is open for business.

## CONTROL OF COMMON FACILITIES

6. (5) The Common Facilities shall at all times be under the control of the Landlord and the Landlord shall be entitled to
- (a) construct, alter, maintain, operate and police the same and to change the area, location and arrangement thereof provided that, save and except for expansion by department stores and food supermarkets, the Landlord shall not make any substantial changes or alterations to the Common Facilities without the approval of the Tenant, such approval not to be unreasonably withheld,
  - (b) restrict parking by the Tenant and by lessees and occupants of the Shopping Centre and their respective officers, agents and employees to employee parking areas,
  - (c) employ all personnel and make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Facilities, and
  - (d) with the consent of the Tenant not to be unreasonably withheld, charge fees to any persons using

the Parking Facilities provided that the Tenant shall not be deemed to be unreasonable in withholding its consent if the charging of such fees is not a common practice in shopping centres of a similar size or nature located in that part of the Province of Ontario presently comprised of the Municipality of Metropolitan Toronto, the Regional Municipality of York, and the Counties of Ontario, Peel, Halton, Wentworth and Simcoe.

The Landlord shall do and perform such things therein and with respect thereto as in the use of good business judgment shall be advisable with a view to the improvement of the Common Facilities and of the convenience and use thereof in connection with the Shopping Centre.

#### RULES AND REGULATIONS

6. (6) The Landlord may from time to time establish reasonable rules and regulations, which shall not be inconsistent with the terms of this Bay Lease and which shall be subject to the approval of the Tenant (such approval not to be unreasonably withheld), applicable to all lessees in the Shopping Centre and governing the use of the Common Facilities. The Tenant shall comply with such rules and regulations so long as the same are uniformly enforced throughout the Shopping Centre. The Landlord shall use its reasonable efforts to enforce such rules and regulations.

ARTICLE VIITAXES

## TENANT'S TAXES

7. (1) During the Term the Tenant shall pay and discharge as rent, on or before the date when the same or the installments for the same become due

- (a) all Real Property Taxes levied, rated, charged or assessed against the Demised Premises;
- (b) every tax and licence fee in respect of the business conducted on or from the Demised Premises or in respect of the occupancy thereof by the Tenant, including without limitation all business taxes and rates, water and garbage taxes, rates and licences and all operating charges for water, gas, electric power and other rates for utilities supplied to the Demised Premises as determined by meters supplied by the Landlord for the Demised Premises;

but nothing herein shall require the Tenant to pay any taxes, rates or charges levied against or in respect of the income or capital of the Landlord. All such Real Property Taxes, business taxes, rates, fees and charges payable by the Tenant hereunder, including each and every installment thereof, shall be paid when due subject only to the right of the Tenant to defer payment thereof in certain circumstances as provided by section 7(4). The Tenant shall also pay all penalties and interest imposed with respect to arrears of such payments. Whenever the Landlord shall reasonably request, the Tenant shall exhibit to the Landlord receipts or other appropriate evidence as to the due payment of such Real Property Taxes, business taxes, rates, fees and charges.

## LANDLORD'S TAXES

7. (2) The Landlord shall pay or cause to be paid all Real Property Taxes, business taxes, licence fees and charges levied, rated, charged or assessed against the Bramalea Lands except those which the Tenant is required to pay pursuant to section 7(1), but nothing herein shall require the Landlord to pay any taxes, rates or charges levied against or in respect of the income or capital of the Tenant. All such Real Property Taxes, business taxes, fees and charges payable by the Landlord hereunder, including each and every installment thereof, shall be paid when due subject only to the right of the Landlord to defer payment thereof in certain circumstances as provided by section 7(4). The Landlord shall also pay all penalties and interest imposed with respect to arrears of such payments. Whenever the Tenant shall reasonably request, the Landlord shall exhibit to the Tenant receipts or other appropriate evidence as to the due payment of such Real Property Taxes, business taxes, fees and charges.

## DETERMINATION OF ASSESSMENTS

7. (3) For the purpose of establishing the amount payable by the Tenant pursuant to section 7(1) and the amount of Real Property Taxes to be included in the Additional Rent, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such amounts are based, being the assessment in the first case of the Demised Premises and in the second case of the Common Facilities. If such separate assessments or any of them are not made by the municipal or other governmental authorities to which such amounts are payable, the Landlord and the Tenant shall use their best efforts to have such separate assessments made or, failing that, sufficient official information to determine what such separate assessments would have been if they had been made, and if assessments are

made on a basis different from the basis contemplated by this Bay Lease (for example, if the Common Facilities are not separately assessed but allocated in portions to the assessments of the Tenant and others) the Landlord and Tenant shall use their best efforts to have such basis of assessment converted to the basis contemplated by this Bay Lease. However, in the event and to the extent that assessments consistent with the basis contemplated by this Bay Lease cannot be obtained from the municipal or other governmental authorities imposing them, the Landlord and the Tenant shall allocate the total assessment of the Bramalea Lands and the Demised Premises in a manner which is equitable and consistent with the basis of assessment contemplated by this Bay Lease so as to arrive at the separate assessments mentioned in the first sentence of this section 7(3) and which are required for the application of the provisions of this Bay Lease. In so doing, the parties shall have regard, as far as possible, to the following principles:

- (a) regard shall be had, where relevant, to such official separate assessments as are available from the municipal or other governmental authorities having jurisdiction and to the official basis upon which they were made;
- (b) available assessments of buildings and improvements in the Bramalea Lands and the Demised Premises shall be allocated to components for which separate assessments are to be arrived at in proportion to the original actual construction cost (excepting trade fixtures) of such buildings and improvements, but if buildings or improvements not part of original construction are involved, regard shall be had to changes in construction costs

and also to the relative ages of such buildings and improvements; and

- (c) available assessments of land in the Bramalea Lands and the Demised Premises shall be allocated to components for which separate assessments are to be arrived at in proportion to the areas of the component portions of such lands.

In the event that the Landlord and the Tenant cannot agree upon the required allocation of assessments, the allocation shall be determined by arbitration pursuant to this Bay Lease but having regard to the basis of determination set out in this section 7(3). The allocation which is either agreed or determined by arbitration shall, until such time as there is a change in assessments, be binding upon the parties and the separate assessments so arrived at shall be applied to determine the respective obligations of the parties with respect to the amount payable by the Tenant pursuant to section 7(1) and also the amount of Real Property Taxes included in the Additional Rent. If any Real Property Taxes, business taxes, licence fees or charges become due before such determination has been made, the Landlord may make a reasonable estimate of the allocation which shall not bind the parties but shall nevertheless be adopted for the basis of the interim amounts respectively payable by them, and when the allocation of assessments has been finally computed, the parties shall promptly make the appropriate re-adjustment and additional payment by the Tenant or repayment to the Tenant, as the case may be.

#### TAX APPEALS

7. (4) The Landlord may appeal any official assessment, or the amount of any Real Property Taxes, business taxes, licence fees or charges based thereon relating to the Bramalea Lands and

the Demised Premises, and the Tenant may appeal any official assessment of any Real Property Taxes, business taxes, licence fees or charges relating to the Demised Premises or, where the Tenant's obligations are directly or indirectly affected thereby, relating to any portion of the Bramalea Lands including the Common Facilities. In connection with any such appeal, the party appealing may defer payment of any Real Property Taxes, business taxes, licence fees or charges, as the case may be, payable by it to the extent permitted by law and provided that no part of the Shopping Centre is thereby rendered subject to sale or forfeiture, that the appeal is diligently prosecuted to completion and, in the case of a deferral by the Tenant, that such security as the Landlord may reasonably require is given for the payment of the amount thereof payable by the Tenant including penalties or interest resulting from deferred payment. Neither the Landlord nor the Tenant shall institute any appeal without notice to the other and, where their interests do not conflict and in particular where the appeal is being made in order to achieve a re-assessment which is consistent with the basis contemplated by this Bay Lease, each shall extend its co-operation and assistance to the other in respect to such appeal.

ARTICLE VIIIMAINTENANCE

## MAINTENANCE OF DEMISED PREMISES

8. (1) Subject to section 4.06 of the Construction Agreement the Tenant shall maintain the Demised Premises and keep or cause the same to be kept in good repair and in a clean, orderly and safe condition (both inside and outside) and in a good and workmanlike manner promptly do all such work and make all necessary repairs, and subject to Article XIII, make all necessary rebuildings and replacements (structural or otherwise), ordinary as well as extraordinary, and foreseen as well as unforeseen, including all such repairs, rebuildings and replacements which as a prudent owner thereof it should do or make to properly maintain and operate the Demised Premises and the water, sewer and gas connections, pipes and mains comprised therein.

## DISCHARGE OF TENANT'S OBLIGATIONS

8. (2) In the discharge of its obligations under section 3(1) and without limiting the generality of section 8(1), the Tenant in the same manner and to the same extent as a prudent owner and operator of the Demised Premises shall

(a) supply and maintain or cause to be installed and maintained adequate water, gas, sewage and electric power services within the Demised Premises where the same are required for the proper operation thereof,

(b) keep the Bay Department Store Building properly heated and air-conditioned and maintain adequate lighting therefor as necessary during the hours that the Bay Department Store Building shall be open for business.

#### EXCEPTION TO TENANT'S COVENANTS

8. (3) If within the period of 2 years immediately before the expiration of the 36th year of the Term and each successive 10-year period thereafter the Bay Department Store Building shall be damaged or destroyed to an extent such that according to the reasonable estimate of the Tenant the cost of repairing and rebuilding it shall exceed 25% of the replacement cost (excluding the replacement value of footings, foundations and pavements) of the Bay Department Store Building the Tenant may, by notice in writing to the Landlord given within 60 days after the happening of such destruction or damage, elect to terminate this Bay Lease, in which event this Bay Lease shall terminate as of the date of the giving of such notice, rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to such date of termination, the Tenant shall be relieved of its obligation to repair or rebuild the Bay Department Store Building and the Tenant shall assign to the Landlord all its interest in all insurance policies and any proceeds which may be payable thereunder in respect of such damage or destruction.

#### MAINTENANCE OF BRAMALEA LANDS

8. (4) The Landlord shall maintain the Bramalea Lands and the Common Facilities and keep or cause the same to be kept in good repair and in clean, orderly and safe condition (both inside and outside), and in a good and workmanlike manner promptly do all such work and make all necessary repairs, and subject to Article XIV, make all necessary rebuildings and replacements (structural or otherwise), ordinary as well as extraordinary, and foreseen as well as unforeseen, including all such repairs, rebuildings and replacements which as a prudent owner thereof it would do or make to property maintain and operate the Bramalea Lands and such Common Facilities and the water, sewer and gas connections, pipes and mains comprised therein, belonging thereto or connected therewith or used in the operations thereof.

## DISCHARGE OF LANDLORD'S OBLIGATIONS

8. (5) In the discharge of its obligations under section 8(4) and without limiting the generality of section 8(4), the Landlord, in the same manner and to the same extent as a prudent owner and operator of the Shopping in accordance with the highest standards in the shopping centre industry shall

- (a) supply and maintain or cause to be installed and maintained adequate water, gas, sewage electric power services and other utilities to all parties of the Bramalea Lands where the same are required for the proper operation thereof and of the Demised Premises,
- (b) provide and maintain, at least to the extent from time to time required under all provisions of this Bay Lease, suitable and adequate Common Facilities for use in the conduct of business in the Shopping Centre by the Tenant and by lessees of the Bramalea Lands and their respective officers, agents, employees, customers, invitees and licencees,
- (c) keep the Parking Facilities properly striped and otherwise marked, police the Parking Facilities and supervise the flow of traffic therein whenever reasonably required, keep the Parking Facilities free and clean of refuse and debris and keep the Parking Facilities and all paved uncovered areas of the Bramalea Lands free of snow and ice,
- (d) keep every enclosed mall open and properly heated and air conditioned and maintain adequate lighting therefor and for the Common Facilities including adequate lighting of the Parking Facilities as necessary during the hours that the Bay Department Store Building shall be open for business, and in any event during

each business day from at least one-half hour before sunset until at least one-half hour after the close of business of the Bay Department Store Building,

- (e) if any escalators or other pedestrian transportation facilities are provided in the Common Facilities, operate and maintain such escalators and other pedestrian transportation facilities in good condition and repair,
- (f) establish and maintain architectural and operational harmony within the Shopping Centre,
- (g) keep all flower beds suitably planted and when reasonably necessary cut and weed all grass, prune and spray all trees against insects and diseases, water and fertilize all grass, trees, shrubs and flowers as required to maintain a well landscaped appearance,
- (h) operate the Shopping Centre as a first rate merchandising activity avoiding any merchandise or promotional activity anywhere in the Shopping Centre which would lower such standard, and shall require such standard from all occupants of the Shopping Centre including other retail department stores,
- (i) provide competent and full time management for the operation of the Shopping Centre and promotional activities within the Shopping Centre, and provide office facilities in the Shopping Centre for such management.

