

**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 II of III)**

**CAMELINO GALESSIERE LLP**

Barristers & Solicitors  
65 Queen Street West Suite 440  
Toronto, Ontario, M5H 2M5

**Linda Galessiere**

Law Society No. 34678A  
Tel: 416-306-3827  
Fax: 416-306-3820  
Email: lgalessiere@cglegal.ca

**Gustavo F. Camelino**

Law Society No. 45607S  
Tel: 416-306-3834  
Email: gcamelino@cglegal.ca

Lawyers for the 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

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

**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  
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Applicants

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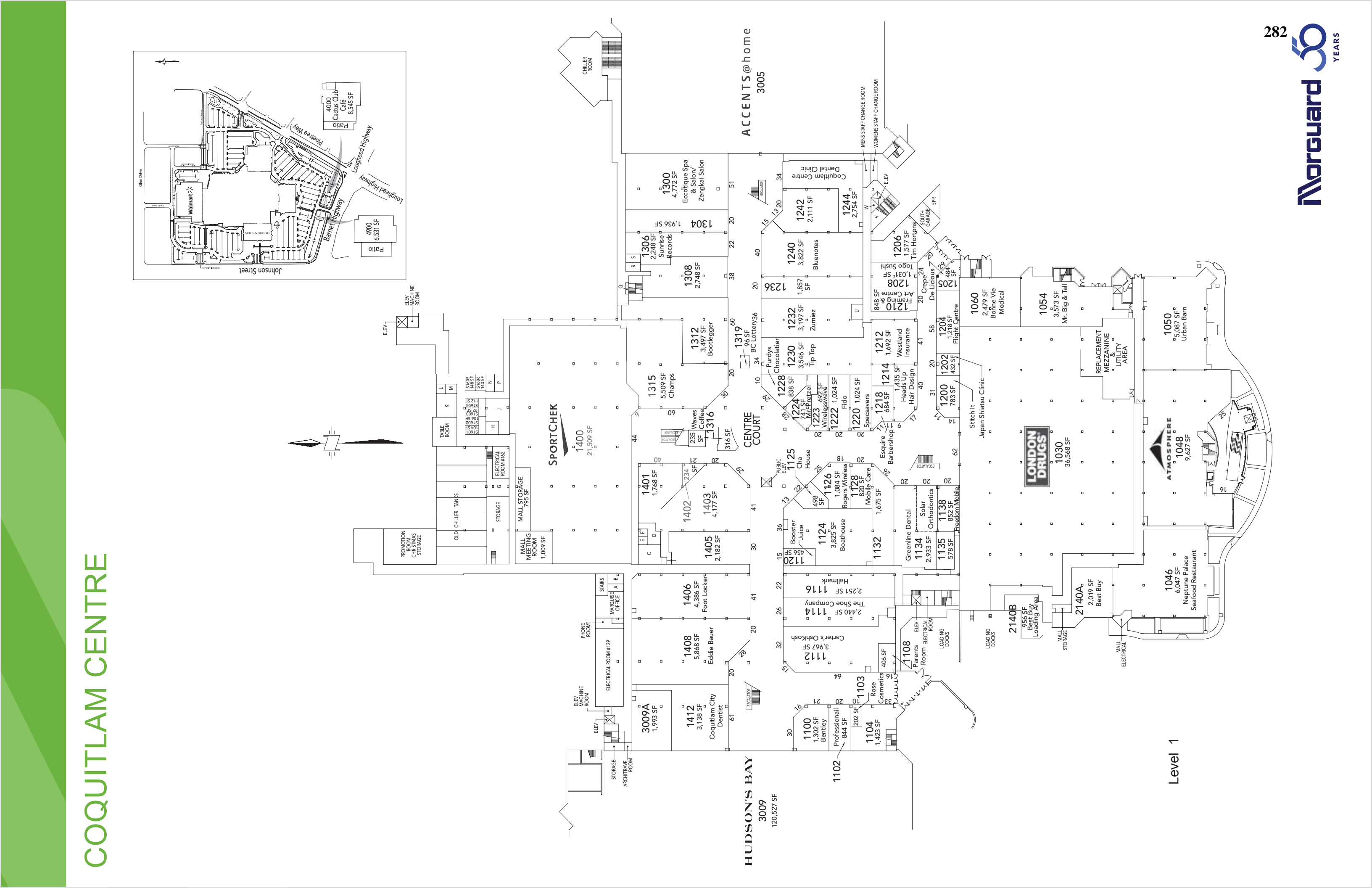
**THIS IS EXHIBIT "E" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**



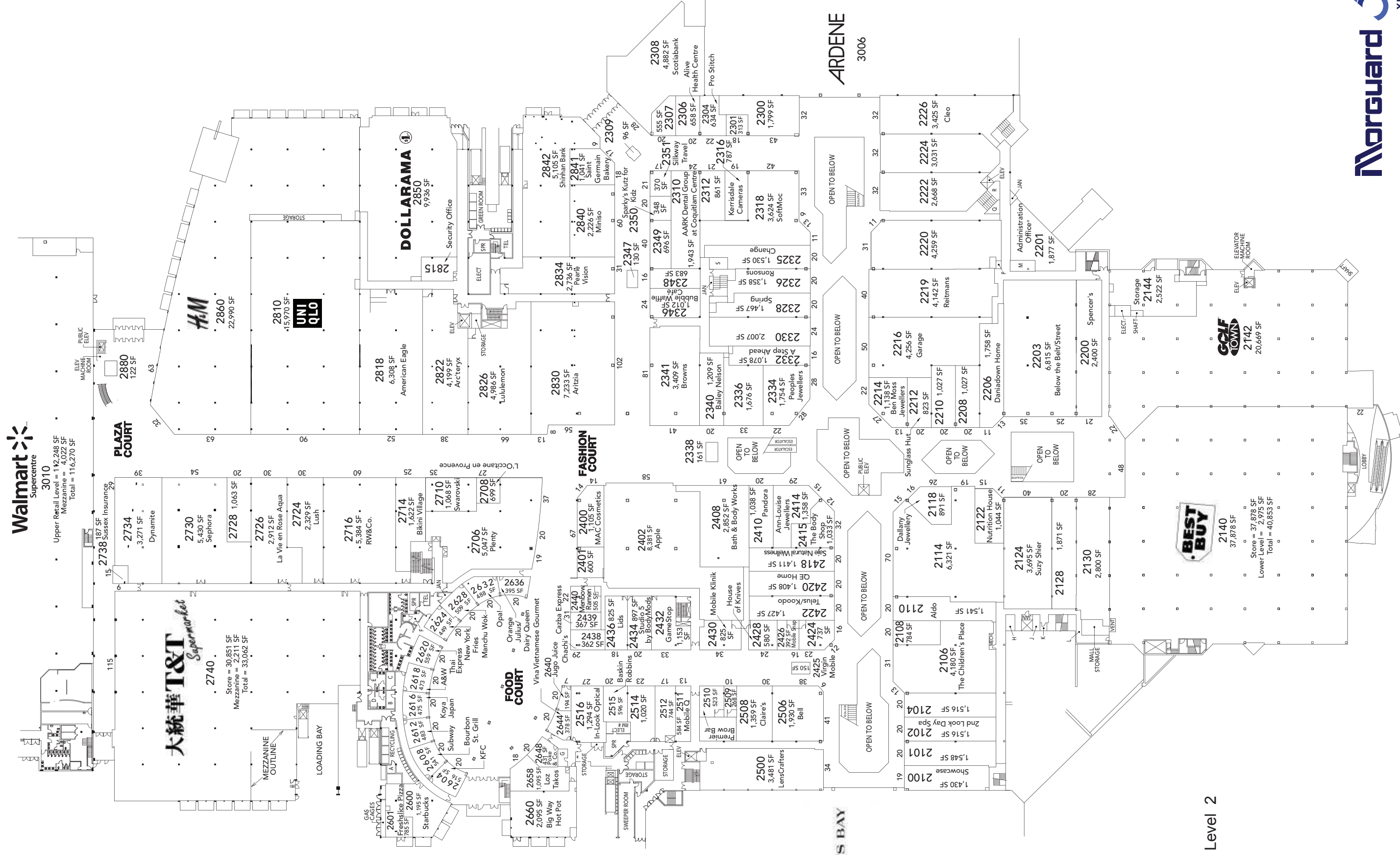
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Commissioner for Taking Affidavits  
Linda Galessiere






## COQUITLAM CENTRE



**THIS IS EXHIBIT "F" 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**

BETWEEN:

PRAXIS GROUP LTD.  
and  
DAON DEVELOPMENT CORPORATION  
(Landlord)

AND:

HUDSON'S BAY COMPANY  
(Tenant)

LEASE

DATED AS OF  
JANUARY 6, 1979

SHRUM, LIDDLE & HERBENTON  
BARRISTERS & SOLICITORS,  
EIGHTEENTH FLOOR, 505 BURNARD STREET, VANCOUVER, CANADA V7X 1G1  
(for DAVIS & COMPANY)

PRAXIS GROUP LTD. AND DAON DEVELOPMENT CORPORATION

LEASE TO

HUDSON'S BAY COMPANY

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THIS INDENTURE made as of the       day of       , 197 ,

BETWEEN:

PRAXIS GROUP LTD., a company duly continued under the laws of Canada, having an office and place of business at 300 - 545 Clyde Avenue, in the Municipality of West Vancouver, in the Province of British Columbia;

(hereinafter called "Praxis")

AND:

DAON DEVELOPMENT CORPORATION, a company incorporated under the laws of the Province of British Columbia, and having an office at 1050 West Pender Street, in the City of Vancouver, in the Province of British Columbia;

(hereinafter called "Daon")

(hereinafter collectively called the "Landlord")

OF THE FIRST PART

AND:

HUDSON'S BAY COMPANY, a corporation having its chief place of business at 2 Bloor Street East, in the City of Toronto, in the Province of Ontario;

(hereinafter called the "Tenant")

OF THE SECOND PART

W H E R E A S:

A.       Each of Praxis and Daon is the registered and beneficial owner of an undivided one-half (1/2) interest in the Lands (as hereinafter defined); and

B. The Landlord is causing to be constructed on the Lands a Shopping Centre known as "The Coquitlam Centre" including a department store and other premises intended for occupancy by the Tenant and has agreed to lease that department store and other premises to the Tenant on the terms and conditions set forth in this Lease;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained and the mutual covenants and agreements hereinafter contained the parties hereto covenant and agree each with the other as follows:

#### ARTICLE 1

#### DEFINITIONS

1.01 In this Lease, unless there is something in the context inconsistent therewith:

(a) "Additional Rent" means all amounts (other than Rent) from time to time payable by the Tenant to the Landlord pursuant to this Lease;

(b) ~~"Adjusted Gross Leaseable Area":~~

(i) of the Leased Premises ~~means 100% of the Gross Leaseable Area of~~ each level of the Leased Premises which is connected horizontally to the Mall and 50% of the Gross Leaseable Area of each level not so connected; and

- (ii) of the HBC Outdoor Selling Area and the HBC Automotive Centre means 100% of the Gross Leaseable Area thereof;

provided that if the Adjusted Gross Leaseable Area of any of the Eatons Store, the Woodward's Store, the Woodward's Bargain Store or the Woodward's Food Floor is calculated in a way more favourable to the tenant thereof, then that method of calculation shall be used for the purpose of this definition from the time that calculation takes effect;

(c) "Affiliate" means a corporation which is controlled by or which controls the Tenant, or any other corporation controlled by, or which controls, that corporation, whether any such control be direct or indirect; and "control" means:

- (i) the right to exercise a majority of the votes which may be put at a general meeting of a corporation, and
- (ii) the right to elect or appoint directly or indirectly a majority of the directors of a corporation or other persons who have the right to manage or supervise the management of the affairs and business of the corporation;



(d) "Architect" as it applies to any part of the Occupied Premises means the architect charged with supervision of the construction of that part of the Occupied Premises and as it applies to the rest of the Shopping Centre means the architect charged with supervision of the construction thereof;

(e) "Capital Debt of the Shopping Centre" means:

- (i) the indebtedness incurred by the Landlord directly related to the actual cost of the development of the Shopping Centre as contemplated in this Lease and as estimated in the Pro Forma Budget, plus
- (ii) the amount of \$6,480,000 ascribed as the value of the Lands in the Pro Forma Budget, to a maximum of \$47,500,000; plus the indebtedness, if any, necessarily incurred by the Landlord to pay for the actual cost of each expansion of the Shopping Centre permitted under the terms of this Lease;

(f) "Commercial Retail Units" means all the Leaseable Premises other than the Occupied Premises, the Eatons Store, the Woodward's Store, the Woodward's Food Floor and the Woodward's Bargain Store, which at present are shown outlined in brown on Schedule "C" hereto;

(g) "Common Facilities" means those areas of, and improvements and facilities on, the Property that are appropriate and intended for common use by, or common benefit of, the tenants of

the Shopping Centre and their agents, employees, customers, invitees and licencees in the manner and for the purposes permitted by this Lease, including without limitation:

the Parking Facilities, Mall, means of access to the Shopping Centre, ~~roof over the Common Facilities~~, public hallways, public washrooms, mechanical rooms, roadways, sidewalks, landscaped areas, open malls, truck courts, common loading areas and driveways, the electrical, music and public address systems, the HVAC System, plumbing and drainage equipment and installations and any enclosures constructed therefor, fountains, customer and service stairways, escalators, signs (including the Shopping Centre identification pylon sign or signs), lamp standards, public telephones, public lockers, information facilities, coat checking facilities and, if included in the Shopping Centre, child-care or nursery facilities, conference rooms, auditorium and public library,

but excluding:

all Leaseable Premises and portions thereof, the HBC Automotive Centre, the HBC Outdoor Selling Area, all kiosks in the Mall and all other portions of Parking Facilities and the Mall used for retail selling and other private purposes while so used, and all corridors, loading and access facilities, including docks and truck receiving and delivery facilities and electrical and mechanical vaults and rooms and facilities therein which in each case are appropriate and intended predominantly for use only by not more than three tenants or their respective agents, employees, customers, invitees and licencees;

(h) "Common Facilities Maintenance Cost" means the total, without duplication, of all reasonable and proper costs and expenses incurred by the Landlord for and properly attributable to the maintenance, operation and supervision of the Common Facilities including without limitation the following:

- (i) the actual costs and expenses relating to the HVAC System;
- (ii) the actual cost of gas, oil, power, water and other applicable utilities and services;

- (iii) the actual cost of repairs and replacement of the Common Facilities as are properly chargeable in accordance with generally accepted accounting principles consistently applied to operating expenses charged against income in the year in which they are incurred as distinguished from capital replacements or improvements;
- (iv) periodic depreciation on capital costs actually incurred and at rates determined by the Landlord (but not to exceed the maximum permitted to the Landlord under the provisions of the Income Tax Act of Canada, from time to time, or any legislation substituted therefor) on the equipment and machinery employed in maintaining and cleaning the Common Facilities;
- (v) premiums paid by the Landlord for:
  - (A) comprehensive public liability insurance pertaining to the use and operation of the Common Facilities; and
  - (B) fire and other property damage insurance in respect of the Common Facilities;
- (vi) the actual cost of sanitary control including cleaning, janitorial and refuse removal services and the removal of snow;

- (vii) wages paid for maintenance and operating personnel and on-site management personnel (except the person or persons charged with the overall management of the Shopping Centre) including payments for workers' compensation, unemployment insurance, vacation pay, Canada Pension Plan and any other fringe benefits whether statutory or otherwise;
- (viii) the portion of the Realty Taxes which may be reasonably allocated to the Common Facilities;
- (ix) an administrative fee for managerial and overhead services relating to the Common Facilities not to exceed 15% of the total of the costs and expenses incurred by the Landlord under this Article 1.01(h) other than those set out in Article 1.01(h)(iv), (v), (viii) and (ix);

but specifically excluding or setting off therefrom or, to the extent otherwise included, deducting therefrom:

- (x) payments of principal and interest under any mortgages or other security instruments in respect of the Property or any part thereof or relating to the repayment of monies;
- (xi) all interest on monies received by the Landlord in respect of Common Facilities Maintenance Cost;

- (xii) all monies recoverable under any insurance policies with respect to damage to, or loss of, any of the Common Facilities or which would have been reasonably recoverable if the Landlord had complied with its obligations to insure under Article 15, and recovered under claims for damage or indemnity from third parties to the extent applicable to repairs or replacement of the Common Facilities, the cost of which would otherwise be included hereunder;
- (xiii) charges for, or revenues from, any temporary use of Common Facilities to the extent not paid to the merchants' association or promotion fund for the purpose of advertising and promoting the Shopping Centre;
- (xiv) recoveries made by the Landlord in respect of warranties and guarantees relating to the Shopping Centre to the extent applicable to repairs or replacement the cost of which would otherwise be included hereunder;
- (xv) all contributions toward Common Facilities Maintenance Cost (other than contributions by the Tenant and other tenants, licencees or occupants calculated on the Gross Leaseable Area of its premises in the Shopping Centre) received

by the Landlord from tenants, licencees, occupants or any other party;

(xvi) all recoveries, contributions, rebates and savings whatsoever in respect of damage, insurance premiums or other costs and expenses included hereunder except Common Facilities Maintenance Costs;

(xvii) management, supervision, administration and other overhead and indirect costs and depreciation, except in each case to the extent expressly permitted under this Article;

(xviii) other expenses which are of a capital nature in accordance with generally accepted accounting practice; and

(xix) revenues received by the Landlord from the Parking Facilities (subject to the provisions of Article 10.02(n)) or from any other Common Facility;

(i) "Cost of Debt Service" means either:

(i) the amount of amortized payments of principal and interest or, until amortized payments are payable, the amount of payments of interest only, on or in repayment of the Capital Debt of the Shopping Centre outstanding from time to time, being the lesser of:

- (A) the amounts actually paid by the Landlord;  
and
  - (B) if any part of the Capital Debt of the Shopping Centre was not incurred at arm's length, the amounts which would have been agreed to be paid at arm's length by a reasonable and prudent owner of the Shopping Centre with a financial creditworthiness comparable to that of Daon at that time; or
- (ii) if any part of the Capital Debt of the Shopping Centre ceases to be payable by reason of a Mortgage Creditor foreclosing on its mortgage then, until the Mortgage Creditor disposes of any interest in the Shopping Centre, the amount which would have been included in (i) above had there been no foreclosure and all payments had been made in respect thereof by the Landlord;
- (iii) if and so often as the Mortgage Creditor after foreclosure disposes of any of its interest in the Shopping Centre the least of:
- (A) the amount that would have been included in (ii) above had there been no disposal;
  - (B) the amount equal to the amortized payments of principal and interest that would be payable if:

- (I) the Capital Debt of the Shopping Centre were equal to the amount thereof that would have been outstanding at the time of disposition had there been no foreclosure and all payments had been made in respect thereof by the Landlord; and
  - (II) such outstanding amount were repayable on the same terms (including interest rate and amortization period) as those upon which the party acquiring the interest in the Shopping Centre incurred a capital debt in relation to the purchase of that interest secured in whole or in part by the interest in the Shopping Centre; and
- (C) the amount equal to:
- (I) the amount that would have been included in (i) above had there been no foreclosure and all payments in respect of the Capital Debt of the Shopping Centre were made when due, in proportion to that part of the interest in the Shopping Centre which that Mortgage Creditor has not disposed of, plus
  - (II) the amount of amortized payments actually



interest in the Shopping Centre in 1998-  
payment of its capital debt referred to  
in (B) (II) above.