#### EXCEPTION TO LANDLORD'S COVENANT

8. (6) If within the period of 2 years immediately before the expiration of the 36th year of the Term and each successive 10-year period thereafter the Bramalea Lands shall be damaged or

destroyed to an extent such that according to the reasonable estimate of the Landlord the cost of repairing or rebuilding shall exceed 25% of the replacement cost (excluding the replacement value of footings, foundations and pavements) of all buildings and improvements, in the aggregate, and if the Landlord gives notice in writing to the Tenant within 60 days after the happening of such damage or destruction, and if the Tenant shall have available to it any further option to terminate this Bay Lease pursuant to section 3(2) which it has not yet exercised, then unless the Tenant within 30 days after receipt of such notice from the Landlord waives the next 2 succeeding options to terminate this Bay Lease as provided in section 3(2), the Landlord may elect to terminate this Bay Lease, in which event this Bay Lease shall terminate upon the expiration of such 30 day period and rent and all other amounts payable by the Tenant hereunder shall be paid and adjusted to such date of termination and the Landlord shall be relieved of its obligation to repair or rebuild such buildings and improvements and the Tenant shall within 60 days after such date of termination vacate the Bay Department Store Building and shall not be responsible for any want of repair therein notwithstanding the provisions of section 8(1).

ARTICLE IXLEASES TO OTHER LESSEESLEASES OF RETAIL PREMISES

9. (1) Without the consent of the Tenant which shall not be unreasonably withheld the Landlord shall not lease any retail premises within the Bramalea Lands unless it be a lease to any person, firm or corporation named in Schedule "B" provided that the premises demised under such lease are in a location and are to be used for a purpose which will not unreasonably interfere with the merchandising balance of the Shopping Centre or are premises not fronting on any mall which would not otherwise be leased at a reasonable rental for such premises and are premises not situate within 80 feet of the mall entrances to the Bay Department Store Building. The Landlord shall from time to time consult with the Tenant on a plan allocating types of use to various locations comprised in the Bramalea Lands. Prior to any lease being executed, the Landlord shall submit the name, location and use of the proposed lessee to the Tenant for comment.

LANDLORD TO PERFORM AND ENFORCE LEASES

9. (2) The Landlord shall observe and promptly perform all the covenants, obligations and agreements of the lessor contained in every lease of retail premises within the Bramalea Lands and shall promptly enforce the observance and performance of all the covenants, obligations and agreements of the lessees thereunder.

LANDLORD TO PERFORM AND ENFORCE EATONS AGREEMENT

9. (3) The Landlord shall observe and promptly perform all the covenants, obligations and agreements of Bramalea Consolidated Developments Limited contained in the Eatons Agreement and shall promptly enforce the observance and performance of all the covenants, obligations and agreements of Eatons thereunder. Except with the consent of the Tenant, the Eatons Agreement shall not be surrendered or amended in any way that materially adversely affects the Tenant.

ARTICLE XMERCHANTS' ASSOCIATION MEMBERSHIP

## MEMBERSHIP BY LESSEES

10. (1) The Landlord shall cause a merchants' association to be formed to which all lessees of retail premises within the Bramalea Lands, except,

- (a) lessees in possession prior to March 1, 1971
- (b) lessees whose leases are dated prior to March 1, 1971, and
- (c) lessees which in accordance with generally accepted shopping centre practice are not usually required to become members of a merchants' association,

shall be required to be members. The Landlord shall use its best efforts to ensure that Eatons and all lessees of retail premises within the Bramalea Lands shall become and remain members of such merchants' association.

## MEMBERSHIP BY TENANT

10. (2) So long as

- (a) Eatons and every lessee of retail department store premises is a member of the merchants' association referred to in section 10(1) and pays a contribution thereto which is in the same ratio of gross leaseable area of the premises demised to such lessee or occupied by Eatons, as the case may be, as the contribution paid by the Tenant is of the gross leaseable area of the Bay Department Store Building, and
- (b) the Tenant continues to approve of the policies, by-laws and activities of such association, provided that such approval

shall not be unreasonably or arbitrarily withheld,

the Tenant shall be and remain a member of, participate in and support the activities of such association and pay a contribution to such association equal to 25% of the total contributions paid to such association by all members of such association other than the Landlord, the Tenant, Eatons and lessees of retail department store premises. So long as the Tenant continues to pay its contribution thereto, the Landlord shall also pay a contribution to such association equal to the lesser of the proceeds to it of percentage rentals under leases of retail premises within the Bramalea Lands or the amount paid by Eatons.

PROVISO

10. (3) Notwithstanding the provisions of section 10(2), the Tenant shall not be liable to pay any contribution to the merchants' association referred to in section 10(1) in excess of an amount equal to 10¢ per square foot per annum multiplied by the gross leaseable area of the Bay Department Store Building.

ARTICLE XICOMPLIANCE WITH STATUTES AND BY-LAWS

## COMPLIANCE BY LANDLORD

11. (1) The Landlord shall comply with and conform to the requirements of every applicable lawful statute, law, by-law and ordinance, with every applicable lawful regulation or order affecting the operation, condition, maintenance, use or occupation of the Bramalea Lands and the Common Facilities including the construction thereof and the making of any alteration or addition therein or thereto, whether or not such construction, alteration or addition be structural or be required on account of any particular purpose for which the Bramalea Lands or the Common Facilities is used and whether or not such requirement, regulation or order be of a kind now existing or within the contemplation of the parties to this Bay Lease.

## COMPLIANCE BY TENANT

11. (2) Subject to section 4.06 of the Construction Agreement the Tenant shall comply with and conform to the requirements of every applicable lawful statute, law, by-law and ordinance, with every applicable lawful regulation or order affecting the operation, condition, maintenance, use or occupation of the Demised Premises including the construction thereof and the making of any alteration or addition therein or thereto, whether or not such construction, alteration or addition be structural or be required on account of any particular purpose for which the Demised Premises are used and whether or not such requirement, regulation or order be of a kind now existing or within the contemplation of the parties to this Bay Lease.

ARTICLE XIIINSURANCE

## LANDLORD'S INSURANCE

12. (1) The Landlord shall take out and maintain with respect to the Bramalea Lands and the Common Facilities and at the request of the Tenant furnish to the Tenant certificates of a policy or policies of an insurance company or companies reasonably acceptable to the Tenant of:

- (a) insurance against destruction or damage by fire and those additional perils contained in the extended perils endorsement of such insurance company or companies including, but not so as to limit the generality of the foregoing, the perils of windstorm, hail, lightning, explosion, riot, impact by aircraft or vehicles, smoke damage, sprinkler leakage and malicious damage to the extent of the full replacement value thereof but excluding the replacement value of footings, foundations and pavements,
- (b) if any boiler or pressure vessels are operated on the Bramalea Lands and the Common Facilities, boiler and pressure vessels insurance up to a limit of not less than \$500,000.00,
- (c) public liability and property damage insurance up to the limits of not less than \$1,000,000.00 for any one occurrence.

**TENANT'S INSURANCE**

12. (2) The Tenant shall take out and maintain with respect to the Demised Premises and at the request of the Landlord furnish to the Landlord certificates of a policy or policies of an insurance company or companies reasonably acceptable to the Landlord of:

- (a) insurance against destruction or damage by fire and those additional perils contained in the extended perils endorsement of such insurance company or companies including, but not so as to limit the generality of the foregoing, the perils of windstorm, hail, lightning, explosion, riot, impact by aircraft or vehicles, smoke damage, sprinkler leakage and malicious damage, to the extent of the full replacement value thereof excluding the replacement value of footings, foundations and pavements,
- (b) if any boiler or pressure vessels are operated on the Demised Premises boiler and pressure vessels insurance up to a limit of not less than \$500,000.00,
- (c) - public liability and property damage insurance up to the limits of not less than \$1,000,000.00 for any one occurrence.

**WAIVER OF SUBROGATION**

12. (3) The insurance policies taken out and maintained

pursuant to sections 12(1) and 12(2) shall provide for waiver of subrogation against the Landlord and the Tenant respectively and all other companies respectively owned, operated or controlled by or affiliated to any of them.

#### SECTION 6 MORTGAGES ACT

12. (4) Each of the Landlord and the Tenant shall obtain from each mortgagee whose interest is shown in any policy of insurance taken out and maintained under sections 12(1) and 12(2) the written acknowledgment of such mortgagee to the effect that notwithstanding the provisions of section 6 of The Mortgages Act, R.S.O. 1970, and amendments thereto, the rights of such mortgagee to any insurance proceeds shall be subject to the application of such insurance proceeds in discharge of the obligations of the Landlord or the Tenant, as the case may be, under sections 8(4) and 8(1) and such proceeds shall be so applied.

#### APPLICATION OF PROCEEDS OF INSURANCE

12. (5) Subject to section 12(4), all policies of insurance taken out and maintained pursuant to sections 12(1)(a) and 12(2)(a) shall be in form reasonably satisfactory in detail to the Landlord and the Tenant so as to assure the availability of the proceeds of such policies for the purposes of restoring the Bramalea Lands, the Common Facilities and the Demised Premises, as the case may be, to their respective conditions in which they were immediately prior to the occurrence with respect to which such proceeds are payable.

ARTICLE XIIIEXPANSION AND ALTERATION BY THE TENANTEXPANSION AND ALTERATION OF BAY DEPARTMENT STORE BUILDING

13. (1) Subject to the provisions of section 13(3) the Tenant shall have the right at any time and from time to time to alter, reconstruct or expand the Bay Department Store Building which shall be at all times a department store building appropriate for its intended use, shall be architecturally compatible with the Shopping Centre and integrated with any enclosed mall in the manner in which it was so integrated at the time of its original construction, shall be located upon the Demised Premises and, if necessary, upon the expansion area marked on Schedule "C" and shall have not less than the gross leaseable area which it had when initially constructed (being about 132,000 square feet). The Tenant shall pay to the Landlord all expenses incurred by the Landlord in providing any additional Parking Facilities required under this Bay Lease by reason of such enlargement or expansion of the Bay Department Store Building if and to the extent such enlargement or expansion of the Bay Department Store Building increases the gross leaseable area of the Bay Department Store Building to more than 250,000 square feet. The Bay Department Store Building may be vacant and unoccupied in whole or in part during any alteration, reconstruction or expansion thereof, but only if and to the extent and so long as it is reasonably necessary, and in any event not for any period in excess of thirty (30) days unless the Landlord shall have consented (such consent not to be unreasonably withheld).

CONSTRUCTION BY THE TENANT

13. (2) Any substantial alteration and any reconstruction or expansion of the Bay Department Store Building shall be performed in accordance with the plans and specifications which have been approved by the Landlord pursuant to section 13(3) and in the performance of every alteration, reconstruction and expansion of the Bay Department Store Building, the Tenant will perform all work

involved in a good and workmanlike manner and in accordance with the general standards which were applicable to the initial construction of the Bay Department Store Building, and subject to section 13(1) will comply with all applicable municipal by-laws and other legal requirements pertaining to such work.

#### SUBMISSION OF PLANS AND SPECIFICATIONS

13. (3) Prior to the commencement of any construction on the lands comprised in the Demised Premises of any buildings or improvements in addition to the buildings and improvements constructed pursuant to the Construction Agreement and prior to effecting any substantial alteration or demolition in the exterior design or construction of the buildings and improvements constructed on the lands comprised in the Demised Premises, the Tenant shall deliver the plans and specifications for the design and construction thereof and showing the nature, location and size thereof to the Landlord for its approval, but such approval shall not be unreasonably withheld provided the requirements of this Article XIII are otherwise complied with.

#### RENTAL AFTER TENANT'S EXPANSION

13. (4) If the Tenant shall determine to construct an expansion of the Bay Department Store Building pursuant to this Article XIII, and the Landlord gives notice that it desires to negotiate with a view to arriving at an agreement whereby the Landlord will construct such expansion, the Landlord and Tenant shall negotiate in good faith with a view to arriving at an agreement whereby the Landlord will construct such expansion, including the amount of additional annual Minimum Rent to be paid under this Bay Lease in respect of such expansion as compensation to the Landlord, but if agreement thereon has not been reached within 60 days after the approval of the plans and specifications therefor, the Tenant shall have the right to proceed with the construction of such expansion at its own expense.

# RESTRICTION ON TENANT'S EXPANSION

13. (5) Any expansion of the Bay Department Store Building shall not occur until after the expiry of 7 years after the Commencement Date unless the gross leaseable area of the Eatons Department Store is increased during the said 7 year period in which event the Tenant shall be entitled to increase the gross leaseable area of The Bay Department Store Building up to but not exceeding the gross leaseable area of the Eatons Department Store.

EXPANSION AND ALTERATION BY THE LANDLORD

## LANDLORD'S ENLARGEMENT

14. (1) At any time and from time to time the Landlord shall be entitled to alter, reconstruct or increase the gross leaseable area of the Shopping Centre and the buildings on the Eatons Lands to not more than 1,200,000 square feet. Every such alteration, reconstruction or increase shall be architecturally compatible with the remainder of the Shopping Centre and shall be integrated with any enclosed mall. No such alteration, reconstruction or increase shall reduce the gross leaseable area of the Shopping Centre to less than 265,000 square feet. In connection with every such alteration, reconstruction or increase the Landlord shall construct additional Common Facilities necessary for the use thereof as a part of the Shopping Centre provided however, that the Landlord shall not permit the gross leaseable area of the department store premises in the Shopping Centre other than the Eatons Department Store and the Bay Department Store Building to exceed the greater of 121,000 square feet or the gross leaseable area at any one time of the Bay Department Store Building.

## CONSTRUCTION ON THE BRAMALEA LANDS

14. (2) The Landlord shall not construct any buildings or improvements on the Bramalea Lands or make any changes in the Parking Facilities, access roads, driveways, or entrances or exits comprised in the Common Facilities, or effect any substantial alteration or demolition in the external design or construction of the buildings and improvements constructed on the Bramalea Lands, except pursuant to plans and specifications approved in the manner provided in section 14(3).

## SUBMISSION OF PLANS AND SPECIFICATIONS

14. (3) Prior to the commencement of the construction on the Bramalea Lands of any buildings or improvements in addition to the buildings and improvements heretofore constructed on the Bramalea Lands and to be constructed on the Bramalea Lands pursuant to the Construction Agreement and prior to making any changes in the Parking Facilities, access roads, driveways, or entrances or exits comprised in the Common Facilities, and prior to effect-

ing any substantial alteration or demolition in the external design or construction of the buildings and improvements constructed on the Bramalea Lands, the Landlord shall deliver to the Tenant plans and specifications for the exterior design and construction thereof and showing the nature, location, size and proposed use thereof. Within 30 days after the delivery to the Tenant of such plans and specifications, the Tenant may revise the same by delivering its revisions and the reasons for the same to the Landlord and within 30 days after the delivery to the Landlord of such revisions and reasons the Landlord may further revise such plans and specifications by delivering its further revisions and the reasons for the same to the Tenant. The delivery of such revisions and further revisions and the reasons for the same shall continue until such plans and specifications as so revised have been approved by the party to whom they or such revisions or further revisions and the reasons for the same were last delivered. Such plans and specifications as so revised shall be deemed to have been approved by the party to whom such plans and specifications or such revisions or further revisions and the reasons for the same were last delivered if such party fails to deliver its revisions or further revisions and the reasons for the same within the time aforesaid.

#### APPROVAL

14. (4) Within 90 days after the initial delivery to the Tenant of plans and specifications for any construction, change, alteration or demolition by the Landlord permitted by this Bay Lease the Tenant shall approve the same as revised in accordance with section 14(3) if the effect of its failure to do so would be to prevent such construction, change, alteration or demolition provided that such construction, change, alteration or demolition shall not reduce the parking index for the Parking Facilities below the minimum required by this Bay Lease.

#### RESTRICTION ON LANDLORD'S ENLARGEMENT

14. (5) (a) The Landlord shall not construct any buildings or structures on the Green Lands without the

consent of the Tenant save and except for

- (i) a parking deck constructed on that part of the Shopping Centre situate between the northerly limit of Clark Boulevard and the south-westerly and north-easterly productions of the line of the south-easterly wall of the Bay Department Store Building.
  - (ii) buildings and structures under the parking deck,
  - (iii) pedestrian walkways, and
  - (iv) landscaping.
- (b) The Landlord shall not change or permit to be changed the use of the Shopping Centre as a shopping centre nor permit the construction, use or operation of any department store premises in the Shopping Centre other than the Bay Department Store Building, the Eatons Department Store and the department store premises situate on the second level of the enclosed mall and shown on Schedule "C", without the approval in each instance of the Tenant, such approval not to be unreasonably withheld provided that the Tenant may unreasonably withhold approval if the Landlord requests same prior to the expiry of the first 6 years of the Term.

ARTICLE XVPERIPHERAL LANDS AND EATONS LANDS

## CONSTRUCTION ON PERIPHERAL LANDS

15. (1) No buildings or improvements shall be constructed on the Peripheral Lands except in accordance with a plot plan which has been approved in the manner provided in section 15(2).

## SUBMISSION OF PLOT PLAN

15. (2) Prior to the commencement of any construction on the Peripheral Lands of any buildings or improvements, the Landlord shall deliver to the Tenant a plot plan showing the location, size and proposed use of such buildings or improvements and the relation thereof to the Shopping Centre. Within 30 days after the delivery to the Tenant of such plot plan the Tenant may revise the same by delivering its revisions and the reasons for the same to the Landlord and within 30 days after the delivery to the Landlord of such revisions and reasons the Landlord may further revise such plot plan by delivering its further revisions and the reasons for the same to the Tenant. The delivery of such revisions and further revisions and the reasons for the same shall continue until such plot plan has been approved by the party to whom such plot plan or such revisions or further revisions and the reasons for the same were last delivered. Such plot plan as so revised shall be deemed to have been approved by the party to whom it or such revisions or further revisions and the reasons for the same were last delivered if such party fails to deliver its revisions or further revisions and the reasons for the same within the time aforesaid.

## APPROVAL

15. (3) Within 90 days after the initial delivery to the Tenant of the plot plan for any construction on the Peripheral Lands by the Landlord permitted by this Article the Tenant shall approve the same as revised in accordance with section 15(2) if the effect of its failure to do so would be to prevent such

construction, provided that as a minimum requirement no such construction shall obstruct the full visibility of the Bay Department Store Building from Highway No. 7 along a corridor 60 feet in width and from Clark Boulevard along a corridor 60 feet in width.

#### RESTRICTIVE COVENANT ON PERIPHERAL LANDS

15. (4) To the intent that the burden of this covenant shall run with the Peripheral Lands in favour of the Demised Premises, the Landlord covenants that during the initial 36-year period of the Term it will not use or permit any part of the Peripheral Lands to be used for or with respect to or in connection with retail premises unless it be with respect to or in connection with an enlargement of the Common Facilities save and except for retail premises situate wholly within buildings or improvements constructed on the Peripheral Lands and being designed and intended primarily for patronage by the occupants of such buildings or improvements.

#### CONSTRUCTION ON EATONS LANDS

15. (5) In the event of construction or expansion, alteration or reconstruction of buildings and improvements on the Eatons lands, the Landlord shall deliver to the Tenant a copy of the plans for the exterior design and construction thereof and showing the nature, location and size thereof provided such plans have been submitted to the Landlord.

ARTICLE XVITRANSFERS AND ENCUMBRANCES BY  
LANDLORD AND TENANT

## DISPOSITIONS BY THE TENANT

16. (1) During the period of 36 years after the Commencement Date, the Tenant shall not sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in this Bay Lease or the Construction Agreement. The Tenant at any time and from time to time after the expiry of 36 years after the Commencement Date without the consent of the Landlord may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in this Bay Lease and the Construction Agreement and may at any time and from time to time enter into any mortgage, pledge, charge, hypothec or encumbrance or enter into any financing arrangement of the whole or any part of its interest in this Bay Lease and the Construction Agreement provided that as a condition precedent to every such dealing (other than any such mortgage, pledge, charge, hypothecation, encumbrance or financing arrangement) the party acquiring such interest shall assume and so long as it holds such interest perform each of the covenants, obligations and agreements of the Tenant under this Bay Lease and the Construction Agreement in the same manner and to the same extent as if originally named as the Tenant in this Bay Lease and the Construction Agreement.

## TENANT'S INTER-CORPORATE TRANSACTIONS

16. (2) Notwithstanding section 16(1) but subject to section 5(1), the Tenant at any time and from time to time without the consent of the Landlord may at any time and from time to time enter into any mortgage, pledge, charge, hypothec or encumbrance or enter into any financing arrangement of the whole or any part of its interest in this Bay Lease and the Construction Agreement with a recognized lending institution and may sell, transfer, lease assign or otherwise dispose of the whole or any part of its interest in this Bay Lease and the Construction Agreement to a company in respect of which the

#### LANDLORD'S ESTOPPEL CERTIFICATE

16. (4) The Landlord at any time and from time to time upon not less than 10 days' prior notice shall execute and deliver to the Tenant a statement in writing certifying that this Bay Lease is unmodified and in full force and effect (or, if modified, stating the modifications and that the same is in full force and effect as modified), and stating whether or not there is any existing default under this Bay Lease on the part of the Tenant of which the Landlord has notice.

#### TENANT'S ESTOPPEL CERTIFICATE

16. (5) The Tenant at any time and from time to time upon not less than 10 days' prior notice shall execute and deliver to the Landlord a statement in writing certifying that this Bay Lease is unmodified and in full force and effect (or, if modified, stating the modifications and that the same is in full force and effect as modified), the dates to which any amount provided in this Bay Lease to be paid by the Tenant to the Landlord has been paid, and stating whether or not there is any existing default under this Bay Lease or the Construction Agreement on the part of the Landlord of which the Tenant has notice.

#### EFFECT OF ESTOPPEL CERTIFICATES

16. (6) Any statement delivered pursuant to the provisions of sections 16(4) or 16(5) may be conclusively relied upon by any third person save as to any default of which the party giving such statement does not have notice at the date thereof.

#### TERMINATION OF LIABILITY

16. (7) Upon the expiry of 36 years after the Commencement Date, and except as to any default existing at such time or at the time of such assumption, whichever is later, the assumption of the covenants, obligations and agreements of any party to this Bay Lease in the manner provided in this Article XVI shall relieve and discharge such party from the performance of its covenants, obligations and agreements under this Bay Lease and the Construction Agreement.

## RIGHTS OF TENANT'S MORTGAGEES

16. (8) If at any time during the currency of a mortgage of the Tenant's leasehold estate, notice of which has been given to the Landlord, the Tenant shall make default in the payment of rent or in the observance and performance of any of its covenants, obligations or agreements under this Bay Lease which would give rise to a right in the Landlord to terminate this Bay Lease, then the Landlord, before becoming entitled as against the holder of such mortgage to terminate this Bay Lease, shall give to the holder of such mortgage notice in writing of such default. The holder of such mortgage shall have 20 days after the giving of such notice within which to remedy such default if it shall arise by reason of default in the payment of rent and 60 days after the giving of such notice or such longer period as may be reasonable in the circumstances within which to remedy any other default and if such default is remedied within such time the Landlord shall not by reason thereof terminate this Bay Lease, provided that if the default of the Tenant shall arise by reason of any of the events mentioned in section 21(1)(b), then, so long as the holder of such mortgage shall pay the rents herein reserved and shall observe and perform the other covenants, obligations and agreements of the Tenant under this Bay Lease, the holder of such mortgage shall be entitled to preserve its rights and interests under its mortgage of the Tenant's leasehold estate, and shall not be obliged to reinstate the Tenant to its financial position or condition prior to the happening of any event mentioned in section 21(1)(b), and provided, further that the rights and privileges granted to the holder of any such mortgage by virtue of this section shall not in any way be deemed to alter, affect or prejudice any of the rights and remedies available to the Landlord against the Tenant. Any notice to be given to the holder of such mortgage shall be deemed to have been properly given if mailed by registered mail to its most recent address of which the Landlord shall have notice.

RIGHTS OF LANDLORD'S MORTGAGEES

16. (9) If at any time during the currency of a mortgage of the Landlord's estate, notice of which has been given to the Tenant, the Landlord shall make default in the observance and performance of any of its covenants, obligations or agreements under this Bay Lease which would give rise to a right in the Tenant to terminate this Bay Lease, then the Tenant, before becoming entitled as against the holder of such mortgage to terminate this Bay Lease, shall give to the holder of such mortgage notice in writing of such default. The holder of such mortgage shall have 60 days after the giving of such notice or such longer period as may be reasonable in the circumstances within which to remedy such default and if such default is remedied within such time the Tenant shall not by reason thereof terminate the Bay Lease, provided that the rights and privileges granted to the holder of any such mortgage by virtue of this section shall not in any way be deemed to alter, affect or prejudice any of the rights and remedies available to the Tenant against the Landlord. Any notice to be given to the holder of such mortgage shall be deemed to have been properly given if mailed by registered mail to its most recent address of which the Tenant shall have notice.

ARTICLE XVIILIENS

## DISCHARGE OF LIENS BY THE LANDLORD

17. (1) The Landlord shall pay off or otherwise discharge as and when any amounts payable in respect thereof become due any mechanics' or similar liens or charges that may be filed against the Shopping Centre with respect to any work or service performed or material furnished at the request of the Landlord or by reason of any default in the payment of any Real Property Taxes, business taxes, licence fees or charges for which the Landlord is responsible and shall cause the same to be discharged.

## DISCHARGE OF LIENS BY THE TENANT

17. (2) The Tenant shall pay off or otherwise discharge as and when any amounts payable in respect thereof become due, any mechanics' or similar liens or charges that may be filed against the Shopping Centre with respect to any work or service performed or material furnished at the request of the Tenant or by reason of any default in the payment of any Real Property Taxes, business taxes, licence fees or charges for which the Tenant is responsible and shall cause the same to be discharged.

ARTICLE XVIIIINDEMNITY

## INDEMNITY BY THE LANDLORD

18. (1) The Landlord shall indemnify and save the Tenant harmless of and from any and all liabilities, damages, costs, claims, suits or actions growing out of

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Bay Lease set forth and contained on the part of the Landlord to be fulfilled, kept, observed and performed,
- (b) any damage to property however occasioned by the use or occupation by the Landlord of the Bramalea Lands or the Common Facilities and any injury to any person or persons, including death resulting at any time therefrom, occurring in or on the Bramalea Lands or the Common Facilities or any part thereof arising from or occasioned by any cause whatever, except where such damage or injury is due to the act, default or negligence of the Tenant, or its servants, employees, agents or contractors,

and such indemnification in respect of any such breach, violation or non-performance, damage to property, injury or death shall survive the termination of this Bay Lease.