(j) "Default" means a failure to observe or perform any warranty, representation, covenant or agreement contained in this Lease;

(k) "Defaulting Party" means that party who has, or is alleged to have, committed a Default;

(l) "Eatons" means The T. Eaton Company Limited and its assignee of the Eatons Lease pursuant to an assignment consented to by the Tenant or which is specifically permitted under the Eatons Lease without the consent of the Landlord;

(m) "Eatons Lease" means the lease in form of Schedule "D" to that Agreement for Lease dated February 27, 1978 between the Landlord and Eatons relating to the Eatons Store and the Eatons Outdoor Selling Area;

(n) "Eatons Store" means the premises in the Shopping Centre demised or to be demised by the Landlord to Eatons by the Eatons Lease which at present is located as shown outlined on Schedule "A" hereto and marked "Eaton's Dept. Store".

(o) "Eatons Outdoor Selling Area" means the area adjacent to the Eatons Store which is located as shown on Schedule "A" hereto and marked "Eaton's Outdoor Selling Area";

(p) "Fixturing Period" means the period commencing on receipt by the Tenant of notice of Substantial Completion of the Leased Premises given by the Landlord pursuant to Article 6.02

and ending on the later of 120 days thereafter and the Shopping Centre Opening Date;

(q) "Food Supermarket" means a departmentalized one-stop self-service retail market for the sale of a comprehensive selection of food items for off-premises consumption by mass display in sufficient quantities to supply the market intended to be served by the Shopping Centre;

(r) "Gross Leaseable Area" as applied to any part of the Shopping Centre means the area (expressed in square feet) of each floor thereof including any mezzanine area (but excluding all mezzanine areas constructed by the Tenant at its cost and used exclusively for storage purposes) measured from the exterior face of all exterior walls, doors and windows (including walls, doors and windows separating such part from the Mall) and from the centre line of all interior walls separating such part from adjoining premises but shall exclude the area of all penthouses, elevator machine rooms, electrical or mechanical vaults and any other rooms therein devoted to electrical or mechanical equipment, loading docks and truck receiving and delivery facilities (unless heated and enclosed) and any other areas not enclosed and heated and, as applied to any facility in the Mall or in the Parking Facilities used for retail selling or other private purposes, means the area occupied by such facility. Where a store front, entrance, window or balcony is recessed from the demising line shown on Schedule "C" hereto, the area of such recess shall, for all purposes, be included in such part. In the event of any dispute as to the Gross Leaseable Area of any such part, such dis-

pute shall be resolved as between the Landlord and the Tenant by the calculation of such area by a British Columbia Land Surveyor named by the Landlord and who has been approved by the Tenant, which decision shall bind the parties hereto; ' '

(s) "HBC Automotive Centre" and "HBC Automotive Centre Site" means respectively:

- (i) the facility which may be constructed and used by the Tenant as an automotive centre on the HBC Automotive Centre Site; and
- (ii) the area shown outlined on Schedule "A" hereto and marked "HBC Automotive Centre" for use by the Tenant in accordance with Article 20 hereof as it may from time to time by agreement between the Landlord and the Tenant be altered or re-located;

~~"HBC Malt Stop" means that part of the Leased Premises~~  
 having an area of approximately 420 square feet located as shown outlined in red on Schedule "C" hereto, as it may from time to time by agreement between the Landlord and the Tenant be altered or relocated;

(u) "HBC Outdoor Selling Area" means the area adjacent to the HBC Store having an approximate area of not more than 10,000 square feet located as shown on Schedule "A" hereto, as it may from time to time by agreement between the Landlord and the Tenant be altered or relocated;

(v) "HBC Store" means the Leased Premises not including the HBC Malt Stop;

(w) "HVAC System" means the entirety of the system in the Shopping Centre for the supply of heat, ventilation and air-conditioning to the enclosed portions of the Common Facilities, including the central plant therefor and all its equipment and the systems for the supply and return of hot water, for reheat coils and all appurtenances and equipment associated with such systems, and includes the related apparatus such as ducts, diffusers, reheat coils, controls and other apparatus installed by the Landlord;

(x) "Land Use Contract" means the land use contract with the Municipality of Coquitlam described in Schedule "D" hereto.

(y) "Landlord's Work" means the work agreed to be performed by the Landlord at its cost and expense relating to the Shopping Centre including the work set forth in Article 6 hereof;

(z) "Lands" means the lands situate in the Municipality of Coquitlam, Province of British Columbia, more particularly known and described in Schedule "B" hereto and shown outlined in red on Schedule "A" hereto except that part thereof shown outlined in green on Schedule "A" hereto at such time as any part thereof is no longer part of the Parking Facilities;

(aa) "Lease" means the whole of this Indenture including all Schedules attached hereto;

(bb) "Leaseable Premises" means those areas of the Shopping

Centre leased, rented or intended for lease or rental to tenants from time to time;

(cc) "Lease Commencement Date" means the earlier of:

- (i) the date the Leased Premises open for business with the public; and
- (ii) the date which is:
  - 1. the Shopping Centre Opening Date, if the Shopping Centre Opening Date occurs between March 1 and April 15 inclusive, in any year or between August 1 and September 15 inclusive, in any year;
  - 2. August 1 following the Shopping Centre Opening Date, if the Shopping Centre Opening Date occurs between April 16 and July 31 inclusive in any year; or
  - 3. March 1 following the Shopping Centre Opening Date, if the Shopping Centre Opening Date occurs between September 16 in any year and the last day of February in the ensuing year inclusive;

(dd) "Leased Premises" means those portions (including the HBC Malt Stop while the Tenant is entitled to possession thereof)

of the building (which building is shown outlined on Schedule "A" hereto) on the Lands, which portions as of the date hereof are shown outlined in red on Schedule "C" hereto, as altered, reconstructed or expanded from time to time pursuant to Article 17 of this Lease and together with any additional portions or any other building or part thereof or any extension thereto leased to the Tenant when and if the same is so leased but not including the HBC Outdoor Selling Area and the HBC Automotive Centre. These portions extend from the upper surface of the sub-floor to and including the underside of the roof deck. The Leased Premises do not include fixtures and equipment of the Tenant installed therein;

(ee) "Lower Mainland Area" means the area comprised of the Cities of Vancouver, New Westminster, North Vancouver and White Rock and the Municipalities of Burnaby, Coquitlam, Port Coquitlam, Port Moody, Richmond, Surrey, North Vancouver, West Vancouver and Delta;

(ff) "Major Default" means a major monetary Default which in the case of Rent must be non-payment of an amount equivalent to the aggregate Rent payable by the Tenant for a period of six (6) months or a Default which is so substantial as to go to the root of this Lease, having regard to the fact that the subject of this Lease is a major national department store in a continuing first class regional shopping centre;

(gg) "Mall" means the enclosed climatically controlled pedestrian walkway or area comprising a portion of the Common Facilities and shown shaded grey on Schedule "A" hereto as the same may from time to time be altered, reconstructed or expanded as provided herein;

(hh) "Merchandising Plan" means the plans attached hereto as Schedule "C" as amended from time to time as permitted by this Lease

(ii) "Minor Default" means a Default which is not a Major Default or a Major Default which the Non-Defaulting Party elects to treat as a Minor Default;

(jj) "Mortgage Creditor" means a creditor of the Landlord having a mortgage on all or part of the interest of the Landlord in the Property;

(kk) "Net Cash Flow of the Shopping Centre" means:

(i) subject to Article 1.01 (kk) (ii) the gross revenue and all recoveries received by the Landlord from all the tenants and other occupants of the Shopping Centre, or any other party, less only the following amounts:

(A) the Cost of Debt Service;

- (B) the amount of the management fee payable in respect of management of the Shopping Centre, including the Manager's salary, but not to exceed per year 3.5% of all rental income from the Shopping Centre, excluding income and recoveries from a tenant in respect of premises which exceed 50,000 square feet;
- (C) all costs incurred in accordance with standard accounting practice in regional shopping centres as expenses in the ordinary course of the business operation of the Shopping Centre consistent with the standard of a first-class regional shopping centre, including, without limitation:
- (I) legal and professional fees,
  - (II) leasing fees not to exceed those that would be paid to a leasing agent operating at arm's length accrued subsequent to the initial lease-up of the Shopping Centre,
  - (III) audit fees,
  - (IV) costs of repair not recoverable from or payable by tenants of the Shopping Centre or in excess of proceeds of insurance relating thereto,



- (V) Landlord contributions to the merchants' association or, in the alternative, a promotion fund for the purposes of promoting and advertising the Shopping Centre,
  - (VI) the proportionate share of all Realty Taxes and Common Facility Maintenance Costs attributable to vacant Leaseable Premises, if any, which are not recoverable from a tenant or former tenant or any other party,
  - (VII) normal depreciation or funded replacement reserves for equipment and for paving replacement and repairs, and
  - (VIII) insurance costs not recoverable from tenants of the Shopping Centre or any other party; and
  - (D) to the extent otherwise included, tenant (including the Tenant) contributions to the merchants' association or, in the alternative, the promotion fund.
- (ii) Notwithstanding the foregoing, if any of the terms of the first financing of the Shopping Centre under which repayment is by amortized payments of principal and interest, or of the terms of financing which have otherwise been approved by the Tenant, is changed

in any way so as to adversely affect the Net Cash Flow of the Shopping Centre or the Tenant's participation therein by increasing the Cost of Debt Service or for any other reason, the Net Cash Flow of the Shopping Centre and the Tenant's participation therein will be calculated and paid as if that change had not been made, unless:

- (A) such change would, at the time it is made, in the opinion of a reasonable and prudent owner of the Shopping Centre, be reasonable having regard to the obligations of the Landlord under this Lease;
- (B) the Landlord shall have complied fully with each of its obligations to the lender; and
- (C) such change is necessitated by a failure by that lender to comply with its obligations to the Landlord under such financing;

(11) "Occupied Premises" means the Leased Premises and, while the Tenant is in possession thereof, the HBC Outdoor Selling Area and the HBC Automotive Centre;

(mm) "Parking Facilities" means all parking areas from time to time on the Property whether at grade or on parking decks including roadways and access ramps and including the HBC Outdoor Selling Area when not in use by the Tenant as such;

(nn) "Pro Forma Budget" means the budget for the Shopping Centre previously identified as such by the Landlord and the Tenant;

(oo) "Property" means the Lands together with the Shopping Centre;

(pp) "Realty Taxes" means the aggregate of all taxes, local improvement or similar rates, duties, assessments, charges, municipal realty taxes, water rates and school taxes imposed upon the Property by any Taxing Authority having jurisdiction but not including income taxes, business or machinery taxes, place of business taxes or any inheritance, estate, succession, capital or transfer tax or levy;

(qq) "Rent" means the amounts payable pursuant to Article 4 and, if any, pursuant to Article 17;

(rr) "Shopping Centre" means the buildings, improvements and facilities including Common Facilities from time to time located on the Lands;

(ss) "Shopping Centre Opening Date" means the later of:

- (i) the date of the general and official opening of the Shopping Centre for business with the public; and

(ii) the earliest date upon which all of the following shall have occurred:

- (A) the ~~Leased Premises shall be in a condition of Substantial Completion and 120 days~~ shall have expired after notice to the Tenant of such Substantial Completion;
- (B) the Common Facilities shall be in a condition of Substantial Completion and available for use by the public, with access thereto completed and available and the Parking Facilities paved and striped; and
- (C) ~~the balance of the Shopping Centre shall be generally in a condition of Substantial Completion; and in particular:~~
  - (I) the Woodward's Food Floor, one of the Eatons Store and the Woodward's Store, ~~and eighty~~ ~~(80%) per cent of the Gross Leaseable Area of the Commercial Retail Units shall be in a condition of Substantial Completion and all tenant's fixturing work therein shall have been substantially completed so that the same are in a suitable condition and ready to open for business with the public; and~~
  - (II) ~~the same shall be open for business with the public;~~

(tt) "Substantial Completion" as applied to ~~any part of the Shopping Centre means the condition arrived at, as certified to by the appropriate Architect,~~ when the same has been completed and is in a condition of presentable appearance and appropriate and available for use and operation with the exception of minor deficiencies which do not interfere with such appearance, use and operation and, in the case of Leaseable Premises, when tenant's fixturing work therein has been so completed and is in such a condition; and includes the completion of a condition sufficient to permit tenant's fixturing and suitable for safe and comfortable use and operation of the following:

- (i) all access for persons, goods and materials, including elevators and loading and docking facilities and paved access thereto;
- (ii) permanent utilities, including electrical power, electrical outlets and lighting, heating, ventilating and air-conditioning systems and plumbing, including sprinkler and washroom facilities;
- (iii) basic interior finishing to the extent such are the Landlord's responsibility, including floor and ceiling tile and furring and enclosure of all utilities, services and columns; and
- (iv) all means of enclosing and securing the premises and facilities necessary for the safe use and occupancy thereof, including glazing, doors and locks, fire alarms and public address systems;

and in the case of the Occupied Premises except the HBC Automotive Centre means such a condition in accordance with the plans and specifications therefor approved by the Tenant and so that the Tenant is legally entitled to use and occupy the same for the purposes contemplated by this Lease;

(uu) "Taxing Authority" means any duly constituted governmental authority, whether federal, provincial, municipal or otherwise, legally empowered to impose taxes, rates, assessments or charges on, upon or in respect of the Property, or any business carried on therein or thereon;

(vv) "Tenant's Work" means the work agreed to be performed by the Tenant at its cost and expense relating to the Occupied Premises;

(ww) "Term" means the entire term of this Lease, including the initial term as described under Article 3.01 and each renewal term if the option therefor is exercised as described under Article 3.02 and any period of overholding to which Article 3.03 applies;

(xx) "Unavoidable Delay" means any prevention, delay, stoppage or interruption in the performance of any obligation of a party hereto due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, laws, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, fire or other casualty and any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by that party to perform because of its lack of funds;

(yy) "Woodwards" means Woodward's Stores (New Westminster) Limited and its assignee of the Woodward's Lease pursuant to an assignment consented to by the Tenant or which is specifically permitted under the Woodward's Lease without the consent of the Landlord;

(yz) "Woodwards Bargain Store" means the premises in the Shopping Centre demised or to be demised by the Landlord to Woodward's by the Woodward's Lease which at present are located as shown outlined on Schedule "A" hereto and marked "Woodward's Bargain Store";

(aaa) "Woodwards Food Floor" means the premises in the Shopping Centre demised or to be demised by the Landlord to Woodward's by the Woodward's Lease which at present are located as shown outlined on Schedule "A" hereto and marked "Woodward's Food Floor";

(bbb) "Woodwards Lease" means the lease dated for reference the 6th day of January, 1979 between the Landlord and Woodward's relating to the Woodward's Store, Woodward's Bargain Store, Woodward's Food Store and Woodward's Outdoor Selling Area;

(ccc) "Woodwards Outdoor Selling Area" means the area adjacent to the Woodward's Store which is located as shown outlined on Schedule "A" hereto and marked "Woodward's Outdoor Selling Area";

(ddd) "Woodwards Store" means the premises in the Shopping Centre demised or to be demised by the Landlord to Woodward's by the Woodward's Lease which at present are located as shown outlined on Schedule "A" hereto and marked "Woodward's Dept. Store".

1.02 The schedules to this Lease forming part hereof are as follows:

Schedule "A" - Site Plan of Shopping Centre

Schedule "B" - Legal Description of the Lands

Schedule "C" - Merchandising Plan

Schedule "D" - Charges, Liens and Encumbrances

Schedule "E" - Sign Policy

Schedule "F" - Terms for Mortgagee Agreement

Schedule "G" - Construction of the Shopping Centre

and are either attached hereto or initialled by the parties hereto for identification.



ARTICLE 2DEMISE AND LICENCE

2.01 The Landlord hereby demises and leases unto the Tenant and the Tenant hereby leases from the Landlord the Leased Premises.

2.02 The Landlord grants to the Tenant for the Term as an appurtenant part of the Occupied Premises, for use by it and its agents, customers, invitees, licencees and employees, in common with the Landlord and other tenants of the Shopping Centre and their respective agents, customers, invitees, licencees and employees, the non-exclusive licence to use the Common Facilities for the purposes for which such Common Facilities are intended and provided and, in particular but without limiting the generality of the foregoing, such non-exclusive licence to use hereby granted to the Tenant shall include:

- (a) the right, subject to the terms of this Lease, to use at all times the Parking Facilities (including the means of pedestrian and vehicular access and the entrances and exits to and from the Property and parts thereof included therein, but excluding those portions thereof which constitute the HBC Outdoor Selling Area, the Eatons Outdoor Selling Area and the Woodward's Outdoor Selling Area while used and occupied by the Tenant, Eatons and Woodward's respectively as permitted hereunder or under the Eatons Lease and the Woodward's Lease respectively) for the purpose of pedestrian and vehicular access to and from the Property and parts thereof and the parking of vehicles in parking spaces provided therein;

- (b) the right of pedestrian passage and repassage through the Mall at all reasonable times (but excluding those portions thereof which are occupied by kiosks permitted hereunder while so occupied) for the purpose of gaining access to or from any portion of the Shopping Centre including the Occupied Premises; and
- (c) the right to use the Common Facilities at all reasonable times.