## INDEMNITY BY THE TENANT

18. (2) The Tenant shall indemnify and save the Landlord harmless of and from any and all liabilities, damages, costs,

claims, suits or actions growing out of

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Bay Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed,
- (b) any damage to property however occasioned by the use or occupation by the Tenant of the Demised Premises and any injury to any person or persons, including death resulting at any time therefrom, occurring in or on the Demised Premises or any part thereof arising from or occasioned by any cause whatever, except where such damage or injury is due to the act, default or negligence of the Landlord, its servants, employees, agents or contractors,

and such indemnification in respect of any such breach, violation or non-performance, damage to property, injury or death shall survive the termination of this Bay Lease.

ARTICLE XIXENFORCEMENT OF COVENANTS

## TENANT MAY PERFORM LANDLORD'S COVENANTS

19. (1) In the event that the Landlord shall be in default of any of its covenants, obligations or agreements under this Bay Lease and such default shall continue after notice by the Tenant to the Landlord specifying with reasonable particularity the nature of such default and requiring the same to be remedied, for a period of time in excess of such period as may be reasonably required in the circumstances to cure such default, then in addition and not in substitution for any other remedy which it may have, the Tenant may remedy such default. The cost of remedying such default shall forthwith be paid by the Landlord to the Tenant.

## LANDLORD MAY PERFORM TENANT'S COVENANTS

19. (2) In the event that the Tenant shall be in default of any of its covenants, obligations or agreements under this Bay Lease and such default shall continue after notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied, for a period of time in excess of such period as may be reasonably required in the circumstances to cure such default or if such default shall create any emergency which in the opinion of the Landlord might interfere with the conduct of business in the Shopping Centre, then in addition and not in substitution for any other remedy which it may have the Landlord may remedy such default. The costs of remedying such default shall forthwith be paid by the Tenant to the Landlord as rent under this Bay Lease.

ARTICLE XXGENERAL COVENANTS

## COVENANTS OF THE TENANT

20. (1) The Tenant covenants with the Landlord:
- (a) to pay the annual rent and all other sums from time to time due to the Landlord under this Bay Lease, and
  - (b) to observe and perform all the covenants, obligations and agreements of the Tenant under this Bay Lease.

## COVENANTS OF THE LANDLORD

20. (2) The Landlord covenants with the Tenant:
- (a) for quiet enjoyment, and
  - (b) to observe and perform all the covenants, obligations and agreements of the Landlord under this Bay Lease.

ARTICLE XXILANDLORD'S REMEDIES

## RE-ENTRY

## 21. (1) When

- (a) the Tenant shall be in default in the payment of any rent whether lawfully demanded or not and such default shall continue for a period of 20 consecutive days after notice by the Landlord to the Tenant specifying such default and requiring the same to be remedied, or
- (b) any goods or equipment of the Tenant have been sold under a valid writ of execution, the Tenant shall make an assignment for the benefit of creditors, or shall make any assignment or have a receiving order made against it under the Bankruptcy Act, or becoming bankrupt or insolvent shall make application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors, or any action whatever, legislative or otherwise, be taken with a view to the winding-up, dissolution or liquidation of the Tenant, or
- (c) subject to sections 13(1) and 25(1) the Demised Premises shall be vacated or become vacant or remain unoccupied for a period of 30 consecutive days,

then and in any of such cases the then current month's rent together with the rent for the 3 months next ensuing shall immediately become due and payable, and at the option of the

Landlord the Term shall become forfeited and void, and the Landlord may without notice or any form of legal process whatever forthwith re-enter upon the Demised Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, provided, however, that such forfeiture shall be wholly without prejudice to the right of the Landlord to recover arrears of rent or damages for any antecedent breach of the covenants, obligations and agreements on the part of the Tenant.

#### RIGHT TO DISTRAIN

21. (2) The Tenant waives and renounces the benefit of any present or future statute purporting to limit or qualify the Landlord's right to distrain and agrees with the Landlord that in any of the cases described in section 21(1) the Landlord in addition to the other rights reserved to it shall have the right to enter the Demised Premises as agent of the Tenant either by force or otherwise without being liable for any prosecution therefor and to take possession of any goods or chattels whatever on the Demised Premises, save and except any such goods and chattels as are owned by any occupiers of the Demised Premises other than the Tenant, and to sell the same at public or private sale without notice and apply the proceeds of such sale on account of the rent or other sums herein provided to be paid by the Tenant as rent in arrears or in satisfaction of the breach of any covenant, obligation or agreement herein contained and the Tenant shall remain liable for the deficiency, if any, and that notwithstanding anything contained in the Landlord and Tenant Act, R.S.O. 1970, or any successor legislation or other statute which may hereafter be passed to amend the same, none of the goods and chattels of the Tenant at any time during the continuance of the Term shall be exempt from levy by distress for rent or other sums provided by

this Bay Lease to be paid by the Tenant as rent in arrears; and that upon any claim being made for such exemption by the Tenant, or on distress being made by the Landlord, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in the said statute or amendments thereto, the Tenant waiving as it hereby does all and every benefit that it could or might have with regard thereto.

#### EXCEPTIONS TO FORFEITURE

21. (3) Notwithstanding any other provisions of this Bay Lease, the non-performance by the Tenant of any of the covenants, obligations and agreements of the Tenant in this Bay Lease shall not entitle the Landlord to a forfeiture of the Term unless the Tenant fails, except as provided in this Bay Lease, to remedy a default in payment of rent within the time permitted in this Bay Lease or unless such forfeiture is ordered or declared by a court of competent jurisdiction.

ARTICLE XXIIEXPIRATION OF TERMREMOVAL OF FIXTURES

22. (1) At any time prior to 60 days after the expiration of the Term, the Tenant, if not in default under this Bay Lease, may remove from the Demised Premises the fixtures and other articles in the nature of trade or tenants' fixtures belonging to it but the Tenant shall in such removal do no damage to the Demised Premises or to the mechanical and electrical equipment and appliances comprised therein for the use of the Demised Premises or shall make good any damage which may be occasioned thereto and if not so removed, such fixtures and other articles shall become the property of the Landlord.

SURRENDER OF DEMISED PREMISES

22. (2) The Tenant at the expiration or other sooner termination of the Term shall peaceably surrender and yield up to the Landlord the Demised Premises and all mechanical and electrical equipment and appliances comprised therein for the use of the Demised Premises in good and substantial repair and condition in accordance with its covenants to maintain and repair the same.

ARTICLE XXIIIARBITRATION

## APPOINTMENT OF ARBITRATORS

23. (1) Notwithstanding anything contained in this Bay Lease or in the Construction Agreement in the event that any dispute shall arise between the parties or any of them out of or in any way connected with this Bay Lease or the Construction Agreement, or the interpretation of this Bay Lease or the Construction Agreement, or the fulfillment of the obligations of such parties under this Bay Lease or the Construction Agreement or with respect to any consent or approval to be given by any party under this Bay Lease or Construction Agreement the parties agree to negotiate in good faith towards a speedy resolution of such dispute and, since time is recognized to be of the essence hereof, it is agreed that any party may at any time give written notice to the other parties of its desire to submit such dispute to arbitration stating with reasonable particularity the subject matter of such dispute and giving the name of the arbitrator who is the nominee of the party giving such notice. Within 5 business days after receipt of such notice, the other party shall give notice of the name of its arbitrator to the party desiring such arbitration. If any party fails to appoint an arbitrator to be its representative and to notify the other parties of such appointment as aforesaid, the party who has appointed the arbitrator may apply to a Judge of the Supreme Court of the Province of Ontario to appoint an arbitrator to be the representative of the party which has failed to appoint an arbitrator. The 2 arbitrators so appointed shall, within 5 business days of their appointment, appoint a third arbitrator, and if they fail to agree on such appointment within such period, the third arbitrator shall be appointed by a Judge of the Supreme Court of the Province of Ontario on application of either party. The 3 arbitrators so appointed shall forthwith proceed to arbitrate the dispute between the parties and

they shall render their decision in writing, as soon as may be practical. The decision of a majority of such arbitrators shall be final and binding upon the parties.

#### REPLACEMENT OF ARBITRATOR

23. (2) In the event of the death, resignation, incapacity, neglect or refusal to act of any arbitrator and of such neglect or refusal continuing for a period of 5 business days after written notice thereof has been given by any party, another arbitrator shall be appointed to replace such arbitrator by the party whose representative he was, or by the 2 arbitrators if he was appointed as the third arbitrator, and failing the making of such appointment, the appointment shall be made by a Judge of the Supreme Court of the Province of Ontario upon application by either party.

#### COMPLIANCE WITH DECISION

23. (3) The party against whom the arbitrators' decision is given shall comply with the arbitrators' decision within 5 days, or such period of time as is normal and reasonable.

#### COSTS

23. (4) The cost of any arbitration shall be borne in such manner as the arbitrators may determine.

ARTICLE XXIVNOTICES AND PAYMENTS

## NOTICES

24. (1) All notices, demands and requests which may be or are required to be given under this Bay Lease shall be in writing. All notices demands and requests shall be served personally or sent by Canadian registered mail addressed in the case of the Tenant to it at

Hudson's Bay House,  
77 Main Street,  
Winnipeg, Manitoba

and in the case of the Landlord to it at

Suite 1902,  
Royal Trust Tower,  
Toronto-Dominion Centre,  
Toronto 111, Ontario.

Attention: The Secretary

or at such other place as such party may from time to time designate by written notice to the other. Notices, demands and requests which shall be served in the manner aforesaid shall be deemed sufficiently served or given for all purposes of this Bay Lease in the case of those personally served, on the day of such service and in the case of those given by registered mail, on the second business day following the mailing thereof.

## PAYMENTS

24. (2) Until such time as the Tenant shall have received written notice to the contrary, all payments of rent and other sums provided in this Bay Lease to be paid to the Landlord shall be paid to the Landlord at its address shown above and notwithstanding any transfer or other disposition by the Landlord of the Demised Premises or of the rent or other sums provided in this Bay Lease to be paid to the Landlord or any change of the

name and address of the payee of any rent or other sums provided in this Bay Lease to be paid to the Landlord, the Tenant may, until receipt of such notice, continue to pay the rent and other sums provided in this Bay Lease to be paid to the Landlord to the same payee to whom and in the same manner in which the last preceding payment thereof was made and each such payment made by the Tenant prior to the receipt by it of such notice shall to the extent thereof exonerate and discharge the Tenant of its liability to pay the same.

#### INTEREST

24. (3) Any amount payable under this Bay Lease by any party to any other party shall bear interest from the date on which the same became due to the date of payment thereof calculated at that rate of interest which is equal to the lowest rate then charged for commercial demand loans by any chartered bank in Canada plus 2% per annum.

#### SET OFF

24. (4) Any amount payable under this Bay Lease by any party to any other party may be set off against any amount due under this Bay Lease to such party by such other party provided that in no event shall any amount be set off against the annual Minimum Rent.

ARTICLE XXVGENERAL

## FORCE MAJEURE

25. (1) Whenever, and to the extent that any party to this Bay Lease shall be unable to fulfil, or shall be delayed or restricted in the fulfilment of any obligation in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs under this Bay Lease by reason of

- (a) strike,
- (b) lock-out,
- (c) war or acts of military authority,
- (d) rebellion or civil commotion,
- (e) material or labour shortage not within the control of either party,
- (f) fire or explosion,
- (g) flood, wind, water, earthquake, act of God or other casualty, or
- (h) any event or matter not wholly or mainly within the control of the party having the obligation

and not caused by the default or act of commission or omission of such party and not avoidable by the exercise of reasonable effort or foresight by it, including any act or omission of it, then such party shall, so long as any such impediment exists, be relieved from the fulfilment of such obligation and the other party shall not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned.

## WAIVERS

25. (2) No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements under this Bay Lease shall be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor shall any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

## AMENDMENTS

25. (3) This Bay Lease may not be modified or amended except by instrument in writing signed by the Landlord and the Tenant.

## SEVERABILITY

25. (4) If any covenant, obligation or agreement of this Bay Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Bay Lease or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Bay Lease shall be separately valid and enforceable to the fullest extent permitted by law.

## NOTICE OF LEASE

25. (5) Each of the Landlord and the Tenant agrees that at the request of the other it will execute and deliver a notice of this Bay Lease for registration against the title to the Shopping Centre and the Peripheral Lands. No such notice of lease shall amend or alter, or shall be deemed to have amended or altered, any of the covenants, obligations or agreements contained in this Bay Lease.

## PLANNING ACT

25. (6) It is a condition of this Bay Lease that the provisions of The Planning Act and amendments thereto are

complied with. The Landlord at its own expense shall apply to, and expedite and pursue diligently any required application to the appropriate authority for its consent thereunder.

#### WHOLE AGREEMENT

25. (7) This Bay Lease and the Construction Agreement comprise the whole agreement between the Landlord and the Tenant. There is no representation, warranty, collateral agreement or condition affecting the subject matter of this Bay Lease other than as expressed in this Bay Lease or the Construction Agreement.

#### SECTION HEADINGS

25. (8) The article and section headings have been inserted in this Bay Lease for convenience of reference only and do not form part of this Bay Lease. Such article and section headings shall not be referred to in the interpretation of this Bay Lease.