2.03 (a) The Tenant shall have the right and licence at any time and from time to time during the Term to have possession, exclusive use and occupation of the HBC Outdoor Selling Area for the retail sale of any type or types of merchandise normally sold in department stores or outdoor selling areas associated with department stores including specifically outdoor living, sports and recreational merchandise;

(b) During periods of use, the Tenant may construct and erect on the HBC Outdoor Selling Area such temporary structures and other improvements as are permitted by law;

(c) Use of the HBC Outdoor Selling Area on other than a seasonal basis will only be made if such use does not prejudice the use of the Shopping Centre under the Land Use Contract.

2.04 The Tenant shall have the right and licence at all times during the Term to have uninterrupted free access to and

from the loading areas of the Occupied Premises (except the HBC Malt Stop) for the purpose of receiving and shipping.

2.05 (a) The Landlord shall not, in the area outlined and hatched in blue on the plan attached as Schedule "A", without the prior written consent of the Tenant vary or alter the boundaries of the Property, change the number, dimension, or locations of the walks or parking areas, construct additional buildings, add to or change any existing building, alter the ingress to or egress from the Property or change the loading or unloading facilities or service entrances relating to the Occupied Premises;

(b) The consent of the Tenant in Article 2.05(a) will not be unreasonably withheld if the Landlord is compelled by law to do so without connivance, by an authority having a right to so compel without the agreement of the owner or occupier of the Lands;

(c) The Landlord will use best efforts to schedule all work for which the Landlord is responsible within the said area outlined and hatched in blue on the plan attached as Schedule "A" so that the ingress to and egress from the Occupied Premises is not adversely affected;

(d) If any such work, other than emergency repairs, might adversely affect the ingress to or the egress from any of the Occupied Premises, the Landlord will obtain the prior approval of the Tenant before causing such work to be done, which approval will not be unreasonably withheld.

ARTICLE 3  
TERM AND RENEWALS

3.01 TO HAVE AND TO HOLD the Leased Premises for and during an initial term of thirty-five (35) years commencing on the Lease Commencement Date. (15)

3.02 (a) The Tenant shall have the options to renew this Lease beyond the initial term for 6 successive renewal terms of 10 years each and 1 renewal term of 5 years. Each option to renew shall be deemed to have been exercised by the Tenant unless the Tenant give written notice to the Landlord not less than one (1) year prior to the end of the initial term (in the case of the first of such options) or one (1) year prior to the end of the then current renewal term that it does not intend to renew;

(b) All of the terms and conditions of this Lease shall apply during each renewal term, except as specifically provided herein and except that there shall be no right of renewal beyond those provided for in this Article.

3.03 If the Tenant shall remain in possession as an overhold- ing tenant of the Leased Premises after the expiration of the initial or any renewal term and the Landlord accepts Rent, the Tenant shall be deemed to be a tenant from month to month at a monthly rental equal to 1/12th of the Rent and Additional Rent paid by the Tenant during the 12 month period immediately pre- ceding the expiration of the Term and otherwise upon all the terms

and conditions of this Lease, modified as is appropriate to such a monthly tenancy, and such tenancy may be terminated by either party but only upon not less than three (3) months' written notice expiring on the last day of a calendar month.

ARTICLE 4RENT

4.01 Subject to adjustment as provided in Article 4.02 and Article 10.02(o), the Tenant shall pay to the Landlord, during the Term, rent as follows:

- (a) during each year of the initial term as provided in Article 3.01, an annual rent calculated at the following amounts per square foot of the Gross Leaseable Area of the Leased Premises, excluding the area of any expansion referred to in Article 17:

<u>Year</u>	<u>Amount Per Square Foot</u>
1 Aug 15, 84 - Aug 31, 85	\$ 4.00
2 Sep 1, 85 - Aug 31, 86	\$ 4.25
3	\$ 4.50
4	\$ 4.60
5 - 35 Inclusive	\$ 4.97

- (b) during each year of any renewal term as described in Article 3.02, an annual rent calculated at \$4.97 per square foot of the Gross Leaseable Area of the Leased Premises, excluding the area of any expansion referred to in Article 17.

4.02 If the Lease Commencement Date precedes the Shopping Centre Opening Date, the Rent payable by the Tenant until the Shopping Centre Opening Date shall be fifty (50%) per cent of the Rent otherwise payable as stipulated in Article 4.01.

4.03 No rent shall be payable by the Tenant in respect of the HBC Outdoor Selling Area.

4.04 The Tenant shall pay for the right to use and occupy the HBC Automotive Centre Site as set forth in Article 20.

4.05 Rent shall be payable in equal consecutive monthly instalments in advance payable on the first day of each calendar month during the Term, commencing on the Lease Commencement Date; PROVIDED that if the Lease Commencement Date is not the first day of a calendar month, then the Rent payable on the Lease Commencement Date for the remaining portion of that calendar month shall be calculated at a rate per day equal to  $1/365$ th of the Rent for the first year of the Term, and provided that if the last day of the Term is not the last day of a calendar month, then the Rent payable for the portion of that calendar month included in the Term shall be calculated at a rate per day equal to  $1/365$ th of the Rent for the last year of the Term.

4.06 Rent or Additional Rent shall be payable without any abatement, setoff or deduction whatsoever save as specifically provided for herein, and shall be paid in lawful money of Canada to the Landlord at such place in Canada as the Landlord shall from time to time direct in writing.

ARTICLE 5GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

## 5.01 The Tenant shall:

- (a) pay to the Landlord the Rent and Additional Rent when due under this Lease; and
- (b) observe and perform all the covenants and obligations of the Tenant under this Lease on its part to be observed and performed.

## 5.02 The Landlord shall:

- (a) ensure that the Tenant may peaceably possess and enjoy the Occupied Premises and the rights and benefits appurtenant thereto and granted by this Lease for the Term, without any interruption or disturbance from the Landlord or anyone lawfully claiming by, through or under the Landlord;
- (b) ensure that neither of Woodward's nor Eatons will be treated by the Landlord more favourably than the Tenant:
  - (i) in any way relating to the management and operation of the Shopping Centre and in particular the Common Facilities;



- (ii) in the rights of Woodward's or Eatons to use the Common Facilities; and
- (iii) in respect of any expansion by either of them of the Eatons Store or the Woodward's Store; and
- (c) observe and perform all of the covenants and obligations of the Landlord under this Lease on its part to be observed and performed;

5.03 The Landlord jointly and severally represents and warrants to the Tenant that:

- (a) each of Praxis and Daon is the registered and beneficial owner of an undivided one-half (1/2) interest in the Lands and the Shopping Centre in fee simple free and clear of all charges, liens and encumbrances except those set out in Schedule "D" hereto;
- (b) there are no restrictions imposed by law or by private agreement binding upon the Landlord which conflict with the purposes of this Lease and rights of the Tenant hereunder or the construction of the Occupied Premises as contemplated herein;
- (c) to the best information and belief of the Landlord, Schedule "D" hereto sets out:

- (i) all agreements, commitments and other obligations under which the Landlord or any Affiliate of the Landlord has any liabilities relating to the Lands, contingent or otherwise, or which create rights in, bind or create any charge, burden or restriction against the Lands or affect the development thereof, and
  - (ii) all the decisions, rulings, by-laws, policies, regulations and plans made by any government bodies which are known to the Landlord, which apply specifically to the Lands or affect the development thereof rather than being of general application and which could prevent the completion of the development of the Shopping Centre as contemplated herein, including the participation therein of the Tenant as a tenant and in the Net Cash Flow of the Shopping Centre;
- (e) all necessary governmental approvals, including without limitation zoning changes, land use contracts, development permits and building permits, have been obtained so as to permit the development of the Shopping Centre, including its construction and leasing, as contemplated herein;

- (f) all access and services required for the proper operation of the Shopping Centre have been made available to the boundaries of the Shopping Centre; and
- (g) there is no legal or physical impediment to the contemplated development and operation of the Shopping Centre or to the Tenant's participation in the Net Cash Flow of the Shopping Centre as contemplated herein.

ARTICLE 6LANDLORD'S AND TENANT'S WORK

6.01 The Landlord shall at its own expense:

- (a) cause to be constructed the Shopping Centre as contemplated herein in a good and workmanlike manner and in accordance with Schedule "G" hereto, in accordance with all applicable legal requirements including municipal by-laws and in accordance with all plans, drawings and specifications approved as set out in Schedule "G" and by other tenants of the Shopping Centre except for the Tenant's Work and similar work of other tenants;
- (b) cause the Landlord's Work to be completed at least one hundred and twenty (120) days before the Shopping Centre Opening Date and use best efforts to achieve Substantial Completion of the Shopping Centre by April 1, 1979 and a Shopping Centre Opening Date by August, 1979;
- (c) use best efforts to cause each other tenant of the Shopping Centre to have its tenant's work completed by the Shopping Centre Opening Date; and
- (d) throughout the Term, do all acts and things relating to the condition or construction of the Shopping Centre necessary to permit the Tenant to legally use and occupy the Occupied Premises as contemplated by this Lease other than those within the Tenant's obligation to repair.

6.02 The Landlord shall give written notice to the Tenant of the date of Substantial Completion of the Leased Premises and of the balance of the Shopping Centre and, at least one hundred twenty (120) days in advance thereof, the best estimated Shopping Centre Opening Date, and the Tenant will inspect the Leased Premises, and may inspect all other parts of the Shopping Centre, promptly after the receipt of such notice and will notify the Landlord in writing of any defects or deficiencies therein which come to the Tenant's notice.

6.03 (a) At the commencement of the Fixturing Period, the Tenant shall be entitled to enter upon the Leased Premises and have shared occupation thereof with the Landlord and for the last eight-five (85) days of the Fixturing Period shall be entitled to exclusive occupation thereof;

(b) If and to the extent the Landlord requires access or entry to or occupation of the Leased Premises for the purpose of completing minor finishing work within Landlord's Work it may do so provided it:

- (i) minimizes interference with the Tenant's Work;
- (ii) adheres to the reasonable security measures prescribed by the Tenant; and
- (iii) pays to the Tenant any additional costs for security measures deemed necessary by the Tenant or additional costs for Tenant's Work relating to or resulting from such access, entry or occupation.

6.04 The Tenant shall do all Tenant's Work during the Fixturing Period and shall complete the Tenant's Work in a good and workmanlike manner and shall use best efforts to complete the Tenant's Work to permit the opening of the Leased Premises for business to the public on the Lease Commencement Date if that date occurs after the expiry of the Fixturing Period or otherwise by the end of the Fixturing Period.

6.05 (a) In respect of the Leased Premises and all fixtures and equipment installed by it therein, the Landlord shall obtain all guarantees which a prudent builder would normally obtain and shall assign to the Tenant the benefit of all such guarantees except to the extent that they cover the Landlord's obligations to repair.

(b) Notwithstanding any other provision of this Lease, the Landlord will co-operate in endeavouring to obtain longer guarantee periods so that the Tenant may have the benefit of guarantee periods longer in duration than first offered by contractors in respect of individual items of work if the Tenant is prepared to pay the extra costs (if any) involved and give sufficient notice in writing to the Landlord therefor to enable negotiations with contractors before contracts are signed.

ARTICLE 7TAXES

7.01 The Landlord shall pay or cause to be paid:

(a) all Realty Taxes; and

(b) all business and other taxes imposed by any Taxing Authority relating to any business carried on from or on the Property where non-payment would create a lien affecting any part of the Property, save those payable by the Tenant pursuant to Article 7.04.

7.02 The Landlord shall furnish the Tenant with a copy of every tax or assessment notice affecting the Property or any part thereof forthwith after receipt by the Landlord and, in any event, not less than seven (7) business days prior to the expiry of any period for appeal therefrom.

7.03 The Tenant shall pay to the Landlord in each year that part of all Realty Taxes imposed against and attributable or fairly allocable to the Occupied Premises and that portion of the Lands upon which the Occupied Premises are situate calculated in the manner provided in Article 7.07.

7.04 The Tenant shall pay to the appropriate Taxing Authority in each year all business taxes which are levied in

respect of the business carried on by the Tenant in the Occupied Premises or the property, fixtures, machinery, equipment or apparatus belonging to the Tenant installed therein, and if any of such taxes are billed to the Landlord, the Tenant will forthwith upon notice, unless the Tenant has appealed the same and then only after final appeal, reimburse the Landlord for the full amount of any such billings paid by the Landlord on behalf of the Tenant.

7.05 (a) All taxes payable by the Landlord or Tenant hereunder, including each and every instalment thereof, shall be paid when due subject only to the right to defer payment thereof in certain circumstances as provided by Article 7.06;

(b) The Landlord and Tenant shall each pay all penalties and interest imposed with respect to their respective arrears of such payments;

(c) Whenever the Landlord or the Tenant shall reasonably request, the other shall produce reasonable evidence, by receipt or otherwise, as to the due payment of such taxes.

7.06 (a) Each of the Landlord and the Tenant, in the name of the Landlord if necessary, may, whenever its financial interest is affected, appeal at its own expense any assessment in respect of, or the amount of, any Realty Taxes or other taxes based on such assessment and all other taxes, rates, charges or levies referred to herein or otherwise relating to the Property;



(b) In connection with any such appeal, payment of any Realty Taxes or other taxes, rates, charges or levies, as the case may be, which are the subject of the appeal, may be deferred to the extent permitted by law provided that:

- (i) no part of the Property is thereby rendered subject to sale or forfeiture;
- (ii) to the appellant's knowledge, such deferment does not cause a breach of any obligation under any hypothecation or mortgage of or charge upon the Property; and
- (iii) the appeal is diligently prosecuted to completion;

(c) Each of the Landlord and the Tenant shall notify the other of any appeal and to the extent that their interests do not conflict, each shall extend its co-operation and assistance to the other in respect of such appeal;

(d) The Landlord shall furnish the Tenant with all appropriate and relevant documents and information required by the Tenant for any appeal;

(e) Any recovery or reduction of taxes, rates, levies or charges as a result of any appeal shall be paid or credited to the Landlord or Tenant in proportion to their respective interests therein;

(f) If, by reason of any appeal taken by the Tenant, any taxes payable by the Landlord are reduced, the Landlord shall pay to the Tenant that proportion of the costs of such appeal that the amount of the reduction to the Landlord is to the total amount of the reduction.

7.07 (a) The Landlord will use its best efforts to obtain separate assessments of the Common Facilities and each one of the Occupied Premises;

(b) If the assessments rendered by the Taxing Authority do show a separate and distinct assessment or computation of Realty Taxes due and payable with respect to any part of the Occupied Premises, as distinguished from the rest of the Property, then the Tenant shall be responsible for payment of the separate and distinct amount of Realty Taxes;

(c) If the assessments rendered by the Taxing Authority do not show a separate and distinct assessment or computation of the Realty Taxes due and payable with respect to any particular part of the Occupied Premises, the Landlord shall use its best efforts to secure from the Taxing Authority all information in its possession relating to the assessment or computation, and the Realty Taxes payable hereunder by the Tenant shall be as follows:

(i) as to those portions of the Lands upon which those Occupied Premises are situate - that portion

of the Realty Taxes applicable to all the Lands multiplied by a fraction the numerator of which is the aggregate of the Adjusted Gross Leaseable Area of those Occupied Premises and the denominator of which is the square foot area of the Lands;

- (ii) as to the improvements - that portion of the Realty Taxes attributable to all improvements comprising those Occupied Premises and as shall be agreed upon between the Landlord and the Tenant using the information aforesaid and the methods used by the Taxing Authority in assessing the Property and failing knowledge of such methods or agreement on an allocation using such methods, the allocation shall be as determined on an equitable basis by two independent appraisers, one to be appointed by the Landlord and one to be appointed by the Tenant, and failing an agreement between such appraisers, as determined by arbitration pursuant to Article 21.11.

ARTICLE 8COMMON FACILITIES MAINTENANCE COST

8.01 The Tenant will pay to the Landlord in each year during the Term an amount equal to that proportion of the Common Facilities Maintenance Cost which the Adjusted Gross Leaseable Area of the Occupied Premises (except the HBC Outdoor Selling Area) is of the aggregate of the Adjusted Gross Leaseable Area of the Occupied Premises (except the HBC Outdoor Selling Area) and the Gross Leaseable Area of the rest of the Leaseable Premises, provided however that the maximum payment to be made by the Tenant to the Landlord hereunder shall not exceed in the first year of the Term the sum of 70¢ per square foot of the Adjusted Gross Leaseable Area of the Leased Premises and for each year thereafter that amount increased by an annual adjustment, in arrears, equal to the lesser of:

- (a) the actual increase per square foot in Common Facilities Maintenance Cost for that year ~~over~~ the first year of the Term; and
- (b) the amount equal to 70¢ per square foot multiplied by the percentage increase (if any) in the Consumer Price Index published by Statistics Canada for Vancouver for the last month of that year over that for the last month of the first year of the Term or if no such indices be published then such other governmental indices as relate to the nearest geographical area most relevant to the Shopping Centre, as agreed between the Landlord and Tenant or as otherwise determined by arbitration.

8.02 The amount of Common Facilities Maintenance Cost which the Tenant is to pay for the first year of the Term shall be reasonably estimated by the Landlord and approved by the Tenant, which approval shall not be unreasonably withheld, and the Tenant shall pay to the Landlord one-twelfth (1/12) of such amount on the dates and at the times for payment of Rent provided for in this Lease. For each year thereafter the Tenant shall pay monthly on account of its amount of Common Facilities Maintenance Cost one-twelfth (1/12) of the amount actually required to be paid as Common Facilities Maintenance Cost for the preceding year after all adjustments as provided herein.

8.03 (a) Within ninety (90) days after the end of each year, the Landlord shall furnish to the Tenant a detailed audited statement of the actual Common Facilities Maintenance Cost during such year and the Tenant's portion thereof determined pursuant to this Article, showing in reasonable detail all information relevant and necessary to the exact calculation of those amounts;

(b) If the amount payable by the Tenant as shown on the statement is greater or less than the amount of Common Facilities Maintenance Cost paid by the Tenant to the Landlord pursuant to this Article for the year, the proper adjustment shall be made within ten (10) days after the later of delivery of such statement and completion of the audit (if any) caused to be taken by the Tenant, as provided in Article 8.03(c) hereof;

(c) The Tenant shall have the right to inspect and take copies of, and cause an audit to be taken by an independent Chartered Accountant of, the books and records of the Landlord pertaining to Common Facilities Maintenance Cost upon reasonable notice at reasonable times;

(d) If an audit is taken which indicates that the amount shown on the statement as being payable by the Tenant exceeds the amount shown by the audit by more than 3%, then the audit shall govern and the Landlord shall pay the cost of such audit to the Tenant;

(e) Any payment made by the Landlord to the Tenant or made by the Tenant to the Landlord in respect of any adjustment made hereunder shall be without prejudice to the right of the Tenant to claim re-adjustment.

ARTICLE 9HEATING, VENTILATING AND AIR-CONDITIONINGAND UTILITIES

9.01 The Landlord shall from time to time throughout the Term for the use of the Occupied Premises:

- (a) in addition to the utilities required for Substantial Completion of the Occupied Premises, provide in the manner and at the times determined by the Tenant at the Tenant's cost, to the exterior wall, demising line or outer perimeter line of occupation of the Occupied Premises and at locations designated by the Tenant, all other utilities requested by the Tenant in connection with its use and occupation of the Occupied Premises if and to the extent such utilities can be provided, including without limiting the generality of the foregoing electricity at secondary voltage and, where applicable, sanitary sewers, storm sewers and drains, water supply, gas supply and access for cable television facilities, and such other utilities shall not be used by any other party other than the Tenant without the prior written consent of the Tenant.
- (b) make such enlargement of the capacity of any utilities as the Tenant shall request, if and to the extent that such utilities can be enlarged but the Tenant shall pay to the Landlord the cost of making any such enlargement to the extent that it is necessary to meet the requirements of the Tenant; and

- (c) provide the Tenant with easements to enable the Tenant to obtain additional utilities for its own use (limited to underground pipes and conduits) but the Tenant shall pay the cost of installing, maintaining, and (if necessary to permit future construction) relocating such utilities and easements, and of making good all damage caused thereby.

9.02 The following provisions shall apply to the supply of utilities to the Occupied Premises:

- (a) The Landlord shall at its own expense to the extent possible provide individual meters for all utilities servicing the Occupied Premises and in particular with respect to electrical service a consumption meter and a demand meter of appropriate size and specifications as determined by the Tenant to provide accurate data on which to calculate the cost thereof to the Tenant;
- (b) The Tenant shall from the date of exclusive occupancy by the Tenant of the premises to which the utilities and services were provided:
  - (i) pay to public utilities or other suppliers for the consumption cost of any electrical service, water, storm and sanitary sewers, gas and other utilities, the cost of which is invoiced directly



to the Tenant by the public utility or other supplier for the Tenant's actual consumption of such utilities which payments shall be made by the Tenant on or before the due date of each such invoice;

- (ii) pay to the Landlord the consumption cost of water, storm and sanitary sewers, gas and other utilities other than electrical actually consumed by the Tenant, the cost of which is invoiced to the Landlord by public utilities or other suppliers, the cost of which shall be determined by individual meters; or
- (iii) during such periods as the Landlord elects to itself purchase in bulk from the supplier utility the aggregate electrical service requirement of the Shopping Centre for resale to the tenants thereof, pay to the Landlord the consumption cost of electrical service calculated on the basis of the individual meters installed as provided in Article 9.02(a) hereof but such cost shall not at any time exceed that which would have been payable by the Tenant to the public electrical utility if individual service had been supplied by it, or other than by the Landlord, to the Tenant as previously contemplated in the drawings and specifications prepared by the Tenant's architect and engineers.

The Tenant shall pay such amount to the Landlord within ten (10) days after the receipt of an invoice, for a period of one (1) month or greater, by the Tenant from the Landlord for such cost determined as set forth above.

ARTICLE 10OPERATION OF SHOPPING CENTRE

10.01 The Landlord shall throughout the Term cause the Property 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.

10.02 The Landlord shall operate the Property in accordance with the best standards of shopping centre management and in accordance with the criteria from time to time established therefor for first class regional shopping centres and, without limiting the generality of the foregoing, the Landlord shall:

- (a) provide active and competent management for the Shopping Centre including maintaining at the Shopping Centre a management office with a competent full-time on-site manager and sufficient staff of management, operating and maintenance personnel to adequately perform the proper management, maintenance and operation of the Shopping Centre;
- (b) lease the Shopping Centre in accordance with the Merchandising Plan and, by appropriate provisions to be contained in all leases and the enforcement of such provisions, maintain control over the use of premises and assignment and sub-letting so as to ensure that the Merchandising Plan is complied with and ensure that

every tenant of the Shopping Centre will maintain and operate its premises in the manner contemplated by this Article and consistent with a first class regional shopping centre;

- (c) provide all Common Facilities for the proper operation of the Shopping Centre and the conduct of the Tenant's business in the Shopping Centre including without limiting the generality of the foregoing parking facilities, an enclosed, heated and air-conditioned mall, means of access to the Shopping Centre, the Common Facilities, the Occupied Premises and the other Leaseable Premises, all as required from time to time for a first class regional shopping centre, and which (without limitation) shall include the Parking Facilities, the Mall and other Common Facilities shown on the Site Plan attached as Schedule "A" hereto;
- (d) keep the Shopping Centre and, in particular, the Common Facilities clean, tidy, well-maintained and attractively decorated;
- (e) take all reasonable action to enforce all tenant's covenants and agreements in all leases of Leaseable Premises;

- (f) operate the HVAC System in such manner and as may be necessary to maintain comfortable conditions in the Mall and so as to avoid the appropriation or withdrawal of heating or cooling from the HBC Store;
- (g) take all such action as may be reasonably required to prevent the use of any part of the Shopping Centre for any purposes which:
  - (i) the Tenant is restricted from carrying on under any provisions of this Lease;
  - (ii) are not in accordance with the restrictions in Article 12;
  - (iii) is a nuisance or annoyance to the Tenant or other tenants of the Shopping Centre; or
  - (iv) is not in keeping with the best standards of a first class regional shopping centre;and to prevent the carrying on in any part of the Shopping Centre of any fire, bankruptcy or auction sale, any sale of second-hand or surplus merchandise or any other activity not in keeping with the character of the Shopping Centre, and to prevent the display of any signs or advertising in respect of any of the foregoing activities;
- (h) except as provided in this Lease, prohibit any display

or sale of merchandise in the Common Facilities or in any other place on the Property outside the confines of Leaseable Premises, except in kiosks in the Mall which are permitted under this Lease and except as part of any general Shopping Centre promotion approved by the Landlord and the Tenant, such approval not to be unreasonably withheld;

- (i) cut and weed all grass, prune and spray all trees, maintain all planting of flower beds, and water, fertilize and replace grass, trees, shrubs and flower beds as may be required to maintain a well landscaped appearance;
- (j) establish and enforce regulations pertaining to minimum hours of business and the use of Common Facilities which shall be reasonable and consistent with the requirements of a first class regional shopping centre and, without limiting the generality of the foregoing, keep the Shopping Centre open for business during at least those hours and days during which other similar shopping centres in the Lower Mainland Area are open for business;
- (k) 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 Leased Premises is open for business, keep the Mall adequately lighted, and heat and air-condition the Mall as may be required so as to maintain therein reasonable standards of comfort;

- (l) maintain in good condition and operate the Parking Facilities and have them open, including the means of access thereto, at all times when the Shopping Centre or any part of the Occupied Premises is open for business, cause the Parking Facilities and Common Facilities to be adequately lighted whenever required to facilitate their use, keep parking spaces and aisles properly striped and otherwise marked and maintained including appropriate traffic and direction signs, adequately supervise the flow of traffic therein whenever reasonably required, otherwise police and supervise these areas in accordance with the best standards of a first class regional shopping centre, and keep the Parking Facilities and Common Facilities free of refuse and debris and take all appropriate measures to keep them reasonably free of snow and ice;
- (m) take whatever steps are appropriate and reasonable to prevent the use of the Common Facilities for any purpose not permitted hereunder and to prevent the use

thereof by persons other than the Landlord, the Tenant and the other tenants of the Shopping Centre and their respective agents, employees, invitees, licencees and customers;

- (n) not impose any charge for the use of the Common Facilities including without limiting the generality of the foregoing, parking spaces in the Parking Facilities, without the written consent of the Tenant. The Landlord shall permit the Tenant to validate customer parking if charges are imposed for same. The Tenant will not unreasonably withhold its consent to a moderate charge for the use of such parking spaces if:
  - (i) such is the common practice in comparable regional shopping centres in the Lower Mainland Area;
  - (ii) the charges are reasonably necessary to control parking, secure turnover and discourage non-customer parking;
  - (iii) the imposition of parking charges would not injuriously affect the business conducted in the Shopping Centre; and
  - (iv) all monies received by the Landlord from the imposition of such charges less any amount of



special taxes related thereto are applied to the Common Facilities Maintenance Cost;

(o) at all times maintain in the Parking Facilities sufficient parking spaces to meet all legal requirements of the Municipality of Coquitlam or other authority having jurisdiction and in any event not fewer than 5.5 standard size car spaces for each one thousand (1,000) square feet of Gross Leaseable Area of premises in the Shopping Centre which house businesses which are retail, provide services or otherwise do business with the public, together with adequate means of access thereto; provided however that ten (10%) percent of such spaces may be for compact size cars located in the North and South perimeters of the Shopping Centre but not within the area outlined and hatched in blue on Schedule "A" hereto, in which event the Rent payable under Article 4.01 hereof will be reduced by the sum of \$870.00 per annum; and

(p) not communicate or publish the words "HBC", "Bay" or "Hudson's Bay Company" in any way without the prior written consent of the Tenant.

10.03 The Landlord shall not grant to any tenant in the Shopping Centre other than the Tenant any exclusive right to carry on any activity which in any way would restrict the

Tenant from carrying on by itself or by concession, licence or otherwise any activity permitted by this Lease or the operation of a full line department store.

10.04 All signs on or within the Shopping Centre (other than for the Occupied Premises) shall throughout the Term comply with the sign policy of the Shopping Centre as set out in Schedule "E" hereto and any change thereto shall be subject to approval of the Tenant, which approval may be withheld for any reason.

10.05 The Landlord may require that employees of all tenants of the Shopping Centre use specified areas for parking, provided that enforcement of this requirement is uniformly applied to all tenants and such areas are reasonably adequate.

10.06 The appointment of a successor or substitute for Ira Young & Associates Ltd. as Shopping Centre manager is subject to the prior approval of a majority of Eatons, Woodward's and the Tenant, or their respective successors or assigns, or so many of them as may from time to time be tenants of the Shopping Centre.

ARTICLE 11USE OF OCCUPIED PREMISES

11.01 (a) Except as otherwise provided in this Lease and only provided that the Landlord secures, maintains in force and enforces a similar operating covenant from each of Eatons and Woodwards, the Tenant will throughout the whole of the Term, except as otherwise provided in Article 11.01(b) and (c) and Articles 11.02 and 11.03 or with the consent of the Landlord, continue to operate the HBC Store in a similar manner to that of its typical department store operations in the Lower Mainland Area under the same name as that used by the Tenant in the majority of its department stores in the Lower Mainland Area;

(b) The Landlord will not amend the operating covenant of Eatons or Woodward's referred to in Article 11.01(a) without the prior approval of the Tenant and, if the Tenant so requests, similarly amending the operating covenant of the Tenant provided in Article 11.01(a);

(c) If Eatons or Woodward's assigns the Eatons Lease or the Woodward's Lease other than in circumstances as provided therein where the Landlord's consent thereto is not required or without the prior written consent of the Tenant, then the operating covenant of the Tenant in Article 11.01(a) shall terminate;

11.02 If at any time during the Term either of Eatons or

Woodwards ceases to operate the Eatons Store and the Woodward's Store respectively, then the Tenant may at any time and from time to time give written notice to the Landlord of such failure and if the Landlord does not assiduously take and pursue proceedings to cure such failure or such failure is not rectified within six (6) months after the giving of such notice, the operating covenant of the Tenant in Article 11.01(a) will be suspended until the expiry of twelve (12) months after both Eatons and Woodward's are again operating the Eatons Store and the Woodward's Store respectively and the Landlord has given written notice to the Tenant to that effect.

11.03(a) If at any time during the Term fifty (50%) per cent or more of the Gross Leaseable Area of retail premises in the Shopping Centre (not including the Gross Leaseable Area of the HBC Store) is vacant or not open for business to the public and such condition exists for one hundred and eighty (180) days (excluding periods when being open for business with the public is prevented by fire damage or other like unavoidable causes and repairs or rebuilding or the curing of such causes is being diligently pursued), the Tenant may:

- (i) while such condition persists cease the conduct of business in the Occupied Premises, in whole or in part, in which case Rent under the Lease shall cease and abate until the Tenant shall recommence or be obligated to recommence the conduct of business; and

(ii) at any time during a renewal term while such condition persists terminate the Lease by giving to the Landlord written notice to that intent.

(b) At such time as such condition no longer exists and if the Tenant has not terminated the Lease, the Tenant will, if requested in writing by the Landlord so to do, recommence the conduct of its business in the Occupied Premises not later than six (6) months after the receipt of such notice provided such condition has not reoccurred after the receipt of such notice.

11.04 (a) Subject to Article 11.04(b), the Tenant covenants that it will abide by any and all reasonable rules and regulations which may, from time to time, be established by the Landlord for the Shopping Centre and approved by the Tenant, such approval not to be unreasonably withheld, provided such rules and regulations are consistent with the provisions of this Lease and are of a general application and enforced uniformly;

(b) In lieu of complying with the hours of business generally established for the Shopping Centre, the Tenant may observe such hours of business as may be established generally for its other comparable department stores, particularly those (if any) in the Lower Mainland Area.

11.05 The Tenant shall be entitled to have identification

signs upon the exterior of the Occupied Premises, upon or over the entrances to the Leased Premises from the Mall and at other locations similar in size, number and character to those generally used at other comparable department stores, malt stops, outdoor selling areas, automotive centres and kiosks, as the case may be, of the Tenant or its Affiliates, and such other signs as it may desire to have and which are consistent with the Landlord's general sign policy established in accordance with Article 10.04 and have been approved by the Landlord, which approval shall not be unreasonably withheld.

11.06(a) All improvements, fixtures, furnishings, equipment, and work done, installed, affixed to or brought into the Occupied Premises prior to or during the Term may, if not removed during the Term, be removed by the Tenant during the period of ninety (90) days after the termination (by effluxion of time or otherwise) of this Lease or of the possession of any part of the Occupied Premises (other than the HBC Store) or the period of overholding, or such longer period of time required by the Tenant therefor by reason of Unavoidable Delay, provided the Tenant makes good any damage caused by such removal;

(b) All property and trade fixtures of the Tenant remaining upon the particular Occupied Premises after the expiration of the longest period referred to in Article 11.06(a) shall become the property of the Landlord.

11.07 (a) The Tenant shall be responsible for cleaning the area of the Mall within the immediate vicinity of the HBC Malt Stop during the hours when it is open for business;

(b) The Tenant may at any time cease the use and occupancy of, and vacate, the HBC Malt Stop by giving not less than ninety (90) days prior written notice to the Landlord to that intent and shall thereupon remove its fixtures therein and thereafter the HBC Malt Stop shall cease to be a part of the Leased Premises.

11.08 The Tenant will not, during the Term, carry on in the Leased Premises a Food Supermarket operation unless:

- (i) all tenants and occupants of the Shopping Centre, other than Woodwards, are not similarly restricted; or
- (ii) Woodwards does not carry on a Food Supermarket operation in the Shopping Centre.

ARTICLE 12  
MERCHANDISING PLAN

12.01 The Landlord shall:

- (a) Use its best efforts to maintain throughout the Term a fair balance of customer attraction throughout the Shopping Centre in keeping with the best standards of a first class regional shopping centre and in accordance with the Merchandising Plan;
- (b) Not at any time during the Term lease, or allow to be occupied, any portion of the Shopping Centre by any party without the prior written approval of the Tenant in accordance with Article 12.02, except for general and temporary Shopping Centre promotions or other temporary uses not within 100 feet of the entrance on the Mall to the Leased Premises (including kiosks in the Mall) which have been approved by a majority of the Tenant, Eatons and Woodward's after written notice to each of them from the Landlord; and
- (c) Obtain the approval of the Tenant in accordance with Article 12.02 to any amendments to the Merchandising Plan except in respect of free standing buildings within the area outlined in green on Schedule "A" hereto.

12.02 (a) In the case of any premises within 100 feet of the entrance on the Mall to the Leased Premises (including kiosks



in the Mall), the approval of the Tenant to the proposed use thereof, proposed amendments to the Merchandising Plan and the identity of any proposed tenant or occupant may be withheld for any reason provided the Tenant shall be deemed to have approved any proposed tenancy or occupancy to which the Tenant has not objected in writing within twenty-one (21) days after receipt of written notice from the Landlord;

(b) In the case of any other Leaseable Premises, the approval of the Tenant to the proposed use thereof, proposed amendments to the Merchandising Plan and the identity of any proposed tenant or occupant will not be unreasonably withheld but the Tenant may withhold approval upon reasonable grounds to be stated in writing within fourteen (14) days after the written request of the Landlord for such approval.

ARTICLE 13MERCHANTS' ASSOCIATION

13.01 Subject to Article 13.07, the Landlord shall organize and promote a merchants' association comprising all retail tenants of the Shopping Centre, except those prevented by law from so doing, which if requested by the Tenant shall be incorporated, and having as its principal object the encouragement of its members to advertise and promote the Shopping Centre, to deal fairly and courteously with their customers, to sell their merchandise or services at fair prices, to follow ethical business practices and in general to further the common interests of the Landlord and all the tenants of the Shopping Centre.