#### APPLICABLE LAW

25. (9) This Bay Lease and the Construction Agreement shall be construed in accordance with the laws of the Province of Ontario.

#### CHANGES REQUIRED BY CONTEXT

25. (10). This Bay Lease shall be read with all changes of gender and number required by the context.

#### SUCCESSORS AND ASSIGNS

25. (11) This Bay Lease shall enure to the benefit of and

be binding upon the parties hereto, shall be binding upon their respective successors and assigns and shall enure to the benefit of and be enforceable by only such successors and assigns which have agreed with the continuing party to assume and to perform each of the covenants, obligations and agreements of the party to which they have so succeeded or from which they have received such assignment in the same manner and to the same extent as if originally named in this Bay Lease as such party.

IN WITNESS WHEREOF the parties hereto have executed this lease.

BRAMALEA CONSOLIDATED DEVELOPMENTS  
LIMITED

Per:  V/P

Per:  V/P

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY

Per: 

DIRECTOR

Per: 

PRESIDENT

SCHEDULE "A"

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the Township of Chinguacousy, in the County of Peel being composed of part of the East and West Halves of Lot 5, Concession 4, East of Hurontario Street and Part of Block Q, Registered Plan No. 688 for the said Township and being more particularly described as

First Parcel                      The Bramalea Lands

PARTS 8, 12 and 18

Second Parcel                    The Peripheral Lands

PARTS 9, 10, 11, 13, 15, 16, 17 and 25 subject to the right of way referred to in the Third Parcel in, over, along and upon PART 16

Third Parcel                    The Eatons Lands

PART 14 together with a right of way in common with all others entitled thereto, to and from PART 14 at all times and for all purposes, for all persons, animals and vehicles, in, over, along and upon PART 16,

all of which PARTS are shown on a reference plan deposited in The Registry Office for the Registry Division of Peel (No. 43) as Plan No. 43R-307.

SCHEDULE "B"Proposed Tenants

BANKS - TRUST - FINANCE

Bank of Montreal

Bank of Nova Scotia

Canadian Imperial Bank of Commerce

Canada Trust-Huron & Erie

Eastern-Chartered Trust Co.

Guaranty Trust Co. of Canada Ltd.

Household Finance

Industrial Acceptance Corp.

Laurentide Financial Corporation Ltd.

Montreal Trust Company

National Trust Company

Royal Bank of Canada

Royal Trust

Superior Acceptance Corp.

Toronto-Dominion Bank

The Metropolitan Trust Company

Canada Permanent Trust

Traders Group Ltd.

Doherty Roadhouse & McGaig

Canada Trust

Beneficial Finance

BARBER SHOPS

Polino's

Leon's Barber Shop

Continental

Martin's Barber Shop

Allen's of P.V.M.

Brentwood Barber Shop

Pat Rocca

Shoppers' Barber Shop

Shamata's - Leo F. Shamata

Ted's Barber Shop

Igor & Andy's Hairstyling Salon

Brentwood Barber Shop

Royal Barbers

Park Barber Shop

BEAUTY SALONS AND SUPPLIES

Charles of the Ritz

Caruso's - Gus Caruso

Fleming - Dorothy Fleming

Fashionette

Joseph's Coiffure

Karal's Beauty Salon

Lawrence Coiffure

Leone's Beauty Salons

Mario's Hair Stylist

Modern Miss Hair Stylists

Pogue Beauty Salons

Ruderfer Beauty Salon

Maison Lawrence

Chez Roderick Beauty Salon

Raymond Salon

Cut & Curl

Chris's Beauty Salon

Coventry Tresses (Wigs)

Wig Shop

Cosmetics - Merle Norman

BOOK STORES & Stationery

Arjay Hallmark Card Shop

Brentburn Books

Book Fair Ltd.

Classic Book Shops

Canada Railway News Company Ltd.

Garfield News

Cole's - C. Cole & Company Limited

Grand & Toy

Home Evangel Book Shop

Smith - W.H. Smith & Son Limited

Wilson's Stationery

Brentwood Books

E. De Mille Books

Ismail Kola

CAMERA SHOPS

Black's Eddie Black Limited

Chas. Abel

Greyhound Photo Service

Stevens - Jerry Stevens Camera Shops Limited

Kits Cameras

Strains

Fast Photo (Tentative Name)

CANDY SHOPS

Dutch Kettle

Jenny Lind Candy Shops

Laura Secord

Maynards (Canada) Limited

Purdy Chocolates

Nut House

Ye Olde Maple Shop

CLEANERS & LAUNDROMATS

Ascot Cleaners

Bryman Enterprises Ltd.

Custom Cleaners

Cadet Cleaners

Clayman's Valet Service

Careful Hand Laundries

Danforth Cleaners Limited

Embassy Cleaners

Hallmark

Langley's Limited

Perth's

Paramount Service Stores Ltd.

Parisian Laundry Co. of Toronto Ltd.

Parker's

Spick & Span Limited

Subiaco Cleaning Centre

Western Cleaning Carousels Ltd.

Jiffy One-Hour Cleaners

Nelson's Laundry

Carlton Cleaning Carousel

DEPARTMENT & JUNIOR DEPARTMENT

Eaton's

Simpson's (Simpsons-Sears)

Steinberg's

Fairweather Company Limited

Holt Renfrew Limited

Greenberg's

Ogilvy's

The Met

Pascal's

Zeller's Limited

Woodward's

S.S. Kresge's (K Mart)

F.W. Woolworth (Woolco)

Towers

Sayvette

Stedman's

Macey's

Gimbles

J.C. Penny

Alexanders

DRUG STORES

Dryson's

Drugtoun Pharmacies Limited

Hooper Drug Stores Limited

I.D.A. Drug Stores

Koffler's (Shoppers Drug Mart - Starkman Chemists)

Kent Drug Limited

Kingsdale Pharmacy

Kingsway Pharmacy

Leader Drugs Limited

Mainprize's - G.C. Mainprize Drug Stores

Moore's - George Moore Drugs Limited

National Drugs

Plaza

Rexall Drug Co. Limited

Saskatoon Drugs

Tamblyn's - G. Tamblyn Limited (Super Save Drug Mart)

Drugcraft Pharmacy

Owl Drug Store

Pinder Drugs

Isaac's Pharmacy

CHILDREN'S WEAR

Au Coin Des Petits

Diana Jr. Fashions

Fruman's Children's Wear

Junior Swank Shop

Junior Tog Stores Limited

Kidsland

Lawrence Kiddies Shop

Mother Goose

Stork Shop

Stockland

Toggery Shop Limited

Togs & Toys

Tots to Teens

Young World

Young Ages

Young Canada Shops

FABRIC CENTRES

Danforth Fabrics Limited

Eric Diversified Ind. Ltd. (Stitsky's)

Fashion Fabrics Limited

Harrison's

Montreal Draperies

Textile Town

Fabric Centre

West Coast Fabrics

FLORISTS

Broadway Florist

Cooper Florist

Dorelle Florist

Heywood Flowers Ltd.

Klora Flower Shop

Graham's - W.P. Graham & Sons

Rae Fraser Ltd.

Tidy's - S. Tidy & Son Ltd.

White's - David W. White Flowers.

Park Florist

Millards Florist

LADIES WEAR

Artistic Ladies Wear  
Atkins - Morton Atkins  
Anjone Shops Northtown Limited  
Alpine House - Sportswear  
Alton-Lewis Ltd.  
Arcade Ladies Shop  
Adorable Hat  
Arnell's  
Braemar  
Bell Furriers  
Brigitte's Ladies Wear  
Belgium Stores Limited  
Betty Wales  
Business Girl (The)  
Berg's - Ira Berg  
Contessa  
Coming Events (Maternity) Fashions Ltd.  
Chex Lillianne (Lingerie & Foundations)  
Conjana Fashion Shops Ltd.  
Creeds Limited  
Cover Girl  
Cameron Jeffries  
J.D. Creaghan Co. Ltd.  
Dalnys Limited  
Dresses Unlimited  
D'Allaird's Limited  
Dories Millinery  
Day-Tonn Hats

LADIES WEAR - cont'd

Ellwood Flynn

Evangelino Shops Limited

Fairweather's (Family Fair)

Fashion Craft Limited

Four Seasons Sportshouse

Fifth Avenue

Gigi

Goodman's Fashion Shoppe Ltd.

Goodman's Ladies Wear

Holt Renfrew &amp; Company Limited

Hollinsworth

Import Boutique Ltd.

Joy Frocks

Laurent Paquette

Lon's Furs

Lewis Howard Ltd.

Maison Diana

Mackenzie's - Ada Mackenzie

Maison Jerome

Mademoiselle Charmante

May Company Limited

Pink Poodle

Ponnington's Large Size Shops

Paris Shops (Brantford)

Rama, Simon Rama

Rouar

Rigby, Joan Rigby

LADIES WEAR - cont'd

Reitman's (Ontario) Limited  
 Stephanie's Ladies Wear  
 Sabrina's Ladies Wear  
 Sally Shops Limited  
 Streeter & Quarles  
 Simon - Franklin Simon  
 Shirley K Fashions  
 Simon - Julius Simon Ltd.  
 Sweet 16  
 Skirt 'N Sweater Shop Ltd  
 Travers Fox  
 Town & Country Shops  
 Town Talk Shops  
 Tunis & Son Limited  
 Town Topic Frocks  
 ? Walker's - Stan Walker  
 Young World  
 Fashion First Apparel  
 Saba Bros.  
 Field's Clothing  
 McVicker's Ladies Wear  
 Charmante Gowns  
 Charmante Bridals  
 Fashion Furs  
 Gray's Apparel  
 Consolidated Furs  
 Kizell, Ruth & Arthur  
 House of Nine (Ladies' Wear)  
 Fox's (Oshawa) Limited (Ladies' Wear)

FURNITURE - TV - RADIO - APPLIANCES

Alloc Demeter  
 Adams Furniture  
 Art Shoppe Limited  
 Babyland Limited  
 Burroughes Furniture Co. Limited  
 Danforth Radio Limited  
 Danet Interiors  
 Etco Electronics  
 Heather Hill Appliances Limited  
 Fallingbrook Furniture  
 Heintzman & Company Limited  
 Hammond Organ  
 Hancock's TV & Appliances  
 Jay's Pram & Toy Shop  
 Kiddie Korner Furniture & Toys  
 Lyon's Furniture Limited  
 H. Lipsen Carpets Limited  
 Lighting Unlimited Corp. Limited  
 Lamp & Shade Studio  
 Living Lighting  
 Michael's Music Mart  
 Shoppers Record & Tape Marts Ltd.  
 Melody Shop (The)  
 Michael's Appliances Limited  
 Mathew's - Tom Mathew Appliances Limited  
 V.S. Gallery (Picture Gallery & custom framing)

FURNITURE - TV - RADIO - APPLIANCES - cont'd

Mobilia Ltd.

MacDonald & Willson (Lamps & Lighting)

Modernage

Ridpath's

Record Shop

Sidley's - H. Sidley Limited

Robinson's Sporting Goods

Singer Sewing Machines

Storkland Furniture Limited (Shelagh's of Canada)

Sam the Record Man

Sayer's Music Centre

Alec Sherman

Shurtliff (Wm.)

Toronto Hi Fi Centre

Yolles Furniture

Sight & Sound

Radioland

Van Dike Portraits

Anderson Fine Arts

Park Gallery

Regal Lamps & Shades

Jordan Interiors

Lyle's House of Sound

Totem Music

GIFT SHOPS

Arcade Gift-O-Fruit Ltd.

Ashley's China

\* Aura Leo Card Shop

Abjon Creative Studio

Bowring China & Gifts

Card Tree

Cavalier Gift Shops Limited

Canadian Gift & Handicrafts

Grant's China & Gift Shops Limited

Gaylor's Gifts

Hope Chest - The (Linens)

Junors

Jade Gifts

Ko's Linen & Gift Shop

Lindsay Studios Limited

Maynard's Canadian Collections

Peck's - Gordon Peck Jewellers

Polin's

Reid's

Rene's for Gifts

Reid Rowland - China

Standish

Ton Fay Lam

Vivian Gifts.

Handicraft Boutique

GIFT SHOPS

Chateau Glass

India Gifts

Picadilly Jungle Gifts

Sanpan Oriental Shop

Capilano Hobby Shop

Pat Pourri

Nelsons Gifts

HARDWARE

Aikenhead's Hardware Limited

Bailey Hardware

McCallum's Hardware

White Hardware Limited.

Dominion Hardware

Pascals Hardware

JEWELLERY STORES

Ames Jewellers

Birk's - Henry Birks & Sons (Ontario) Ltd.

Firbanks Jewellers

Ostrandens Jewellers

Peoples Credit Jewellers Limited

Peck's - Peck Jewellers Limited

Specialty Jewellers

Swedish Jewellers

Mappin's Jewellers

Harold's Jewellery

Morse Jewellers

MEN'S & BOYS' WEAR

Armstrong - Jack Armstrong

Bond Clothes Shop

Beauchamp & Row Limited

Bearden's Men's & Boys' Wear

Dean Junction

Cameron-Jeffries

Dante

Disney's

Elk's Men's & Boys' Wear

Ely Company

Fraser's - Jack Fraser Limited

Gold - A. Gold & Sons

S & W Gasco

Grafton & Company

Garvey & Willmot

Griner - Bill Griner Ltd.