13.02 The Landlord shall include in all leases with tenants carrying on a retail business in the Shopping Centre a covenant requiring them, unless prevented by law from so doing, to become members of, and to participate fully and to remain members in, such association and to abide by the constitution, by-laws, articles and rules and regulations of the association provided however that the Eatons Lease and the Woodward's Lease can provide Eatons and Woodward's with rights to withdraw from membership but only on the same terms as provided to the Tenant in this Article.

13.03 ~~The Tenant will become and remain a member of the association and continue to contribute annually to the association~~

as set out in Article 13.06 hereof only if and so long as:

- (a) all other retail tenants of the Shopping Centre who are not prevented by law from so doing, and in, any event Eatons and Woodward's, maintain membership in the association, abide by its constitution, by-laws, articles and rules and regulations and contribute to its annual budget;
- (b) each member of the association, other than the Tenant, Eatons and Woodward's, shall contribute annually to the association for promotions of the Shopping Centre;
- (c) the Tenant has no major and reasonable objection to any policy or course of conduct of the association;
- (d) the maintenance of the Tenant's membership in the association shall not require the Tenant to adopt, condone or become associated with any business practice inconsistent with its established standards or which inhibits or restricts the Tenant from the full exercise of its rights under this Lease;
- (e) the Tenant has approved the constitution, by-laws and articles and rules and regulations of the association;
- (f) the association shall be organized so as to provide that:

- (i) a representative of the Tenant shall have a permanent voting membership on the association's Board of Directors, steering committee, executive committee or other managing body thereof except that if the Tenant is not a member of the association for a period in excess of one month, it shall not be entitled to a representative on the Board of Directors while not a member;
  - (ii) no expenditure shall be made by the association except in accordance with an annual budget approved by the Tenant, which approval shall not be unreasonably withheld;
  - (iii) a quorum for a meeting of members of the association must include a representative of the Tenant unless it is an adjourned meeting held as a result of the fact that the representative of the Tenant was not present at the previous meeting; and
- (g) the Landlord makes its contributions pursuant to Article 13.05 hereof.

13.04 If the Tenant bona fide disapproves of any activity or policy of the association, and the cause of such disapproval has not (within a reasonable time) been stopped, abandoned or remedied to the reasonable satisfaction of the Tenant, the Tenant may as

often as the same should occur withdraw from membership in the association and discontinue its contributions thereto, until the Tenant has been so satisfied, whereupon the Tenant shall reinstate its membership and contributions.

13.05 The Landlord shall actively support the association whether as a member or as the owner of the Shopping Centre or otherwise, and shall contribute to the association:

- (a) annually an amount which when paid is twenty-five per cent (25%) of the aggregate of the amounts payable to the association by all tenants, including the Tenant, of the Shopping Centre pursuant to the requirement to pay the same contained in their Leases; and
- (b) all revenues received by the Landlord from the temporary use or occupation of any portion of the Common Facilities other than those referred to in Article 10.02(n).

13.06 (a) ~~Provided that the Landlord makes all of its contributions as provided in Article 13.05, the Tenant will contribute annually to the merchants' association while a member thereof, on an equitable basis for the purpose of the creation and maintenance of a common promotion fund which the association shall use in a reasonable manner for the advertising and promotion of the Shopping Centre which contribution shall include membership dues, an amount no greater than the amount calculated by multiplying the~~

Gross Leaseable Area of the HBC Store by the lesser rate of:

- (i) \$.12 per square foot; and
- (ii) the rate per square foot payable by Eatons based on the Gross Leaseable Area of the Eatons Store and actually paid;

but in no event in excess of the annual contribution thereto paid by Woodward's and in the absence of agreement between the Landlord and the Tenant as to the amount to be so paid the same shall be submitted to arbitration as provided in Article 21.11;

(b) The Tenant shall make a contribution to the opening promotion of the Shopping Centre in an amount equal to the product of the Gross Leaseable Area of the HBC Store and the lesser of:

- (i) 5¢ per square foot; and
- (ii) the lesser of the rates per square foot at which Eatons and Woodward's contributed to the said opening promotion based on the Gross Leaseable Area of the Eatons Store and the Woodward's Store respectively;

(c) No other payments shall be required to be made by the Tenant to the association.

13.07 As an alternative to a merchants' association, the Landlord may establish a promotion fund provided each of the Tenant, Woodward's and Eatons so agree and on terms and conditions agreed to by each of them.

ARTICLE 14PARTICIPATION IN NETCASH FLOW OF THESHOPPING CENTRE

14.01(a) The Landlord shall, during the continuance of this Lease and at the times set out in Article 14.02(a), pay to the Tenant an amount equal to ten per cent (10%) of the Net Cash Flow of the Shopping Centre for each fiscal period of the Shopping Centre and the Tenant may set off against, or deduct such amount from, Additional Rent.

(b) The first fiscal period of the Shopping Centre shall commence on the Shopping Centre Opening Date and end on a date within the ensuing 12 months to be determined by the Landlord and thereafter the fiscal period of the Shopping Centre shall be each succeeding twelve-month period.

14.02(a) Within ninety (90) days after the end of each such period, the Landlord shall furnish to the Tenant a detailed audited statement of the Net Cash Flow of the Shopping Centre for such period, showing in reasonable detail all information relevant and necessary to the exact calculation of that amount together with payment of the amount payable under Article 14.01;

(b) The Tenant shall have the right to inspect and take copies of, and cause an audit to be taken by an independent Chartered Accountant of, the books and records of the Landlord pertaining to Net Cash Flow of the Shopping Centre upon reasonable notice at reasonable times;

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(c) In the event that an audit of the Landlord's statement discloses that the Net Cash Flow of the Shopping Centre is greater or less than that disclosed in the Landlord's audited statement, the proper adjustment shall be made forthwith provided that if the Net Cash Flow of the Shopping Centre is found to be greater by three (3%) per cent than that disclosed in the Landlord's audited statement, the Landlord shall in addition to adjusting the Net Cash Flow of the Shopping Centre based on such audit, pay the cost of such audit within thirty (30) days after demand by the Tenant;

(d) The Tenant's ten (10%) per cent participation in the Net Cash Flow of the Shopping Centre shall be deemed to accrue from month to month;

(e) If for any reason it shall become necessary to calculate Net Cash Flow of the Shopping Centre for irregular periods of less than one (1) year, an appropriate pro-rata adjustment shall be made on a monthly basis in order to compute the Net Cash Flow of the Shopping Centre for such irregular period;

(f) Any additional payment made by the Landlord to the Tenant as a result of the audit shall be without prejudice to the right of the Tenant to claim re-adjustment.



14.03 The Landlord represents and warrants to the Tenant that:

- (a) the Pro Forma Budget fairly represents the Landlord's best estimates as at October 17, 1977 of the intended financial aspects of the development of the Shopping Centre and it is not expected that any changes within the Landlord's control will be made thereto which will adversely affect the Tenant's participation in the Shopping Centre or the Net Cash Flow of the Shopping Centre to any material degree;
- (b) the mean rent rate payable by each of Eatons and Woodwards for the Eatons Store and the Woodwards Store respectively, without any rights of set-off or deduction, will not be less than \$4.90 per annum per square foot of the Gross Leaseable Area of the Eatons Store and the Woodwards Store respectively, provided that if either store costs less than \$28.00 per square foot of Gross Leaseable Area, the rent therefor may be reduced only in proportion to the reduction in cost; and
- (c) interim financing adequate for the development and operation of the Shopping Centre has either been obtained or bona fide commitments have been secured, at arms length, on terms which would be, in the opinion of a prudent and reasonable owner, and at the time obtained, the best available.

ARTICLE 15INSURANCE

15.01 The Landlord shall take out or cause to be taken out (except to the extent required to be taken out by the Tenant pursuant to Article 15.05) and keep or cause to be kept in force at all times:

- (a) fire insurance and extended coverage supplemental risks contracts, including sprinkler leakage, on the Shopping Centre and every part thereof in an amount not less than 100% of the full replacement cost thereof (but which may exclude the cost of foundations and excavations and permit a first deductible amount to be assumed by the Landlord not greater than three (3) per cent of the permitted claim under the terms of the insurance contract);
- (b) comprehensive public liability insurance in respect of the Property in an amount not less than \$10,000,000 for claims for personal injury, death or property damage arising out of any one occurrence and shall cause the Tenant to be included as an insured; and

- (c) boiler and pressure vessel insurance in respect of any boiler and pressure vessels operated in the Shopping Centre in such amounts as are normally effected having regard to the nature of the boiler and pressure vessels so operated.

15.02 (a) All proceeds of the insurance referred to in Articles 15.01(a) and (c) shall be made available to the Landlord, the Tenant and other tenants responsible for repair or rebuilding as their interests may appear for the purpose of the repair or rebuilding for which such party is responsible or, in the event of default by the Landlord or such other tenant, to the Tenant to permit it to perform such repairs or rebuilding on behalf of and at the expense of the Landlord.

(b) Any excess of such insurance proceeds over the amount required to make good such damage or destruction shall belong to the Landlord and be paid to it.

(c) The insurance shall be payable to the Landlord, the Tenant and any Mortgage Creditor named by the Landlord and included as an insured party, as their respective interests may appear, and when received by any one or more of them, shall be held in trust (with any interest which may accrue thereon) to be dealt with in accordance with Article           

(d) The Landlord shall procure from each Mortgage Creditor an agreement with the Tenant that the insurance proceeds shall be so dealt with, notwithstanding any default under the mortgage.

(e) The Landlord shall not assign, or otherwise alienate any proceeds payable under any such insurance.

15.03 Every policy of insurance effected pursuant to Article 15.01 shall prevent the insurer from exercising any rights of subrogation against the Tenant and shall, if the Tenant is included as an insured, afford protection to the Landlord and the Tenant in respect of cross-liability between the Landlord and the Tenant.

15.04 The Landlord shall from time to time whenever reasonably requested furnish to the Tenant certificates of insurance, certificates of renewal and any other documents appropriate to evidence the insurance from time to time required to be in force hereunder.

15.05 The Tenant at its cost shall take out or cause to be taken out and keep or cause to be kept in force at all times during the Term:

- (a) fire insurance and extended coverage supplemental risks contracts, including sprinkler leakage, on the HBC Store and each part thereof in an amount not less than 100% of the full replacement cost thereof (but which may exclude the cost of foundations and excavations and permit a deductible amount to be assumed by the Tenant not greater than those deductible amounts in insurance policies generally instituted by the Tenant for premises in similar shopping centres);

- (b) comprehensive public liability insurance in respect of the Tenant's use and occupancy of the Occupied Premises in an amount not less than \$5,000,000 for claims for personal injury, death or property damage arising out of any one occurrence; and
- (c) if any boilers or pressure vessels are operated in the HBC Store, boiler and pressure vessel insurance in such amounts as are normally effected having regard to the nature of the boiler and pressure vessels so operated, and permit any deductible amount to be assumed by the Tenant.

15.06 The Tenant will pay to the Landlord, within a reasonable time after receipt from the Landlord of a request therefor accompanied by all information reasonably required to make the calculation, its proportionate share of the premium paid by the Landlord for the insurance in Article 15.01(a) and (c) based on the Gross Leasable Area of the HBC Malt Stop compared to the Gross Leaseable Area of the other Leaseable Premises insured by that policy.

15.07 The Tenant may elect to include its insurance as part of an overall corporate insurance policy applying to all or some of its other department stores.

15.08 (a) All proceeds of insurance referred to in Article

15.05(a) and (c) shall be made available as follows:

- (i) firstly to the Tenant for the repair or rebuilding of the Occupied Premises to the extent the Tenant is responsible for such repair or rebuilding, or if the Tenant fails to repair as required by the Lease, then the Landlord to make such repairs on behalf of and at the expense of the Tenant; and
- (ii) secondly to the Landlord for making good the damage or destruction to the Occupied Premises for which the Landlord is responsible to repair or rebuild and shall advance such monies upon certificates of the Architect after such repair or rebuilding is duly completed;

(b) Any excess of such insurance monies over the amount required to be made available to the Landlord and the Tenant for making good such damage or destruction shall belong to the Tenant and be paid to it.

(c) The insurance shall be payable to the Landlord, the Tenant and any Mortgage Creditor named by the Landlord and included as insured parties, as their respective interests may appear, and when received by any one or more of them shall be held in trust (with any interest which may accrue thereon) for the Tenant and dealt with in accordance with Articles 15.08(a) and (b).

(d) The Landlord shall procure from each Mortgage Creditor an agreement with the Tenant that the insurance proceeds shall be so dealt with, notwithstanding any default under the mortgage.

15.09 Every policy of insurance effected pursuant to Article 15.05 shall prevent the insurer exercising rights of subrogation against the Landlord and shall, if the Landlord is included as an insured, afford protection to the Landlord and the Tenant in respect of cross-liability between the Landlord and the Tenant.

15.10 The Tenant shall from time to time whenever reasonably required furnish to the Landlord certificates of insurance, certificates of renewal and other documents appropriate to evidence the insurance from time to time required to be in force hereunder.

15.11 Neither party will assign or otherwise alienate any proceeds of insurance, except to a mortgage creditor of its freehold or leasehold interest, as the case may be, but only provided that such mortgage creditor shall agree to make all proceeds of insurance received by it available for repair or rebuilding as provided herein, notwithstanding any default under the mortgage.

15.12 All insurance referred to in this Article shall be placed with insurers and upon terms to which neither the Landlord, the Tenant nor any Mortgage Creditor has any reasonable objection.

15.13 The Tenant shall not be liable to the Landlord in respect of any loss, injury or damage required to be insured against by the Landlord under Article 15.01, except to the extent only that such loss, injury or damage results from the negligence of the Tenant or any person for whom in law it is responsible and only up to but not exceeding the related deductible amounts permitted by this Article.

15.14 The Landlord shall not be liable to the Tenant in respect of any loss, injury or damage required to be insured against by the Tenant under Article 15.05, except to the extent only that such loss, injury or damage results from the negligence of the Landlord or any person for whom in law it is responsible and only up to but not exceeding the related deductible amounts permitted by this Article.



ARTICLE 16REPAIRS AND REBUILDING

16.01 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 Property including without limiting the generality of the foregoing:

- (a) the roof, foundations, subfloors, outer walls, canopy (other than the glass therein) and structural supports relating to the Leased Premises (excluding, in the case of the roof of the HBC Store, weather proofing unless repair or replacement thereof is necessary as a result of inherent defects in materials, poor workmanship or materials or the Landlord's fault or negligence);
- (b) all the balance of the Shopping Centre except the HBC Store and those portions of the HBC Malt Stop, the HBC Outdoor Selling Area or the HBC Automotive Centre which were constructed by the Tenant unless otherwise provided herein;
- (c) all utilities and services used in the operation of the Shopping Centre; and
- (d) all damage caused by the act or negligence of the Landlord or any other person for whom the Landlord is in law responsible.

16.02 The obligations of the Landlord under Article 16.01 shall be subject to the following exceptions only:

- (a) reasonable wear and tear which does not affect:
  - (i) the use or operation of the Shopping Centre as contemplated in Article 10; or
  - (ii) the exterior appearance of the HBC Store;and
- (b) all repairs which are the specific responsibility of the Tenant as set out in Articles 16.06 and 16.07.

16.03 Notwithstanding the obligations of the Tenant to repair under the provisions of Articles 16.06 and 16.07, the Landlord shall maintain and keep in good and substantial state of repair and rectify all deficiencies or defects in the Landlord's Work which come to its attention during the period being the longer of:

- (a) one year after the date of Substantial Completion of the Shopping Centre; and
- (b) the period the supplier, installer or contractor relating to any materials or workmanship in the Landlord's Work has guaranteed the same.

16.04 If the Landlord considers that any repairs made by it pursuant to its obligations hereunder were occasioned by the negligence of any consultant retained by the Tenant for the design, construction or testing of the HBC Store and if

the Landlord gives the Tenant notice thereof, then the Tenant shall:

- (a) secure a written opinion from its solicitors in British Columbia as to whether or not the repairs were occasioned by the negligence of the consultant; and
- (b) if it receives an opinion that the repairs were so occasioned and that there is a reasonable expectation of recovery in respect thereof of an amount which will exceed the legal fees and other expenses which will likely be incurred in recovery, then:
  - (i) commence an action against the consultant and pursue it diligently to final judgment including applicable stages of appeal unless otherwise advised by its said solicitors; and
  - (ii) pay to the Landlord an amount equal to that recovered by the Tenant in that action less all legal fees and other expenses relating thereto.

The Tenant shall keep the Landlord informed fully as to the status of every action pending hereunder and shall provide the Landlord with an original counterpart of every legal opinion upon which the Tenant shall elect to rely as aforesaid.

16.05 The agents and representatives of the Landlord shall have the right to enter the Occupied Premises only at reasonable times after business hours on reasonable written notice to the

Tenant at the Leased Premises unless in an emergency to examine the same or to make alterations or repairs as they shall deem necessary for the safety or preservation or proper administration or improvement of the Occupied Premises or of the Shopping Centre, or of any premises adjoining the Leased Premises, but only in accordance with the reasonable security precautions prescribed by the Tenant and so as not to interfere with the Tenant's use and enjoyment of the Occupied Premises.

16.06 ~~the Tenant shall at all times during the Term maintain and keep in a good and substantial state of repair:~~

(a) the HBC Store;

~~(b) the glass in the glass canopy surrounding the HBC Store; and~~

(c) those portions of the Occupied Premises other than the HBC Store which were constructed by the Tenant.

16.07 The obligations of the Tenant under Article 16.06 shall be subject to the following exceptions:

- (a) reasonable wear and tear which does not affect the use or operation of the Occupied Premises by the Tenant as contemplated in Article 11;
- (b) damage or destruction caused by or resulting from any act or negligence of the Landlord or any person for whom the Landlord is responsible in law;

- (c) damage or destruction caused by or resulting from any structural weakness, failure or defect in any part of the Shopping Centre; and
- (d) any repairs for which the Landlord is responsible under Articles 16.01 and 16.03.

16.08 The order of any repairs to the Occupied Premises shall be as determined by the Tenant.

16.09 All repairs to be done by either the Landlord or the Tenant hereunder shall be done at its own expense, commenced as soon as reasonably practicable and completed diligently and in a good and workmanlike manner.

16.10 If the Occupied Premises or any part thereof are damaged or destroyed at any time within three (3) years before the expiration of the initial term or at any time during any renewal term to such an extent that the cost of repairing the same exceeds twenty-five (25%) percent of the replacement cost of the Occupied Premises (excluding foundation and excavation costs and all equipment and fixtures therein), then the Tenant may terminate this Lease by written notice to the Landlord given within sixty (60) days after the happening of such damage or destruction, in which event;

- (a) this Lease shall terminate as of the date of the happening of such damage or destruction;

- (b) the Landlord and the Tenant shall be relieved of their obligations to repair the Occupied Premises;
- (c) the Tenant shall assign to the Landlord, if practicable, all its interest in all insurance policies and any proceeds which may be payable thereunder in respect of such damage or destruction to the extent that the same relate to other than the Tenant's fixtures and equipment;
- (d) the Tenant shall within one hundred and eighty (180) days after the giving of such notice vacate the Occupied Premises; and
- (e) the Rent and Additional Rent shall be adjusted and paid up to the date the Tenant ceases to carry on business with the public from the Occupied Premises.

ARTICLE 17ALTERATIONS AND EXPANSION

17.01 The Tenant may, at any time and from time to time, redecorate, alter, reconstruct or, as set out in Articles 17.02 and 17.03, expand the Leased Premises subject to the following conditions:

- (a) the Leased Premises shall at all times be architecturally compatible with the Shopping Centre;
- (b) the plans and specifications for any substantial expansion of the Leased Premises or any substantial alteration of the exterior of the Leased Premises shall be submitted to the Landlord for its information and consent prior to the commencement of work; such consent not to be unreasonably withheld;
- (c) all work shall comply with all applicable municipal by-laws and other legal requirements pertaining to such work; and
- (d) in the event of an expansion the Tenant will, if necessary, at its own cost alter the Parking Facilities to provide additional parking spaces as may be required by law as a result of the

expansion subject to the minimum standard prescribed by Article 10.02(o).

17.02 (a) The Tenant may expand the HBC Store by constructing a vertical addition or, in the area indicated on Schedule "A" hereto a horizontal addition, or both, but so that the Gross Leaseable Area of the HBC Store as expanded does not exceed 150% of the Gross Leaseable Area of the HBC Store as originally constructed, and will give to the Landlord two (2) months' written notice of its intention so to do and the Landlord will, during that period of time, remove from the area of expansion any structures, trees or other items at its own expense;

(b) The Tenant may so expand the HBC Store at any time after the first ten (10) years of the Term except that if either the Eatons Store or the Woodward's Store is expanded within the first (10) years of the Term, the Tenant may expand the HBC Store at any time on the terms contained herein.

17.03 The Landlord will, at the request of the Tenant, enter into bona fide negotiations with the Tenant to the intent that the Landlord will construct the expansion required by the Tenant either for an agreed price or in consideration of an agreed increase in Rent or for other consideration and on the terms and conditions which may reasonably be agreed upon, but if the Landlord and the Tenant are unable to agree upon the matters set out in this Article 17.03 within a reasonable time after commencing such negotiations, the Tenant may construct the expansion at its own cost and shall not be required to pay any Rent or other consideration in respect of the expansion and the area thereof



shall not be included in the Gross Leaseable Area of the HBC Store for the purposes of calculating Rent under Article 4.

17.04 The Tenant may, at any time and from time to time, expand the HBC Outdoor Selling Area in the area shown on Schedule "A" hereto unless necessary amendments to the Land Use Contract or other governmental approvals therefor cannot be obtained after the Landlord has applied therefor and used its best efforts to pursue diligently the obtaining thereof.

17.05 The Landlord represents and warrants to the Tenant that the rights of Eatons and Woodward's to expand the Eatons Store and the Woodward's Store respectively are limited as follows:

(a) each of Eatons and Woodward's has only the right to expand the Eatons Store and the Woodward's Store respectively after the expiration of the first 10 years of the term of the Eatons Lease and the Woodward's Lease respectively but so that the Gross Leaseable Area of the store, as expanded, will not exceed 150% of its Gross Leaseable Area as originally constructed and such expansion may only be a horizontal expansion within the areas respectively indicated on Schedule "A" hereto;

(b) each of the Eatons Store and Woodward's Store will have to provide and pay for additional Parking Facilities that may be required as a result of its expansion; and

- (c) an increase in rent similar to the increase in Additional Rent which would be payable by the Tenant in respect of its expansion shall be payable by Eaton's or Woodward's in respect of its respective expanded area even if constructed at its own expense.

17.06 The Landlord will not amend the expansion rights of Eatons and Woodwards referred to in Article 17.05 without prior notice to the Tenant and, if the Tenant so requests, similarly amending the rights of the Tenant to expand the HBC Store.

17.07 The Landlord shall:

- (a) apply to the appropriate authorities for an amendment to the Land Use Contract and will use its best efforts to pursue diligently such amendment and take all other steps required to be taken in its name to permit the Tenant to make such an expansion and, if necessary, change the Parking Facilities in accordance with this Article 17;
- (b) not do or allow to be done anything which does or might preclude, interfere with or prejudice the Tenant's rights of expansion or the securing of an amendment to the Land Use Contract as set out in this Article 17;
- (c) permit the alteration of the Parking Facilities to provide additional parking spaces for the Tenant to meet its obligations under Article 17.01(d) to the extent it is reasonable to provide such additional spaces on the Property; and

- (d) permit the Tenant to construct at its own expense parking decks or structures on the Property at such location or locations as shall be agreed upon by the Landlord and the Tenant, both acting reasonably and failing such agreement as shall be determined by arbitration pursuant to the provisions of Article 21.11.

17.08 The Landlord may, at any time and from time to time, alter or expand the Shopping Centre subject to the following conditions:

- (a) all legal requirements including municipal by-laws shall be complied with;
- (b) architectural compatibility within the Shopping Centre shall at all times be maintained and preserved;
- (c) the areas of the Mall, Parking Facilities and other Common Facilities shall in no way be diminished;
- (d) the Parking Facilities required by Article 10.02(o) shall be maintained;
- (e) access to the Shopping Centre and its component parts shall not be adversely affected;
- (f) neither the Eatons Store nor the Woodward's Store shall be expanded except as presently contemplated in Article 17.05;

- (g) no additional department store shall be constructed without the consent of the Tenant;
- (h) the aggregate of the Gross Leaseable Areas of Leaseable Premises shall not be reduced without the consent of the Tenant;
- (i) no buildings or structures (including parking decks or structures other than those pursuant to Article 17.01(d)) shall be erected upon the portion of the Lands which is outlined and hatched in blue on Schedule "A" hereto;
- (j) all alterations and expansions shall at all times be consistent with a first class regional shopping centre;
- (k) before proceeding with the construction of any expansion or major alteration to the Shopping Centre (other than in the area outlined in green on Schedule "A" hereto), the Landlord shall provide plans and specifications thereof to the Tenant for its approval, which:
  - (i) may be withheld for any reason if the expansion or major alteration or any part thereof directly affects the visibility of, access to or from, or the operation, functionally or aesthetically, of any part of the Occupied Premises having due regard to the general design concepts previously approved by the Tenant; and
  - (ii) otherwise is not to be unreasonably withheld.

ARTICLE 18TRANSFERS AND ENCUMBRANCES

18.01 The Tenant shall not assign this Lease or any separate lease of the HBC Automotive Centre or sublet the whole or any part of the Occupied Premises without the consent of the Landlord, which consent will not be unreasonably withheld, except the Tenant may do so without such consent in the following circumstances:

- (a) the Tenant may assign this Lease or sublet the whole or any part of the Occupied Premises to any Affiliate provided the Tenant shall in any event continue and remain throughout the initial term of this Lease liable for the performance of the Tenant's obligations hereunder;
- (b) the Tenant may assign this Lease together with any separate lease of the HBC Automotive Centre:
  - (i) to any corporation with which the Tenant amalgamates, merges or consolidates; or
  - (ii) to any corporation to which it sells all or substantially all of its retail department stores located in the Lower Mainland Area;
- (c) the Tenant may sublet or grant rights or licences to use or occupy any parts of the Occupied Premises provided that:

- (i) such parts (except the HBC Malt Stop) retain the appearance of being conducted as an operation integrated with that carried on in the HBC Store; or
  - (ii) in the case of the HBC Automotive Centre, it is subleased, or rights or licences to use or occupy are granted, consistent with the Tenant's overall policy towards its automotive centres;
- (d) the Tenant may assign, sublet, mortgage or charge this Lease or its interest under this Lease as security in connection with a bona fide borrowing by the Tenant or any Affiliate; and
- (e) after the expiration of ninety (90) days after notice to the Landlord to that intent, the Tenant may assign this Lease if the Landlord has ceased to operate the Shopping Centre as a first class regional shopping centre unless the Landlord has cured such condition to the reasonable satisfaction of the Tenant within that period of ninety (90) days;

and in the case of an assignment pursuant to Articles 18.01 (b), (d) or (e), from and after such assignment, the Tenant will not be liable for the performance of the Tenant's obligations hereunder.

18.02 The Landlord will not enter into any agreement with any other party relating to a sale, transfer, mortgage, assignment or other dealing with any interest in the Property except in a manner that ensures that the rights of the Tenant under this Lease shall take or retain priority over the rights of any other such party and unless that other party enters into an agreement with the Tenant under which that other party covenants with the Tenant that so long as it retains any interest in the Property it will perform the obligations of the Landlord hereunder and be bound by all the provisions of this Lease, including this provision, which shall apply to each and every subsequent similar agreement.

18.03 If the Landlord shall have mortgaged, charged or otherwise encumbered the Property or any interest therein prior to the execution of this Lease, the Landlord shall forthwith after execution of this Lease secure from such party an agreement with the Tenant containing the terms set out in Schedule "F" hereto.

18.04 (a) Each of the Landlord and the Tenant shall 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 Property and, if any such claim of 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 Property liable to forfeiture or sale;

(b) In the conduct of any construction or other work, each of the Landlord and the Tenant shall comply with all the provisions of applicable statutes available to it for the protection of the Property from claims of lien.

(c) If either the Landlord or the Tenant defaults in the payment of monies justly due in connection with any construction or other work and a claim of lien is 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.



ARTICLE 19DEFAULT AND REMEDIES

19.01 If the Tenant commits a Default the Landlord may, but only in the manner provided in Article 19.03 and 19.04,:

(a) if the Default is a Major Default, only:

- (i) terminate this Lease, in which event the Term shall cease, and the Landlord may re-enter and take possession of the Occupied Premises without any legal proceedings being taken in respect thereof and the Landlord shall also be entitled to recover from the Tenant the Rent then accrued or accruing due to the date of such termination; or
- (ii) take all actions in the name of the Tenant or otherwise as may reasonably be required to remedy such Major Default and all costs and expenses incurred by the Landlord or its agents therefor shall be payable by the Tenant to the Landlord (as Additional Rent) within thirty (30) days of notice in respect thereof;

(b) if the Default is a Minor Default, only:

- (i) take all actions in the name of the Tenant or otherwise as may reasonably be required to remedy

such Minor Default and all costs and expenses incurred by the Landlord or its agents therefor shall be payable by the Tenant to the Landlord (as Additional Rent) within thirty (30) days of notice in respect thereof; or

- (ii) take all actions as may reasonably be required to obtain damages from the Tenant in respect of such Minor Default.

19.02 If the Landlord commits a Default, the Tenant may, but only in the manner provided in Article 19.03 and 19.04,:

- (a) if the Default is a Major Default, only:

- (i) terminate this Lease, in which event the Term shall cease, and the Landlord may re-enter and take possession of the Occupied Premises and the Landlord shall also be entitled to recover from the Tenant the Rent then accrued or accruing due to the date of such termination but the Tenant shall be under no further obligation to the Landlord under the terms of this Lease; or
- (ii) take all actions in the name of the Landlord or otherwise as may reasonably be required to remedy such Major Default and all costs and expenses incurred by the Tenant or its agents therefor shall be payable by the Landlord to the Tenant within

thirty (30) days of notice in respect thereof and if not so paid the Tenant may deduct such amount from the Common Facilities Maintenance Cost payable by the Tenant to the Landlord;

(b) if the Default is a Minor Default, only:

(i) take all actions in the name of the Landlord or otherwise as may reasonably be required to remedy such Minor Default and all costs and expenses incurred by the Tenant or its agents therefor shall be payable by the Landlord to the Tenant within thirty (30) days of notice in respect thereof and if not so paid the Tenant may deduct such amount from the Common Facilities Maintenance Cost payable by the Tenant to the Landlord; or

(ii) take all actions as may reasonably be required to obtain damages from the Landlord in respect of such Minor Default.

19.03 Neither the Landlord nor the Tenant shall be entitled to pursue any of the remedies or actions set out in Article 19.01 or 19.02 or any other remedies specifically provided for herein in the event of a Default unless:

(a) it shall have given written notice to the Defaulting Party setting out the alleged Default and requiring the Defaulting Party to remedy the same; and

(b) the Defaulting Party:

(i) does not:

- A) give notice within thirty (30) days after the receipt of the notice from the other party that it disputes the existence of the alleged Default;
- B) commence to remedy the alleged Default with reasonable diligence within sixty (60) days after receipt of the notice from the other party or within such longer period as is reasonable under the circumstances; and
- C) pursue the remedying of the alleged Default with reasonable diligence subject to Unavoidable Delay; or

(ii) A) gives notice to the other party that it disputes the existence of the alleged Default within thirty (30) days after the receipt of notice from the other party (in which event the dispute shall then be determined by arbitration);

- B) has not commenced to remedy the Default with reasonable diligence within sixty (60) days after the communication to the Defaulting Party of the final determination against the

Defaulting Party of the dispute (including appeals, if any) pursuant to Article 21.11 hereof or within such longer period as is reasonable in the circumstances; and

- C) does not pursue the remedying of the Default with reasonable diligence subject to Unavoidable Delay.

19.04 (a) If the alleged Default could reasonably be expected to cause immediate damage or harm to any part of the Property or the Tenant's property or, in the reasonable opinion of the Tenant (in the case of a Default by the Landlord), will adversely affect its business to a material degree, the other party may immediately take all action which may reasonably be required to remedy such Default and the Defaulting Party shall pay to the other party the cost of remedying such Default within thirty (30) days of the later of:

- (i) the receipt of notice in respect thereof from the other party; or
- (ii) if disputed by the Defaulting Party, the communication to the Defaulting Party of the final determination against the Defaulting Party (including appeals, if any) of such dispute pursuant to Article 21.11 hereof or within such longer period as is reasonable in the circumstances;

(b) The Landlord may recover any such monies as Additional Rent and the Tenant, if not so paid, may deduct such amount from Common Facilities Maintenance Cost payable by the Tenant to the Landlord.

ARTICLE 20HBC AUTOMOTIVE CENTRE

20.01 The Tenant shall have the option to use and occupy the HBC Automotive Centre Site and to construct thereon the HBC Automotive Centre, such option to be exercised at any time during the Term, by notice in writing to the Landlord but if the Landlord gives written notice to the Tenant requesting such exercise, the option must be exercised within the time specified by the Landlord in the notice which shall not be less than ninety (90) days after receipt by the Tenant of the notice from the Landlord.

20.02 If the Tenant exercises that option:

- (a) the Landlord will lease to the Tenant the HBC Automotive Centre Site upon the terms contained in this Lease except as otherwise provided in this Article;
- (b) the lease shall commence on the day designated by the Tenant at the time, or at any time after, the exercise of the option;
- (c) until the commencement of the lease or a decision not to use as provided in Article 20.02(h), the Tenant shall pay to the Landlord the sum of \$15,000 per year in equal consecutive monthly instalments;
- (d) the term of the lease shall be the then remaining portion of the Term and the rent payable therefor shall be \$15,000 per year;

- (e) prior to the commencement of the lease, the HBC Automotive Centre Site shall remain and be used as part of the Common Facilities and the Landlord will indemnify and save harmless the Tenant from any liability of the Tenant relating to the HBC Automotive Centre Site or the use thereof;
- (f) after the commencement of the lease:
  - (i) the Tenant may construct the HBC Automotive Centre at its own expense except as set out in clause (g) hereof, and the exterior design thereof will be compatible and harmonious with the remainder of the Shopping Centre and be approved by the Landlord, which approval will not be unreasonably withheld; and
  - (ii) the HBC Automotive Centre may be used for the purpose of the sale of gasoline and other fuel, oil and other lubricants, tires, batteries and automotive parts and accessories and the servicing, not including washing, of motor vehicles, or any of them;
- (g) the Landlord shall, at its own expense, provide to the HBC Automotive Centre all utilities and services required by the Tenant for its use thereof, including sanitary sewers, storm drains, water and electricity;



- (h) the Tenant may at any time decide not to use or occupy, or cease to use and occupy and surrender the lease of the HBC Automotive Centre Site, in which event:
- (i) the payment under clause (c) or the rent payable under the lease shall cease, as the case may be;
  - (ii) the Tenant will, unless the Landlord otherwise requires, remove at its own expense within a reasonable time thereafter, the buildings and improvements constructed by the Tenant thereon and restore it as part of the Parking Facilities, and
  - (iii) if the Landlord requires the retention of such buildings and improvements, the Landlord will not allow them to be used or occupied for any purpose other than a bank or other financial institution or commercial offices, or be expanded without the prior written approval of the Tenant, which approval will not be unreasonably withheld; and
- (i) the Landlord will, if requested by the Tenant, execute and deliver to the Tenant a separate lease of the HBC Automotive Centre Site incorporating the terms as herein specified to the extent they are appropriate thereto.

ARTICLE 21GENERAL PROVISIONSCondonation and Waiver

21.01 Any condoning or overlooking by the Landlord or the Tenant of any Default by the other at any time or times shall not operate as a waiver of such Default, and any waiver of a particular Default shall not operate as a waiver of any subsequent or continuing Default.