Hobberling's Ltd.

Karle's

Les Boutiques Dupuis (Dupuis Freres)

Linehan's - Pat Linehan Men's Wear

Bob Lunny's Sportswear

Marc Bouet

Maxwell's

Mallabars Better Quality Men's Wear

Provan (Ed.)

Perry's Men's Wear (Bloor St.)

Harry Rosen

H.T. Ross Distinctive Clothiers Ltd.

MEN'S & BOYS' WEAR - cont'd

Sibborry's - Johnny Shapiro

Stollery

Seymour's Men's Wear Ltd.

Sauve Freres

Smith's - Willie Smith's

Johnny Shapiro

Slack Shop Co.

Streeter & Quarles

Tip Top Tailors Limited (Dylex Diversified)

Thrifty

Toronto Family Clothiers Limited

The English Sheepskin Shop

Ward - Cecil Ward

Werner's Custom Tailoring

Wolf Gang Schoenbach Tailors

House of Mann

Brentwood Tailors

Elwood Flynn

Dorn's Men's Wear

Pant Stop

Just Jeans

PAINT STORES

Crown Paint & Wallpaper Company

Collings Wallpaper & Paints

Canada Paint Company

Canadian Pittsburgh Industries Ltd.

Empire Paint & Wallpaper Limited

The Glidden Co. Ltd.

Lowe Brothers Company Limited

Routley's Limited

St. Clair Paint & Wallpaper

Sherwin-Williams Co. of Canada Ltd.

Toronto Paint & Wallpaper Company

Rexdale Paint Supply

United Wallpaper & Paint.

RESTAURANTS

Au Cascades

Bryman Enterprises Ltd. (Limited menu)

Ceasar's Palace (Dr. Pub.)

Balmoral Cafe

Cara Holdings Ltd.

Canadian Food Products (Honey Dew)

Doll House Restaurant

Diana Sweets

Delli

Emmett Kelly Carnival

Fran's Restaurant

George's Spaghetti House

Grenadier

Hy's Steak House

Hot Shoppes (Versafoods)

Heritage

Holiday Garden (Chinese)

Johnson - Howard Johnson - U.S.A. Co.

LeComptoir

Le Bonjour Buffet (Steinberg Caf.)

Le Maison Neuve

Murray's

Noshery (The)

Ports of Call

Sobey's Snack Bar

Smitty's Pancake House

Sam Pappas Caf.

RESTAURANTS - cont'd

Stoodleigh

Scott's

Saphire Tavern

The Moorings

The Pancake House

The Donut Co.

Brentwood Donut.

Ricky's Restaurant

Little Oly's Soup &amp; Sandwich

Skillet &amp; Wisk

Gizella Tea Room

Palm Palm Restaurant

Wellings Restaurant

Dog N' Suds Restaurant

Ky's Restaurant

SHOE STORES

Agnew Surpass Shoe Stores

Arliss

Alderson Shoes Limited

Bata Shoes Limited

Barclay's Bootery

Betty Jane Shoe Company

Bonita

Brown's Shoe Shop

Calderone Shoes Limited

Clark Shoes Cedarbrae Plaza

Children's Shoe Shop

Collyer Shoes Limited

Coquette

Dack Corporation

Dolcis (Canada) Limited

Franch Shoes

Ingledeu's Shoes

Kinney Shoes of Canada

J.A. Johnston Shoes

Kent Shoes

Johnson's - Mel Johnson

Lewis Fred

F.X. La Salle

Murray's High Grade Footwear Ltd.

Miss Tina Shoes Limited

Maher Shoes Limited

SHOE STORES - cont'd

Owens & Elmes

Roward Shoos

Salon De La Barre

Slater Shoe (Canada) Limited

Town Cobbler (Shoes)

Town Shoes Limited

Saan Shoes

Thom McAn

Town Shoes

Vanity

The Villager

Trans Canada

Young's - Harry Young

Young Canada Shoe Store

Young's Shoes

Ralson Shoes

Jarman Shoes for Men

SHOE REPAIR

--Bolloccario Shoe Service

Heel Bar

Ralph's Shoe Service

Shoe Clinic

SPECIALTY SHOPS

Goldon Dolphin Bath Boutique

Clara's Leather Fashions

Ski Equipment & Apparel

Stroeter & Quarles

The English Sheepskin Shop

Leather Attic

Pampered Kitchen

Hobby Town Stores Ltd.

Hobby Shop

Card Shop

Peacock Corsetry

Fabric Centre

The Glove Shop

P. & J. Pet Centre

Formal Rental

Unicorn

Renette's Boutique

Arjay Hallmark Shop

Ladies' Boutique

Kizell Lingerie

Import Boutique

V.S. Gallery (Picture Gallery & Custom framing)

Thrifty Riding & Sport Shop

Spanish Village

Ameri - Can Girl (Uniforms)

SPECIALTY SHOPS

- Alpine Hut

Sanpan Oriental Shop

Royal Rug & Curio

Honey Boutique

Arjay Card Shop

Exquisite Boutique

Inclination

Nut House

Capilano Hobby Shop

Ye Olde Maple Shop

Picadilly Jungle Gifts

Matt Fisher Leather

Locksmith Supply Ltd.

Wingwood Fair

Al Wright Sport Shop

T O Y S

Toy World Limited

\* Eland Distributors Ltd. (Toys & Wheels)

Toy & Gift Shop

Dominion Playworld

Tomcor Games Limited

Toys & Wheels

TRAVEL SERVICE

Lawson

Charlie Conacher

Calladine & Baldry Ltd.

Trucman Travel Services Ltd.

United Travelmasters Ltd.

O'Brien Travel

World Wide Travel

SUPERMARKETS

A. & P. Food Stores Limited

Dominion Stores Limited

Loblaws Groceries Co. Limited

Oshawa Wholesale Limited

Power Super Markets Limited

Steinberg's Limited

Sobey's

FURRIERS

7-11 (Dloor St. W.)

Colquhoun's Scottish Fur House

Swears & Wells

Len's

Consolidated Furs

Fashion Furs

SEWING MACHINE COMPANIES

Singer Sewing Machine Company

SMOKE SHOPS

Claire's Cigar Store

Grosse - Lou Grosse (Mount Pleasant)

United Cigar Stores

Garfield News

Ismail Kola

LUGGAGE

Collacut Luggage

Derby's Luggage

Harcourt's Luggage

London Luggage

J.E. Fournier

Style Leather Goods.

Matt Fisher Leather

WOOL SHOPS

Jankok

Fairlane

AUTOMOTIVE CENTRES

The T. Eaton Co. Limited

The Robt. Simpson Co. Limited

Madison Bay Company

B.P. Oil

Shell Oil Company.

VARIETY STORES

Kresgo's - S.S. Kresge Company Limited

Metropolitan Stores

Stodman Brothers Limited

Woolworth's - F.W. Woolworth Company Limited

Zeller's Limited

GENERAL

Bright's Wines Limited

Coles Sporting Goods Limited

Gregory Systems (Clinic for Removal of Hair)

Dance Craft (Dancing Supplies)

R.J. Gordon Importer - Exporter

Lock Enterprises Limited

Jordan Wines

Liquor Control Board of Ontario

Fred Asher

Super Valu

Andreas Pappas

Jean Hardenne

GENERAL - cont'd

J.P.H. Manon

Vancouver Fraser Park Distributors

Kelly's Limited

V.S. Gallery (Picture Gallery &amp; custom framing)

Thrifty Riding &amp; Sport Shop Limited

London Shop

Spanish Village

Jeanne Dorse

Eleanor Mack

Tom Jones

Blink Bonnie

Bon Ton

Jenwood

Permaposie

Murchie's

Ena Swires

Kennedy McDonald

Geo Sparling

Joyce Dayton

Hollyburn Bailery

Mr. Roberts

Kelly DeYoung

Coach House

RECORDS

Melody Shop (The)

Michael's Music Mart

Promenade Music Centre

Sayers Music Centre

Sam the Record Man

Shoppers Record & Tape Mart Ltd.

FOODS & DELICATESSEN

Aux dolices

Bailey Foods Limited

Baker Guennel

Brentwood Donut House

Begel King

Coleman Delicatessen

Continental Cheese Shop

Eglinton Grocery Ltd.

Gainsborough Kitchens Limited

Health Bread Bakery Ltd.

Hunt's

La Brioche

Lottman's Imperial Bakery Ltd.

Margaret's Fine Foods Limited

Open Window Bakery Limited

Paul's

Patisserie Francaise

Shopsy's

Tip Top Fine Meats &amp; Delicatessen

Unser's - Wm. Unser Limited

Wozon's Bakery

Standard Fruit

Brentwood Bakery - Cookie Jar

Bene's Bakery Limited

House of Gourmet

Capilano Service Meats

Loyal Seafoods

Traeger's Bakery Limited

Hickory Farms

Captain Submarine Inc

OPTICAL

Yorkdale Optical Centre

Baril

Imperial Optical

London Optical

Brentwood-London Optical

Moncton Optical Co. Limited

INSURANCE

Equitable Life

Paul Revere Life Insurance

Aetna Insurance

Fidelity Life Insurance

TIMATHIES

United Century

Famous Flyers

Odeon Theatres

Jerry Lewis

INTERNATIONAL

Evelyn Wood Reading Dynamics

KIDGKS

Can-or-Wrap A Gift  
Engravecraft Jewellery  
Canadian Facts  
W.T. Lawson  
Little India  
Mr. Keys Limited  
Can-Carib Shoppe  
Oriental Bazaar  
Time Craft  
Yorkdale Candle Shop  
United Cigar Stores  
The Card Shop  
Mini-Bank (Bk. of Montreal)  
Steinberg-s Do-Nuts  
Le Comptoir (Snack Bar)



# LEASE AMENDING AGREEMENT

**THIS AGREEMENT** is dated the 8<sup>th</sup> day of March, 2007.

**BETWEEN :**

**MORGUARD CORPORATION and  
BRAMALEA CITY CENTRE EQUITIES INC.,**  
(collectively, the "Landlord")

OF THE FIRST PART

- and -

**HBC LEASEHOLD PROPERTY LP**  
(the "Tenant")

OF THE SECOND PART

## WHEREAS:

A. By a lease made as of the 28<sup>th</sup> day of March, 1973 (the "Lease"), between Bramalea Consolidated Developments Limited, as landlord, and The Governor And Company Of Adventurers Of England Trading Into Hudson's Bay, also known as Hudson's Bay Company ("HBC"), as tenant, the landlord leased to HBC, for and during a term (the "Term"), commencing on the 28<sup>th</sup> day of March, 1973 and ending on the 31<sup>st</sup> day of March, 2074, certain premises (the "Demised Premises") as more particularly described in the Lease and shown outlined in red on the plan attached to the Lease as Schedule "C", located in the mixed use complex known as Bramalea City Centre, in the City of Brampton, in the Province of Ontario;

B. By an agreement made as of the 20<sup>th</sup> day of July, 1987 (the "First Lease Amending Agreement") and an agreement dated the 30<sup>th</sup> day of April, 2002 (the "Second Lease Amending Agreement"), the Lease was amended upon the terms and conditions more particularly set out therein (the Lease, as amended by the First Lease Amending Agreement and the Second Lease Amending Agreement, being hereinafter referred to as the "Lease");

C. The Tenant is the present tenant under the Lease, having acquired the interest of HBC in the Lease, and the Landlord is now the registered owner of the Shopping Centre and as such is landlord under the Lease; and

D. The Landlord and the Tenant have agreed to amend the Lease upon the terms and conditions hereinafter set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of Two Dollars (\$2.00) now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged), and other mutual covenants and agreements, the parties agree as follows:

1. The foregoing recitals are true in substance and in fact.
2. The Lease shall be amended effective immediately as follows:
  - (a) Section 1(1) of the Lease shall be amended as follows:
    - (i) Subsection 1(1)(r) thereof (as amended by Section 5 of the Lease Amending Agreement) shall be deleted and replaced with the following:
 

"(r) "Parking Facilities" means paved parking areas provided and maintained by the Landlord or which the Landlord shall cause to be maintained from time to time on the Bramalea Lands and on the Eatons Lands and on the Peripheral Lands for transit, non-contract parkers (whether at or below grade level or in parking decks or structures), in such ratio as will, at minimum, comply with the following: (i) within a radius (the "Parking Radius Area") of 350 feet from any exterior customer entrance to the Bay Department Store Building, there shall be at least 5 parking spaces per 1,000 square feet of total leaseable area of the Bay Department Store Building; (ii) with respect to retail premises (as defined in Section 1(1)(v)), there shall be at least 4.5 parking spaces per 1,000 square feet of the total leaseable area of all such retail premises, and (iii) with respect to

leaseable premises other than retail premises (as defined in Section 1(1)(v)), the number of such parking spaces shall be sufficient to comply with all the legally enforceable requirements of municipal authorities applicable to such lands”;

- (ii) The following shall be added as a new subsection 1(1)(q.1) thereof:

“(q.1) “No Build Area” means the area shown hatched in black on Schedule “C-1” attached hereto.”; and

- (iii) Subsection 1(1)(v) thereof shall be deleted and replaced with the following:

“(v) “retail premises” means any premises which are used or available for use for the providing of goods and/or services to the public from such premises. For greater certainty, but subject to the exclusions hereinafter set out, any banks (other than bank premises located above the ground floor level of free standing buildings, which shall not be considered retail premises), any movie theatres, any fitness facilities (other than those fitness facilities not exceeding 50,000 square feet in aggregate and located below the grade level of the enclosed mall, which shall not be considered retail premises), any medical or dental facilities providing services to the public (other than any such medical or dental facilities which are located more than 350 feet from any exterior entrance to the Bay Department Store Building, which shall not be considered retail premises) and any call centres are hereby deemed to be retail premises, and the following premises are hereby deemed not to be retail premises: (a) residential premises; (b) any hotel or motel premises; and (c) any governmental, commercial, business or professional offices (other than those used as a call centre).”

- (b) Section 3(2) of the Lease shall be deleted and replaced with the following:

“The Tenant shall have the option to terminate this Bay Lease as of March 31, 2029 and as of each successive 10-year anniversary of such day thereafter. Such option shall be exercised by the Tenant by not less than 12 months' prior written notice to the Landlord.”;

- (c) Subsections 4(1)(a)(vi) and 4(1)(a)(vii) of the Lease shall be deleted and replaced with the following:

“(vi) Two Hundred and Twenty-Six Thousand Dollars (\$226,000.00) per annum until December 31, 2006;

(vii) Five Hundred and Twenty-Three Thousand, Four Hundred and Eighty-Five Dollars (\$523,485.00) per annum from January 1, 2007 until March 31, 2009, and Three Hundred and Ninety-Seven Thousand, Four Hundred and Eighty-Five Dollars (\$397,485) per annum from April 1, 2009 and through to the balance of the Term, provided in each case that such rate(s) shall cease to apply as of the day before the Expansion Premises Commencement Date (as defined in section 13(1A)) if applicable; and

(viii) from and after the Expansion Premises Commencement Date (if applicable pursuant to Section 13(1A)) and for the balance of the Term, the annual amount obtained by multiplying Seven Dollars (\$7.00) per square foot by the total gross leaseable area of the Bay Department Store Building and subtracting from such annual amount: (A) for any portion of the Term from the Expansion Premises Commencement Date up to March 31, 2009, NIL, and (B) for that portion of the Term after March 31, 2009, the annual sum of One Hundred and Twenty-Six Thousand Dollars (\$126,000).”;

- (d) Subsection 4(2)(a) of the Lease (as amended by Section 9 of the Lease Amending Agreement) shall be amended by:

(i) adding “until December 31, 2006,” at the beginning of subclause (a),

(ii) deleting said Section 9 effective from and after January 1, 2007, and

(iii) adding the following paragraph at the end thereof:

“The Tenant shall pay to the Landlord for each year or portion thereof within the Term, in lieu of the amounts set out in the above paragraph (“Common Area Costs”):

- (1) from and after January 1, 2007 to and including December 31, 2007, the sum of One Dollar (\$1.00) per square foot of the total gross leaseable area of the Bay Department Store Building; and
- (2) from and after January 1, 2008 until the expiry of the Term, an amount in each 12-month period, per square foot of the total gross leaseable area of the Bay Department Store Building, obtained by taking the sum of One Dollar (\$1.00) and adding to it the product of One Dollar and Fifty Cents (\$1.50) multiplied by the percentage increase (if any, but no decrease) in the CPI for January of the subject calendar year over the CPI for January, 2007; provided that from and after the Expansion Premises Commencement Date (if applicable pursuant to Section 13(1A)), the total gross leaseable area of the Bay Department Store Building shall be deemed, for the purposes of this paragraph of subsection 4(2)(a) only, not to include the gross leaseable area of the Expansion Premises. By way of example only, if by January 2008 the CPI has increased by two percent (2%) since January of 2007, the per square foot annual payment for calendar year 2008 would be \$1.03.

"CPI" means (a) the Consumer Price Index for all items for the City of Toronto published by Statistics Canada or by any successor thereof or any other governmental agency whose responsibility it is to publish such statistics, or, (b) if such index is at any time not published, such replacement index or system of adjustment as agreed upon by the Landlord and the Tenant, and failing agreement, as determined by arbitration pursuant to the provisions of Article 23.";

- (e) Section 4(5) and Subsection 4(6)(b) of the Lease shall be deleted;
- (f) Section 5(1) of the Lease shall be amended by adding the following paragraph at the end thereof:

"Notwithstanding any agreement or law to the contrary, if at any time during the Term a retail department store is not operated in substantially all of the Demised Premises for a period of ninety (90) consecutive days (excluding any period of time during which such operation in substantially all of the Demised Premises is prevented as a result of damage or destruction, force majeure (as described in Section 25(1) of this Bay Lease), renovations and other permitted temporary closures), then the Landlord may, at its option, give notice to the Tenant to terminate this Bay Lease effective upon the date (the "Specified Date") specified in the Landlord's notice (which date shall be no less than ninety (90) days following the giving of such notice), in which case should substantially all of the Demised Premises not be re-opened for business as a retail department store by the Specified Date, this Bay Lease shall thereupon terminate and the parties will be released from all further liabilities except for any defaults existing on or before the date of termination and any payments or adjustments owing or accruing prior to the date of termination. The foregoing right of termination is acknowledged by the parties to be a contractual right that does not relate to the existence of any default by the Tenant and is therefore intended to be available despite any stay order arising in any insolvency circumstances or proceedings. This right does not supercede any default-based rights and remedies available to the Landlord in the event of a breach by the Tenant under this Bay Lease.";

- (g) Section 5(4) of the Lease shall be amended by deleting in the last sentence thereof that portion starting with "and upon" and ending with "supermarkets";
- (h) The following shall be added as a new Section 5(5) of the Lease:

#### "RADIUS RESTRICTION

5. (5) From and after December 15, 2006 until December 31, 2027, the Tenant will not engage in nor will it permit any person under its control or affiliated with it, whether as partner, shareholder, lender, employee or otherwise, to engage, directly or indirectly, in a department store business operating under the same name as the Tenant's business in the Demised Premises, or under a similar name, or any full-line department store within any building or building complex, any part of which is within a radius of seven (7) kilometers from any point on the Bramalea Lands, the Eatons Lands or the Peripheral Lands. The Tenant acknowledges that the foregoing restriction comprises a reasonable

limitation on the Tenant's trading area in the context of this Bay Lease. Notwithstanding the foregoing, this section 5(5) will not apply to: (a) any Tenant's store which is acquired by or merged with another department store chain; or (b) until no later than December 31, 2007, the Tenant's retail department store currently operating as "The Bay" in the shopping centre known as Shoppers World Brampton, located at the Northwest corner of Steeles Avenue and Highway #10, in the City of Brampton, Province of Ontario, which retail department store (the "SWB Store") the Tenant covenants to permanently close and cease operating by no later than December 31, 2007. In consideration of the Tenant permanently closing the SWB Store and ceasing to operate its retail department store business from the SWB Store, the Landlord will pay to the Tenant the sum of One Million Dollars (\$1,000,000) plus goods and services taxes thereon. Such amount will be payable within thirty (30) days after the date of such permanent closing and cessation of operation.";

- (i) Section 6(1) of the Lease shall be amended by replacing "Section 6(2)" with "this Bay Lease", and Section 6(2) of the Lease shall be amended by deleting the first sentence thereof and replacing it with the following:

"The Landlord shall not lease, or otherwise permit the use of, any premises within eighty (80) feet from any customer entrance to the Bay Department Store Building without the prior written consent of the Tenant, which consent shall not be unreasonably withheld.";

- (j) Section 6(5) of the Lease shall be amended by deleting subsection (a) thereof and replacing it with the following.

"(a) construct, alter, maintain, operate and police the same and to change the area, location and arrangement thereof, provided same is in accordance with good shopping centre industry practice and does not (and the Landlord hereby covenants not to) materially interfere with customer access to and from the Bay Department Store Building or the Parking Facilities which serve customers of the Bay Department Store Building, and further provided the Landlord complies with the provisions of this Bay Lease, including without limitation Sections 1(1)(r) and 14(3) of this Bay Lease.";

- (k) Article IX of the Lease shall be deleted. The Tenant acknowledges that the Landlord's current merchandising plan of the Shopping Centre, and all previous iterations thereof up to and including this date, were approved by the Tenant pursuant to its previous rights under Article IX;

- (l) Sections 10(2) and 10(3) of the Lease shall be deleted;

- (m) Section 13(1) of the Lease (as amended by Section 4 of the Lease Amending Agreement) and Sections 13(4) and 13(5) of the Lease shall be deleted and substituted by the following:

"13. (1) Subject to the provisions of section 13(3), the Tenant shall have the right at any time and from time to time to alter, reconstruct or expand the Bay Department Store Building which shall be: (a) at all times a department store building appropriate for its intended use; and (b) architecturally compatible with the Shopping Centre and integrated with any enclosed mall in the manner in which it was so integrated at the time of its original construction. Notwithstanding anything to the contrary, any expansion area will be located only in the area shown cross-hatched in black on Schedule "C-2" and will comprise approximately 20,000 square feet on the ground floor level of the Demised Premises and approximately 20,000 square feet on the upper floor level of the Demised Premises (the "Expansion Premises"). The west side of the Expansion Premises may have a direct entrance/exit into the proposed east-west interior mall of the Shopping Centre (which interior mall is depicted on Schedule "C-2"), provided that the location of any such entrance/exit shall be first approved in writing by the Landlord (such approval not to be unreasonably withheld). The Bay Department Store Building may be partially vacant and unoccupied during the build-out of the Expansion Premises, but only if and to the extent reasonably necessary. From the Expansion Premises Commencement Date, the Expansion Premises shall be deemed to be part of the Bay Department Store Building.

(1A) The Expansion Premises (including any entrance/exit into the proposed east-west interior mall depicted on Schedule "C-2") shall, if constructed, be constructed in accordance with the plans approved by the Landlord pursuant to Section 13(3), and shall be opened for business therein fully fixtured, stocked and staffed, and the balance of the Demised Premises shall be renovated by the Tenant in a manner consistent with the level

of finish of the Expansion Premises, all referred to herein as "Tenant's Work" and all to be completed within eighteen months from issuance of a municipal building permit allowing same (subject to any delays resulting from force majeure). The "Expansion Premises Commencement Date" shall mean the opening date to the public of the Tenant's expanded and renovated (in accordance with the provisions hereof) Bay Department Store Building, and in the event the Expansion Premises Commencement Date occurs, the Landlord shall pay to the Tenant within forty-five (45) days thereafter (provided the Landlord shall be entitled to hold back such holdback amounts as are permitted by the Construction Lien Act of Ontario, together with 125% of any lien claim amount for the Tenant's Work until such time as such lien claim has been discharged from title or vacated by court order) the sum of Ten Million Dollars (\$10,000,000.00), plus goods and services taxes thereon (collectively, the "Construction Allowance"), to be applied by the Tenant towards the cost of constructing the Expansion Premises and renovating the Demised Premises. The Tenant shall comply with the provisions of any construction lien or other relevant legislation in force in the Province of Ontario including any holdbacks specified under any such legislation. If the Landlord does not pay the Construction Allowance to the Tenant when due hereunder, and such failure continues for ten (10) business days after written notice given by the Tenant to the Landlord specifying therein the consequences of such failure as set out herein, the Tenant may offset the Construction Allowance against the next rent ensuing due until fully satisfied, and all arrears in regard thereto shall bear interest from the date that payment was due until payment is made at an annual rate equal to one percent (1%) above the prime rate of Canadian Imperial Bank of Commerce from time to time, calculated and payable monthly, not in advance.";

- (n) Section 14(1) of the Lease shall be deleted and replaced with the following:

"14. (1) At any time and from time to time, the Landlord shall be entitled to alter, reconstruct or increase the gross leaseable area of the Shopping Centre and the buildings on the Eatons Lands, but in doing so the Landlord shall not breach its covenant contained in subsection 6(5)(a) of this Bay Lease. Every such alteration, reconstruction or increase shall be architecturally compatible with the remainder of the Shopping Centre. In connection with every such alteration, reconstruction or increase, the Landlord shall construct additional Common Facilities necessary for the use thereof as part of the Shopping Centre, subject to the provisions of section 14(3). Notwithstanding anything to the contrary, so long as the Demised Premises are continuously, actively and diligently operated as a retail department store (other than when such operation is prevented by the occurrence of damage and destruction or force majeure), the Landlord will not lease or otherwise use or permit to be used any other premises in the Shopping Centre having a gross leaseable area that is larger than that of the Demised Premises for the purpose of a retail department store, except that this restriction shall not apply to the premises or business currently operated as "Sears" or its successors, assigns or replacements.";

- (o) Section 14(2) of the Lease shall be deleted;

- (p) Section 14(3) of the Lease shall be amended by deleting the first sentence thereof and replacing it with the following:

"The Landlord shall not construct any buildings or related above-grade improvements (other than curbing, lighting, signs, landscaping and other non-structural alterations) in the No Build Area as defined in section 1(1)(q.1), without the Tenant's prior approval which may be granted or withheld in the Tenant's discretion, and in that regard the Landlord shall deliver to the Tenant plans and specifications showing the nature, location, size and proposed use of any buildings or improvements. Notwithstanding the foregoing, part of the No Build Area abuts the proposed "Price Chopper" grocery store (the "Price Chopper Store") and, as such, the No Build Area and the Tenant's rights in connection with the No Build Area shall be subject to: (i) the rights of Sobeys Capital Incorporated (or any successor, assign, or replacement of Sobeys Capital Incorporated) to expand the Price Chopper Store and to use the outside areas within the No Build Area for purposes permitted under its lease with the Landlord including, without limitation, for use in connection with garbage enclosures, cart corrals, and loading facilities; and (ii) the final, as-built configuration of the Price Chopper Store.";

- (q) Sections 14(4) and 14(5) of the Lease shall be deleted. The Tenant acknowledges that it has approved of the proposed expansion of the Shopping Centre as depicted on Schedule "C-1" attached hereto, as such plan may be altered in non-material respects;

- (r) Article XV of the Lease shall be deleted;

- (s) Schedule "A" of the Lease shall be deleted and substituted by Schedule "A" attached hereto; and
  - (t) Schedule "C-1" and Schedule "C-2" attached hereto shall be appended to the Lease as, and in replacement of the existing, Schedule "C-1" and Schedule "C-2".
3. The parties confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. All capitalized words used in this Agreement have the same meaning as they have in the Lease, unless a contrary intention is expressed herein.
  4. This Agreement shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.


IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**MORGUARD CORPORATION**

By its Agent

**MORGUARD INVESTMENTS LIMITED**

(Landlord)

Per:  \_\_\_\_\_  
Authorized Signature

Per:  \_\_\_\_\_  
Authorized Signature

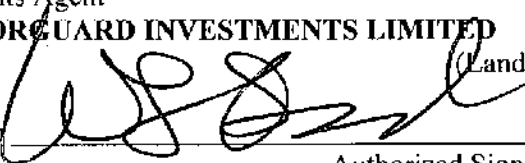
I/We have authority to bind the corporation.

**BRAMALEA CITY CENTRE EQUITIES INC.**

By its Agent

**MORGUARD INVESTMENTS LIMITED**

(Landlord)

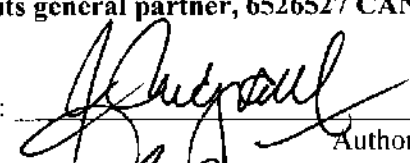
Per:  \_\_\_\_\_  
Authorized Signature

Per:  \_\_\_\_\_  
Authorized Signature

I/We have authority to bind the corporation.

**IIBC LEASEHOLD PROPERTY LP,  
by its general partner, 6526527 CANADA INC.**

(Tenant)

Per:  \_\_\_\_\_  
Authorized Signature

Per:  \_\_\_\_\_  
Authorized Signature

I/We have authority to bind the corporation.

**SCHEDULE "A"**  
**UPDATED LEGAL DESCRIPTIONS OF BRAMALEA LANDS,**  
**PERIPHERAL LANDS AND EATONS LANDS**

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the City of Brampton, in the Regional Municipality of Peel (formerly in the Township of Chinguacousy, in the County of Peel) being composed of part of the East and West Halves of Lot 5, Concession 4, East of Hurontario Street and Part of Block Q, Registered Plan No. 688 for the said Township and being more particularly described as:

First Parcel:                    The Bramalea Lands

PARTS 8, 12 and 18

Third Parcel:                The Eatons Lands

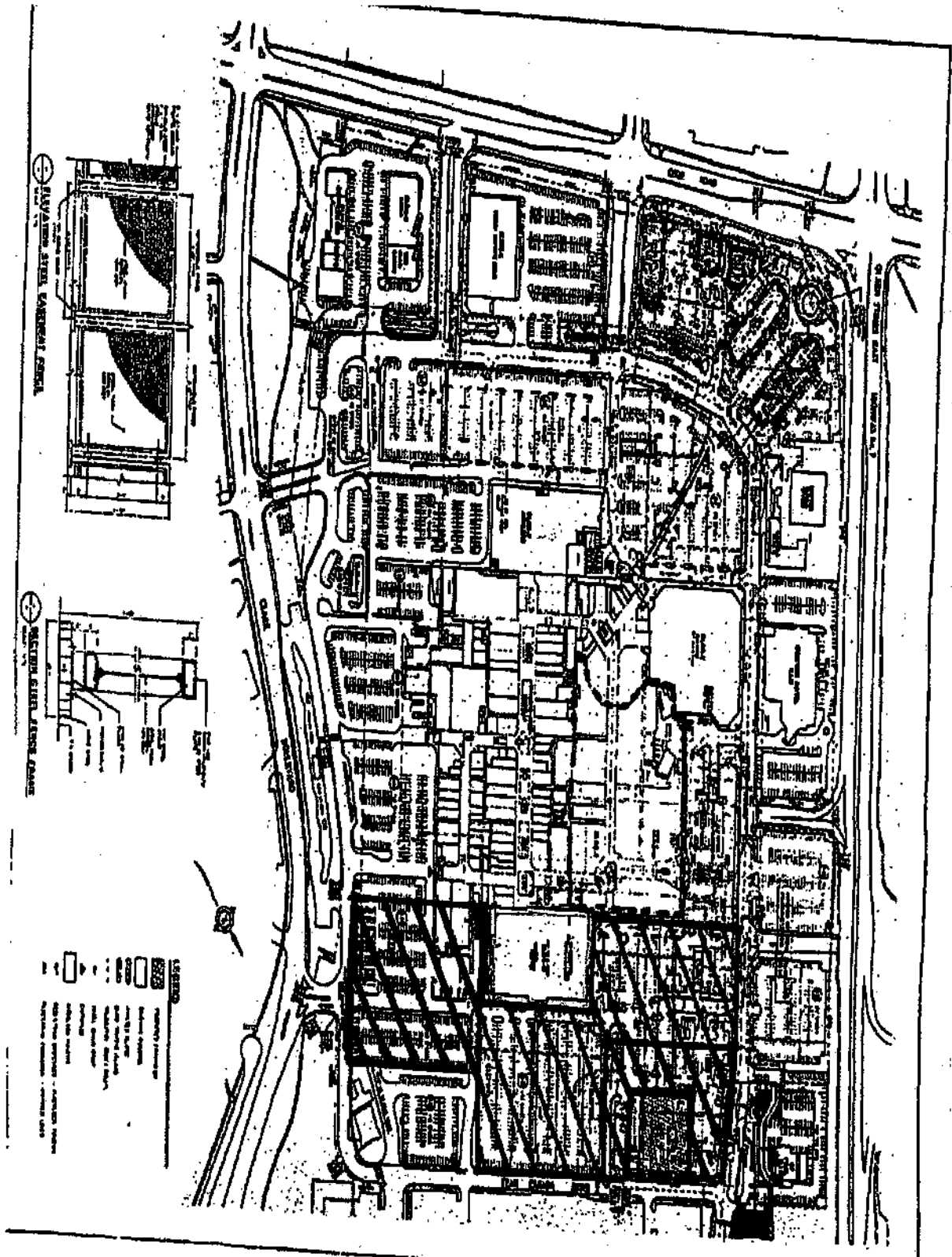
PART 14 together with a right of way in common with all others entitled thereto, to and from PART 14 at all times and for all purposes, for all persons, animals and vehicles, in, over, along and upon PART 16,

all of which PARTS are shown on a reference plan deposited in The Registry Office for the Registry Division of Peel (No. 43) as Plan No. 43R-307.

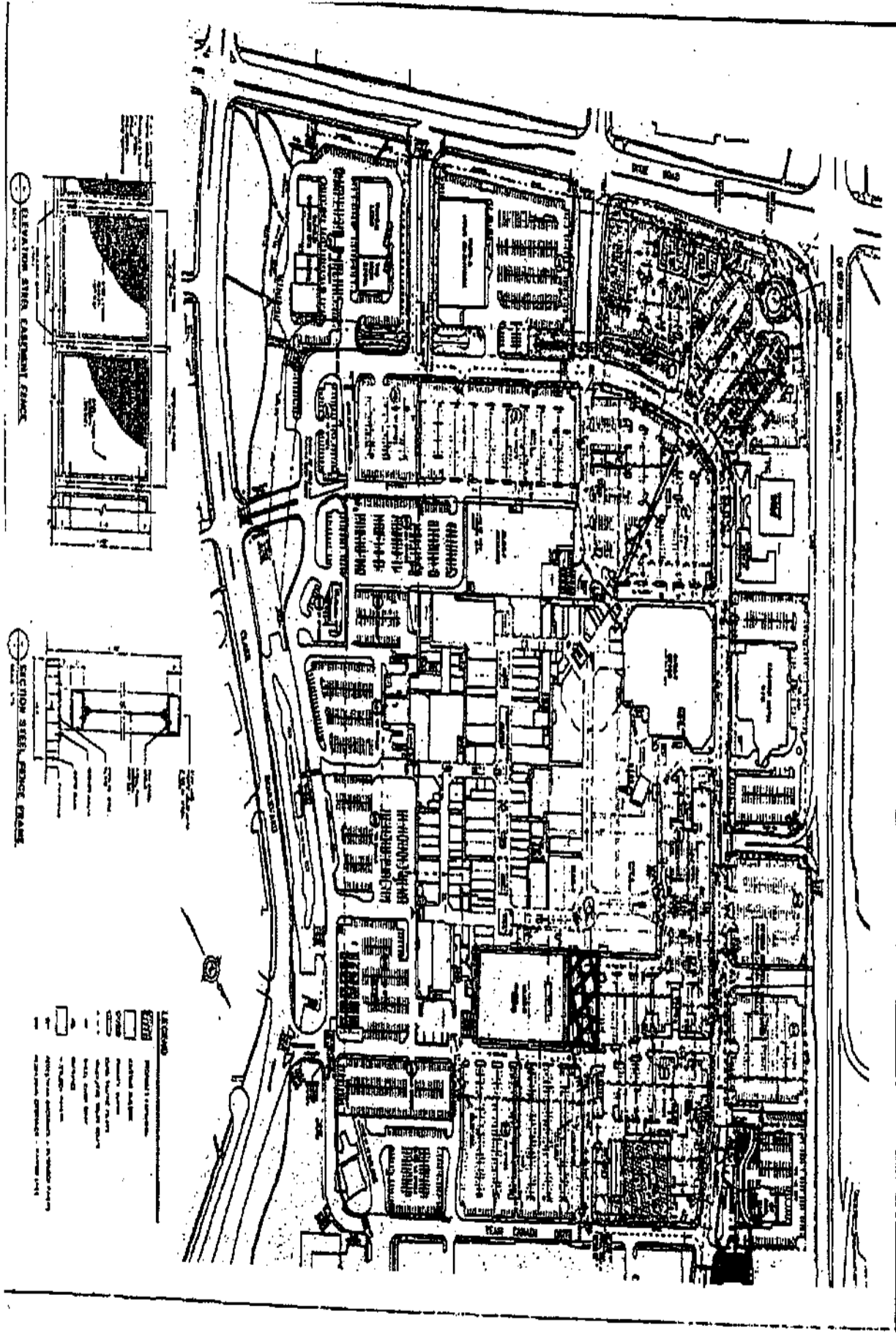
Second Parcel:              Peripheral Lands

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the City of Brampton, in the Regional Municipality of Peel (formerly in the Township of Chinguacousy, in the County of Peel) being composed of Part of Lot 5, Concession 4, East of Hurontario Street and Part of Block Q, Plan 688, and more particularly described as Parts 9, 10, 11, 13, 15, 16, 17 and 25 on Plan 43R-307, save and except for Parts 14, 92, 69, 78, 83, 151, 160 and 161 on Plan 43R-243.

**SCHEDULE "C-1"**  
**SITE PLAN OF SHOPPING CENTRE**  
**NO BUILD AREA HATCHED IN BLACK**



SCHEDULE "C-2"  
SITE PLAN OF SHOPPING CENTRE  
TENANT'S EXPANSION AREA CROSS-HATCHED IN BLACK



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HUDSON'S BAY COMPANY ULC  
COMPAGNIE et. al.**

APPLICANTS

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b> Proceeding commenced at TORONTO</p>	<p><b>RESPONDING MOTION RECORD OF</b> <b>MORGUARD INVESTMENTS LIMITED,</b> <b>the authorized agent and manager for various landlords</b> <b>wherein the Applicants operated retail stores</b> <b>(Returnable August 28, 2025)</b> <b>Volume I of III</b></p>
<p><b>CAMELINO GALESSIERE LLP</b> Barristers and Solicitors 65 Queen Street West, Suite 440 Toronto, ON M5H 2M5</p> <p><b>Linda Galesiere</b> Law Society No. 34678A Tel: 416-306-3827 Email: lgalesiere@cglegal.ca</p> <p><b>Gustavo F. Camelino</b> Law Society No. 45607S Tel: 416-306-3834 Email: gcamelino@cglegal.ca</p> <p>Lawyers for Morguard Investments Limited as authorized agent and manager for the landlords of its retail stores leased to one or more of the Applicants</p>	