Unavoidable Delay

21.02 (a) If the doing or performing of any act or thing required hereunder to be done or performed by the Landlord or the Tenant is affected by Unavoidable Delay, then the time for such doing or performing or the time within which it shall be done or performed shall be extended for a period equal to the Unavoidable Delay or, if the Unavoidable Delay ceases after the specified period for the doing or performing, for a period equal to the Unavoidable Delay after the Unavoidable Delay ceases;

(b) The party obligated to do or perform such act or thing shall not be deemed to have committed a Default until the expiration of such time as so extended;

(c) Each party shall when so delayed promptly notify the other of the occurrence of the Unavoidable Delay.

Notices

21.03 Any notice required to be given hereunder by either party to the other shall be deemed to have been well and sufficiently given if mailed by prepaid registered mail or delivered at the addresses hereinafter set forth:

If to the Landlord:

Praxis Group Ltd.,  
300 - 545 Clyde Avenue,  
West Vancouver, B.C. V7T 1C5

with copy to: Owen, Bird,  
Barristers and Solicitors,  
595 Burrard Street,  
Vancouver, B.C. V7X 1J5

ATTENTION: W.E. IRELAND, ESQ.

and:

Daon Development Corporation,  
1050 West Pender Street,  
Vancouver, B.C.

with copy to: Shrum Liddle & Hebenton  
Barristers & Solicitors,  
505 Burrard Street,  
Vancouver, B.C. V7X 1G1

ATTENTION: R. STERN, ESQ.

If to the Tenant:

Hudson's Bay Company,  
25th Floor,  
2 Bloor Street East,  
Toronto, Ontario M4W 3H7

ATTENTION: Manager, Property & Development

with copy to: Hudson's Bay Company,  
Coquitlam Shopping Centre,  
Coquitlam, B.C.

and: Davis & Company,  
Barristers and Solicitors,  
1400 - 1030 West Georgia Street,  
Vancouver, B.C. V6E 3C2

ATTENTION: D.S. HOSSIE, ESQ. 21-2

or at such other address as the parties hereto may from time to time advise in writing, and any such notice shall be deemed to have been received, if mailed, forty-eight (48) hours after the time of mailing (except in the case of mail interruption when it must actually be received) and, if delivered, upon the day of delivery.

#### Certificates

21.04 If the Landlord or the Tenant requests a certificate of Substantial Completion of the HBC Store or any other part of the Shopping Centre, respectively, and the Architect refuses to give such certificate, then:

- (a) the Architect for the Landlord and the Architect for the Tenant will try for seven (7) days to reach an agreement on whether there is such Substantial Completion;
- (b) if no agreement is reached within such time:
  - (i) the Tenant will within seven (7) days thereafter select three (3) architects qualified to act in British Columbia and independent of the Architect for the Tenant and the Architect for the Landlord;
  - (ii) the Landlord will select one (1) of such architects within seven (7) days after the Tenant has delivered the names of three (3) architects; and
  - (iii) the architect so selected will decide if such

Substantial Completion has been obtained and his decision will be binding on the Landlord and the Tenant.

#### Approvals

21.05        Wherever, under any provisions of this Lease, either the Landlord or the Tenant is required to give approval and no time period is specified for such approval, any request for such approval shall be treated with reasonable promptness, and in any event the party from whom such approval is required shall, if it has not replied to the party requesting such approval within thirty (30) days of the date of such request being made, be deemed to have given its approval. As a condition precedent to a party relying upon this Article, the party requesting such approval from the other shall make specific reference to its intent so to do.

#### Successors and Assigns

21.06        This Lease shall be binding upon and enure to the benefit of the Landlord and the Tenant and their respective successors and assigns provided that the benefit will only enure if such successors and assigns are permitted successors and assigns under the provisions of Article 18.

#### Applicable Law

21.07        This Lease is made in accordance with and is subject to the laws of the Province of British Columbia.

Relationship of Parties

21.08 Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture between the parties hereto and none of the provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Captions

21.09 The captions in this Lease form no part of this Lease, and shall be deemed to have been inserted for convenience only.

Amendments

21.10 This Lease may not be modified or amended except by instrument in writing signed by the Landlord and the Tenant.

Arbitration

21.11 Wherever in this Lease it is provided that any matter is to be determined by arbitration, the same shall be decided by a single arbitrator pursuant to the provisions of the "Arbitration Act" of the Province of British Columbia and amendments thereto.

Interest on Payments

21.12 All payments to be made by either the Tenant or the Landlord to the other under this Lease if not paid when due shall bear interest at the rate of one (1%) per cent per month calculated from the date the payment is due until paid in full.

Surrender of Possession

21.13 Upon the termination of this Lease whether by effluxion of time or otherwise, the Tenant will, except as otherwise specifically provided in this Lease, surrender and yield up possession of the Occupied Premises to the Landlord and surrender to the Landlord all keys to locks within the Occupied Premises or the Shopping Centre in its possession.

Interpretation

21.14 Where required by the context hereof the singular shall include the plural, and the masculine gender shall include either the feminine or neuter genders, as the case may be, and vice-versa.

Estoppel Certificates

21.15 (a) The Tenant 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 as the Landlord may direct (save and except to itself) a statement in writing certifying to such third party whether this Lease is in full force and effect, whether or not it has

been modified (and if so in what respect), the status of 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 Lease in respect of which such a certificate is reasonably requested.

(b) The Landlord will from time to time whenever reasonably requested by the Tenant for the purpose of giving assurance to any third party interested (including any prospective or actual assignee or mortgagee of the Tenant) execute and deliver as the Tenant may direct (save and except to itself) a statement in writing certifying to such third party whether this Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of Rent and other accounts between the Landlord and 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 Lease in respect of which such a certificate is reasonably requested.

(c) Such statements may be relied upon only by the third party for whose benefit they are stated to be given and shall not affect or waive any rights of the party giving such statement or estop it from enforcing any rights against any party other than the said third party in respect of any matter whether mentioned in the statement or not.



Further Acts

21.16 Each of the parties hereto shall perform such further acts and execute such further documents as may be required from time to time to give proper effect to the intent of this Lease.

Severability

21.17 If any provision of this Lease is unenforceable or is declared invalid or void for any reason whatever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions of this Lease and such provision shall be severable from the remainder of this Lease.

Grant

21.18 No grant will be required to be made pursuant to the provisions of this Lease after the expiration of twenty-one (21) years less one (1) day after the death of the last survivor of those persons living at this date who are descendants of His

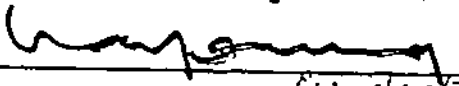
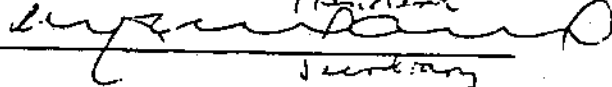
Late Majesty King George V.

Joint and Several

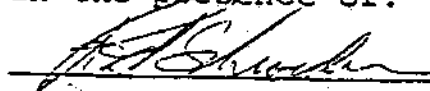
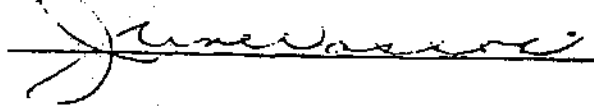
21.9 All representations, warranties, covenants and agreements of the Landlord are joint and several representations, warranties, covenants and agreements of each of Praxis and Daon.

IN WITNESS WHEREOF the parties hereto have executed these presents in the presence of their proper officers first duly authorized in that behalf as of the day and year first above written.

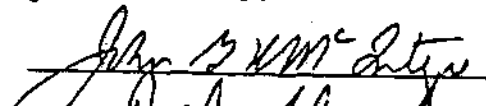
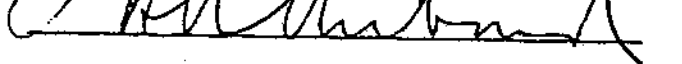
The Corporate Seal of PRAXIS GROUP LTD. was hereunto affixed in the presence of:

  
  
 President  
 Secretary

The Common Seal of DAON DEVELOPMENT CORPORATION was hereunto affixed in the presence of:

  
  
 RODNEY A. SCHROEDER  
 VICE PRESIDENT  
 DAON SHOPPING CENTRES  
 JUNE E. VASSOS  
 ASSISTANT SECRETARY

The Corporate Seal of HUDSON'S BAY COMPANY was hereunto affixed in the presence of:

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PRAXIS GROUP LTD. and  
DAON DEVELOPMENT CORPORATION

AND:

HUDSON'S BAY COMPANY

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LEASE

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DAVIS & COMPANY  
Barristers & Solicitors  
14th Floor - 1030 West Georgia Street  
Vancouver, B.C. V6E 3C2  
Tel. 607-0444

## Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the

12<sup>th</sup>

day of

February

1978

at Vancouver

in the Province of British Columbia,

~~William Edmund Ireland~~ ~~whose identity has been proved by the evidence on oath of~~

~~who is~~ personally known to me,

appeared before me and acknowledged to me that he is the

Secretary

of

PRAXIS GROUP LTD.

who subscribed his name to the annexed instrument as

Secretary

, and that he is the person

of the said

Company

and affixed the seal of the

Company

to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,

at Vancouver

in the Province of

British Columbia, this 12<sup>th</sup> day of February

one thousand nine hundred and seventy-eight

*My Comm.*

A Notary Public in and for the Province of British Columbia.  
A Commissioner for taking Affidavits for British Columbia.

NOTE—WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.

PAK-

FORM NO. 206 ACKNOWLEDGMENT OF OFFICER OF A CORPORATION.

## Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the

eight

day of

February

1978

at Toronto

in the Province of Ontario

oath of

ALLEN ROLPH HUGAND

~~whose identity has been proved by the evidence on~~

~~who is~~ personally known to me,

appeared before me and acknowledged to me that he is the

SECRETARY

of

Hudson's Bay Company

, and that he is the person

who subscribed his name to the annexed instrument as

SECRETARY

of the said

Company

and affixed the seal of the

Company

to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of Ontario.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,

at Toronto

in the Province of

Ontario, this eight day of February  
one thousand nine hundred and seventy-eight

*Donald Campbell Toshack*

A Notary Public in and for the Province of Ontario  
A Commissioner for taking Affidavits for Ontario

DONALD CAMPBELL TOSHACK, Notary Public,  
Judicial District of York, for Hudson's Bay  
Company and its subsidiary, associated and  
affiliated Companies.

Expires 3.9.82

NOTE—WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.

BANK

FORM NO. 206 ACKNOWLEDGMENT OF OFFICER OF A CORPORATION.

## Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 13th day of February, 1978,  
 at Vancouver, in the Province of British Columbia,  
 (whose identity has been proved by the evidence on  
 oath of \_\_\_\_\_ who is personally known to me,  
 appeared before me and acknowledged to me that he is the Assistant Secretary of  
 DAON DEVELOPMENT CORPORATION, and that he is the person  
 who subscribed his name to the annexed instrument as Assistant Secretary of the said  
 Company and affixed the seal of the  
 Company  
 to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to  
 the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of  
 British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and ~~Seal of Office~~,  
 at Vancouver in the Province of  
 British Columbia, this 13th day of February  
 one thousand nine hundred and seventy-eight near

Donald M. A. +  
 A Notary Public in and for the Province of British Columbia.  
 A Commissioner for taking Affidavits for British Columbia.

NOTE—WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.

SCHEDULE "B"

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the Municipality of Coquitlam, in the Province of British Columbia, described as:

Firstly:

Lots One Hundred and Three (103) and  
One Hundred and Five (105)  
District Lot Three Hundred and Eighty-four A  
(384A)  
Group One (1)  
Plan 51877  
New Westminster District

Hereto is annexed Easement P28436 over Part (Plan 54467)  
of the South Half of Parcel "A" (Explanatory Plan 12668)  
of Lot 5, Plan 148

and

Secondly:

Lot Ninety-eight (98)  
Block "E" of District Lot Three Hundred  
Eighty-four A (384A)  
Group One (1)  
Plan 52027  
New Westminster District

BETWEEN:

PRAXIS GROUP LTD.  
and  
DAON DEVELOPMENT CORPORATION  
(Landlord)

AND:

HUDSON'S BAY COMPANY  
(Tenant)

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SCHEDULES  
"A" TO "G" INCLUSIVE  
TO LEASE

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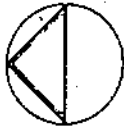
DATED AS OF  
JANUARY 6, 1979

SHRUM, LIDDLE & HERBENTON

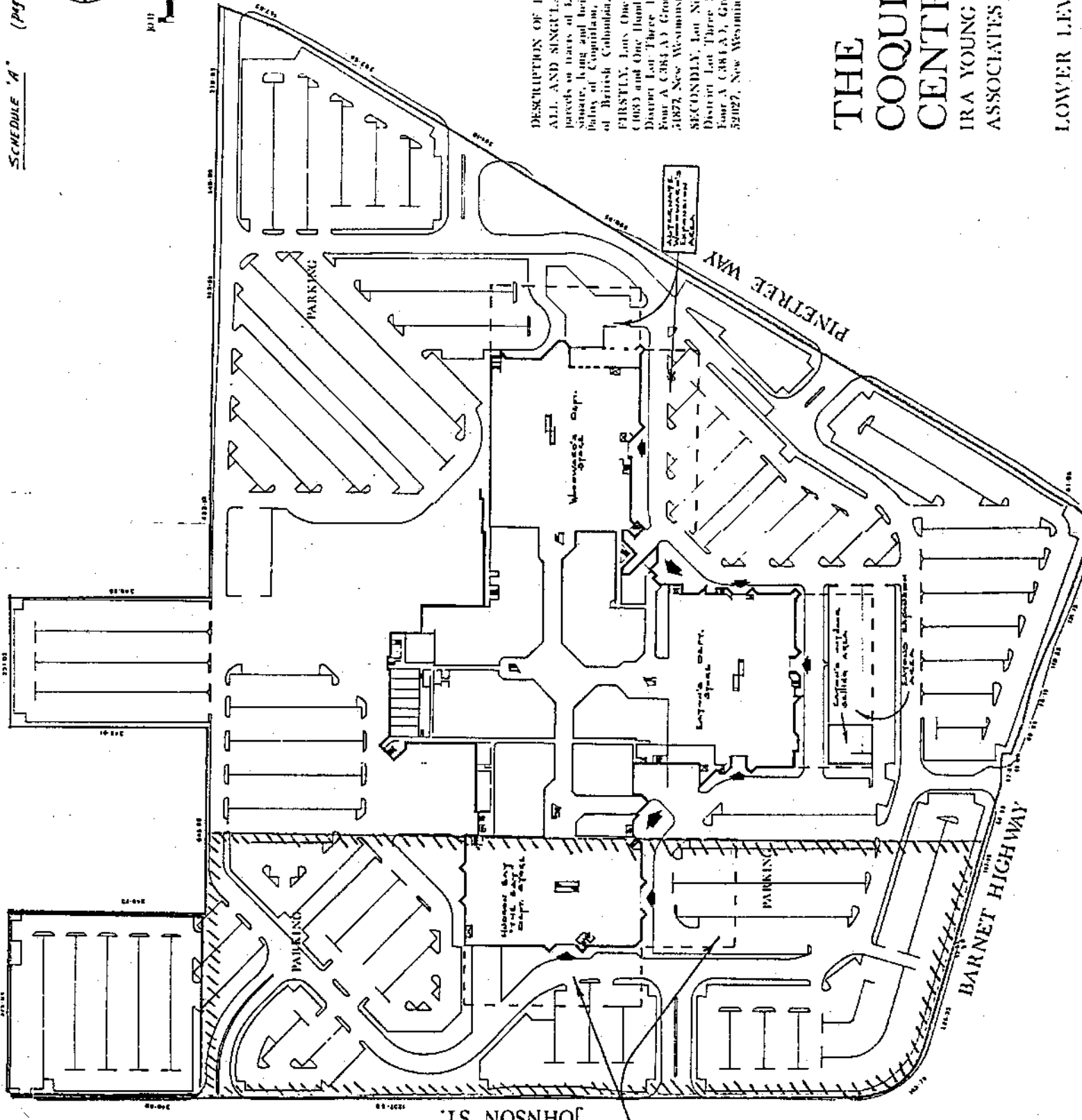
BARRISTERS & SOLICITORS

EIGHTEENTH FLOOR, 505 BURNARD ST., VANCOUVER, CANADA V7X 1G1

(for DAVIS & COMPANY)



100 30 100 150

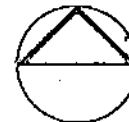


DESCRIPTION OF PROPERTY:  
ALL AND SINGULAR those certain parcels of lands and premises situate, being and being in the Municipality of Coquitlam, in the Province of British Columbia, described as:  
FIRSTLY, Lots One Hundred and Three (103) and One Hundred and Five (105), District Lot Three Hundred and Eighty Four A (384 A) Group One (1), Plan 31872, New Westminster District and  
SECONDLY, Lot Ninety Eight (98), District Lot Three Hundred and Eighty Four A (384 A), Group One (1), Plan 32027, New Westminster District.

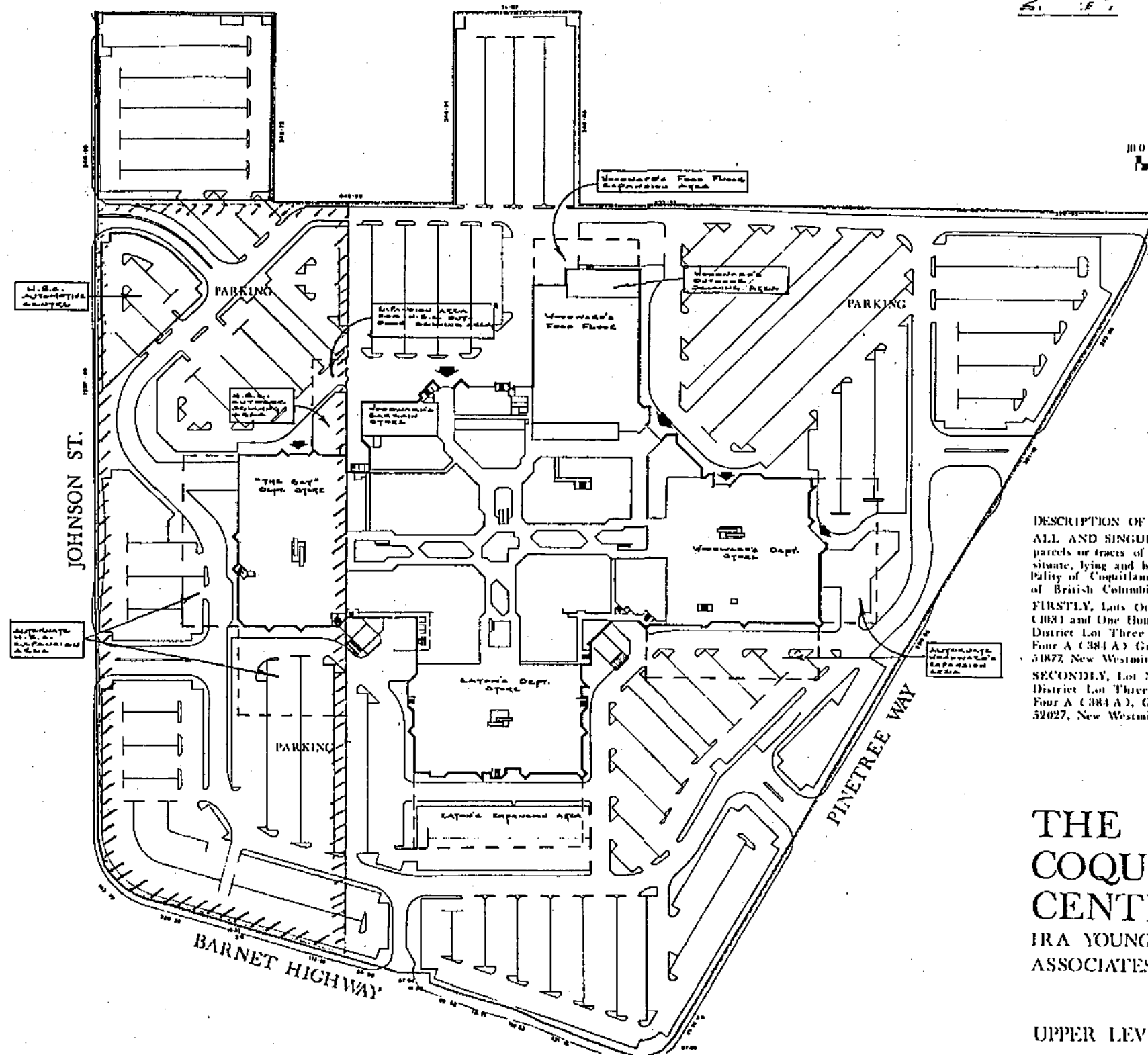
# THE COQUITLAM CENTRE

IRA YOUNG AND ASSOCIATES LTD.





100	50	100	15
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DESCRIPTION OF PROPERTY:

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the Municipality of Coquitlam, in the Province of British Columbia, described as:

FIRSTLY, Lots One Hundred and Three (103) and One Hundred and Five (105), District Lot Three Hundred and Eighty Four A (384 A) Group One (1), Plan 51877, New Westminster District and

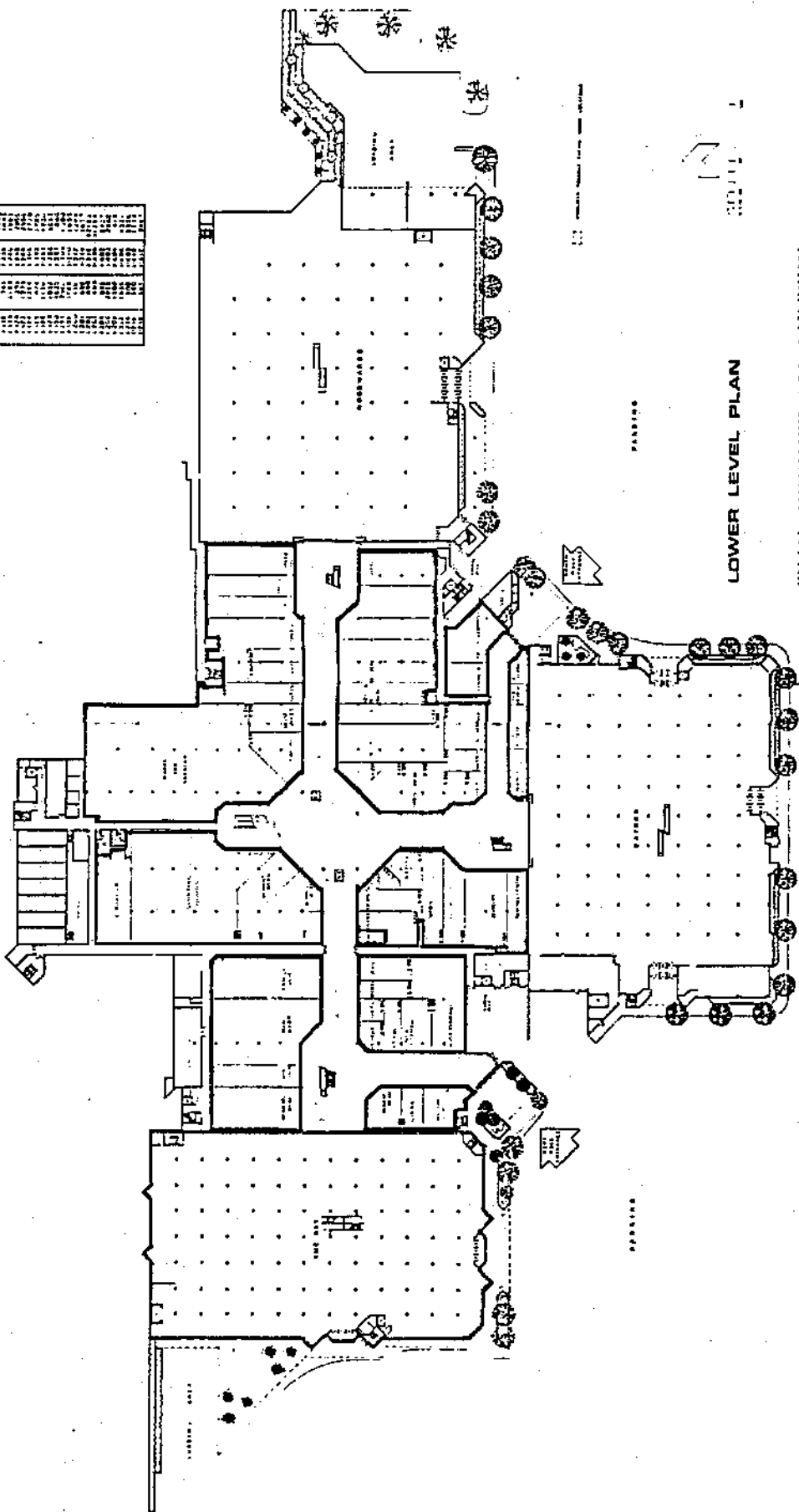
SECONDLY, Lot Ninety- Eight (98),  
District Lot Three Hundred and Eighty-  
Four A (384 A), Group One (1), Plan  
52027, New Westminster District,

THE  
COQUITLAM  
CENTRE

IRA YOUNG AND  
ASSOCIATES LTD.

### UPPER LEVEL PLAN

Room No.	Room Name	Area (sq. ft.)
101	RECEPTION	150
102	LOBBY	250
103	CONFERENCE	120
104	OFFICE	100
105	OFFICE	100
106	OFFICE	100
107	OFFICE	100
108	OFFICE	100
109	OFFICE	100
110	OFFICE	100
111	OFFICE	100
112	OFFICE	100
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114	OFFICE	100
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192	OFFICE	100
193	OFFICE	100
194	OFFICE	100
195	OFFICE	100
196	OFFICE	100
197	OFFICE	100
198	OFFICE	100
199	OFFICE	100
200	OFFICE	100



LOWER LEVEL PLAN  
THE COQUITLAM CENTRE  
GUY YOUNG AND ASSOCIATES LTD.



BETWEEN:

HUDSON'S BAY COMPANY

Tenant

AND:

PRAXIS GROUP LTD, and DAON  
DEVELOPMENT CORPORATION

Landlord

AND:

PRAXIS GROUP LTD, and DAON  
DEVELOPMENT CORPORATION

"The Coquitlam Centre"

ACKNOWLEDGMENT AND PRIORITY  
AGREEMENT

OWEN, BIRD

BARRISTERS AND SOLICITORS

WEI:aff

SCHEDULE "D"

Part I - setting out the charges, liens and encumbrances registered against title to the Lands:

- (a) Land Use Contract No. Z-23-76 made between Praxis and the District of Coquitlam, registered March 14, 1977 as No. N23658;
- (b) Restrictive Covenant given by Praxis in favour of Hudson's Bay Company Developments Limited by Indenture dated October 17, 1977 and registered October 20, 1977 as No. N109202;
- (c) Agreement of Modification to Land Use Contract No. Z-23-76 aforesaid made between Praxis and the District of Coquitlam, registered November 2, 1977 as No. N114772;
- (d) Right of First Refusal granted by Praxis, as to its undivided one half interest, in favour of Hudson's Bay Company by Memorandum of Agreement dated May 26, 1977, registered April 19, 1978 as No. P34042;
- (e) Mortgage granted by Praxis and Daon in favour of Poole Construction Limited, registered June 21, 1978 as No. P58586;
- (f) Mortgage granted by Praxis in favour of Daon, registered June 22, 1978 as No. P58904;
- (g) Mortgage granted by Praxis in favour of Daon, registered September 21, 1978 as No. P92315;
- (h) Right of First Refusal granted by Daon, as to its undivided one half interest, in favour of Hudson's Bay Company, registered September 29, 1978 as No. P96198;
- (i) Mortgage granted by Praxis and Daon in favour of Bank of Montreal, registered September 29, 1978 as No. P96199;
- (j) Priority Agreement made by Daon in favour of Bank of Montreal granting Mortgage P96199 priority over Mortgages P58904 and P92315, registered September 29, 1978 as No. P96200;

continued.....

Page 2  
Schedule "D"

- (k) Priority Agreement made by Daon in favour of Bank of Montreal granting Mortgage P96199 priority over Mortgages P58904 and P92315, registered October 3, 1978 as No. P96806;
- (l) Priority Agreement made by Poole Construction Limited in favour of Bank of Montreal granting Mortgage P96199 priority over Mortgage P58586, registered October 4, 1978 as No. P98039;
- (m) Priority Agreement made by Poole Construction Limited in favour of Hudson's Bay Company granting Right of First Refusal P96198 priority over Mortgage P58586, registered October 30, 1978 as No. P105446.

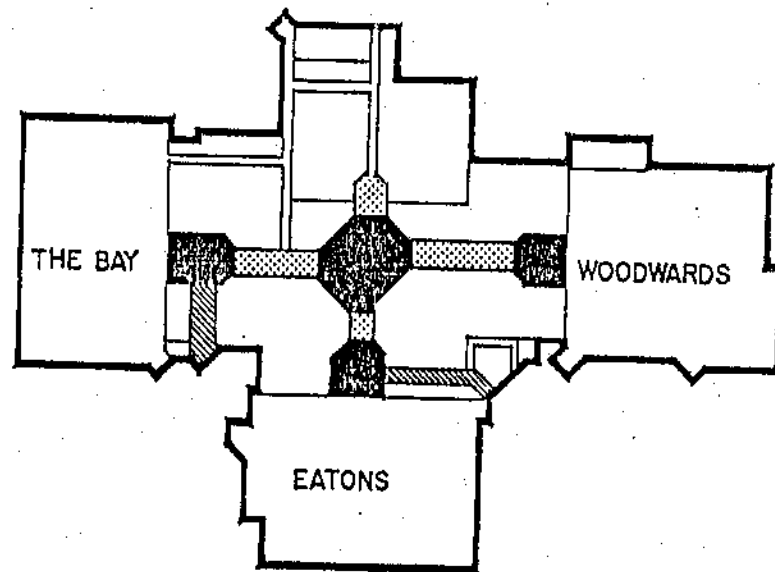
Part II - setting out

all agreements, commitments and other obligations of Praxis and its affiliates relating to the Lands, and  
all governmental decisions, rulings, by-laws, policies, regulations and plans known to Praxis which could prevent the completion of the within development of the Centre, including the participation of HBC therein:

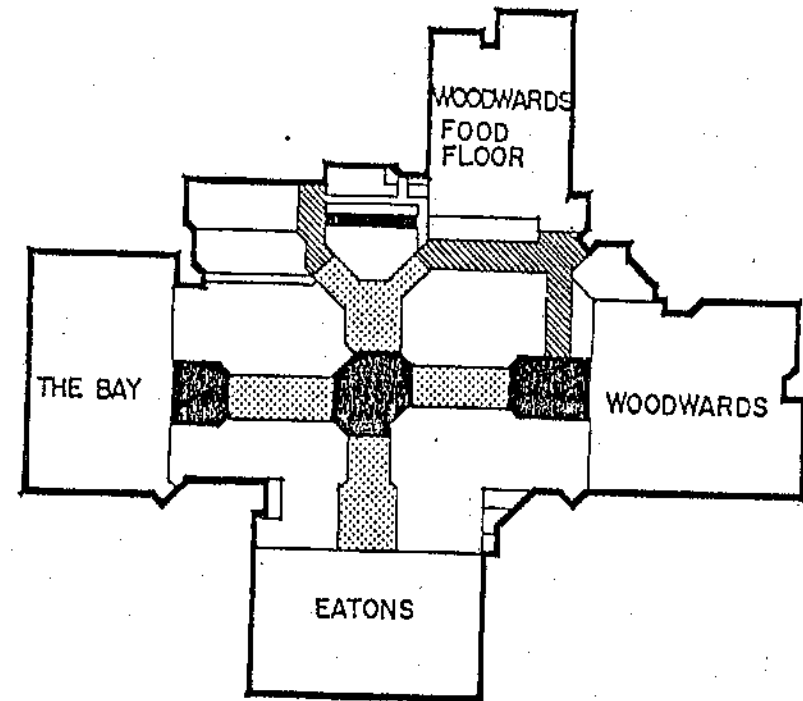
NIL

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Plan & Plan



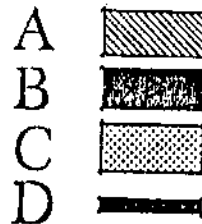
LOWER



UPPER

## LEGEND

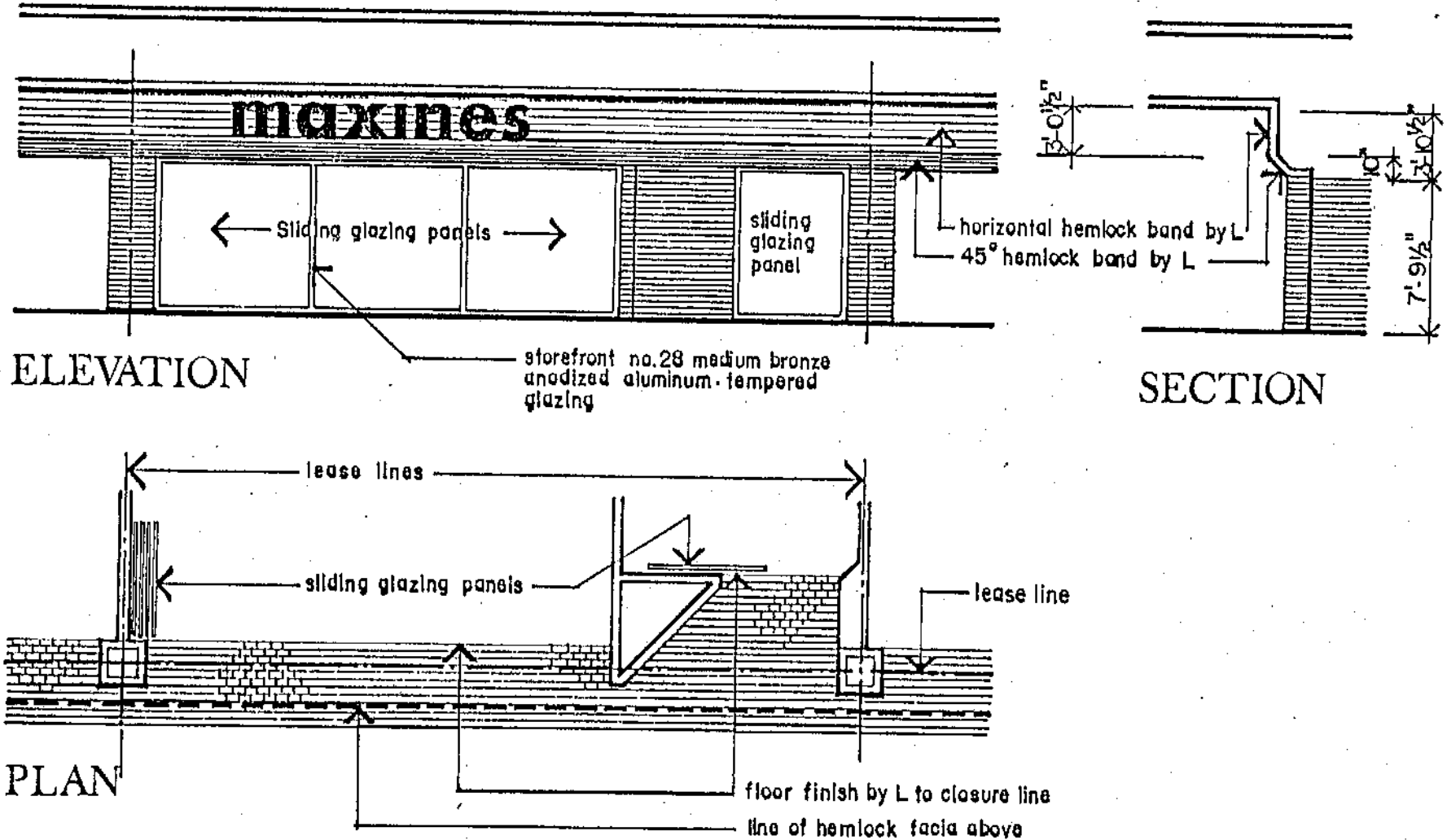
mall type



## THE COQUITLAM CENTRE

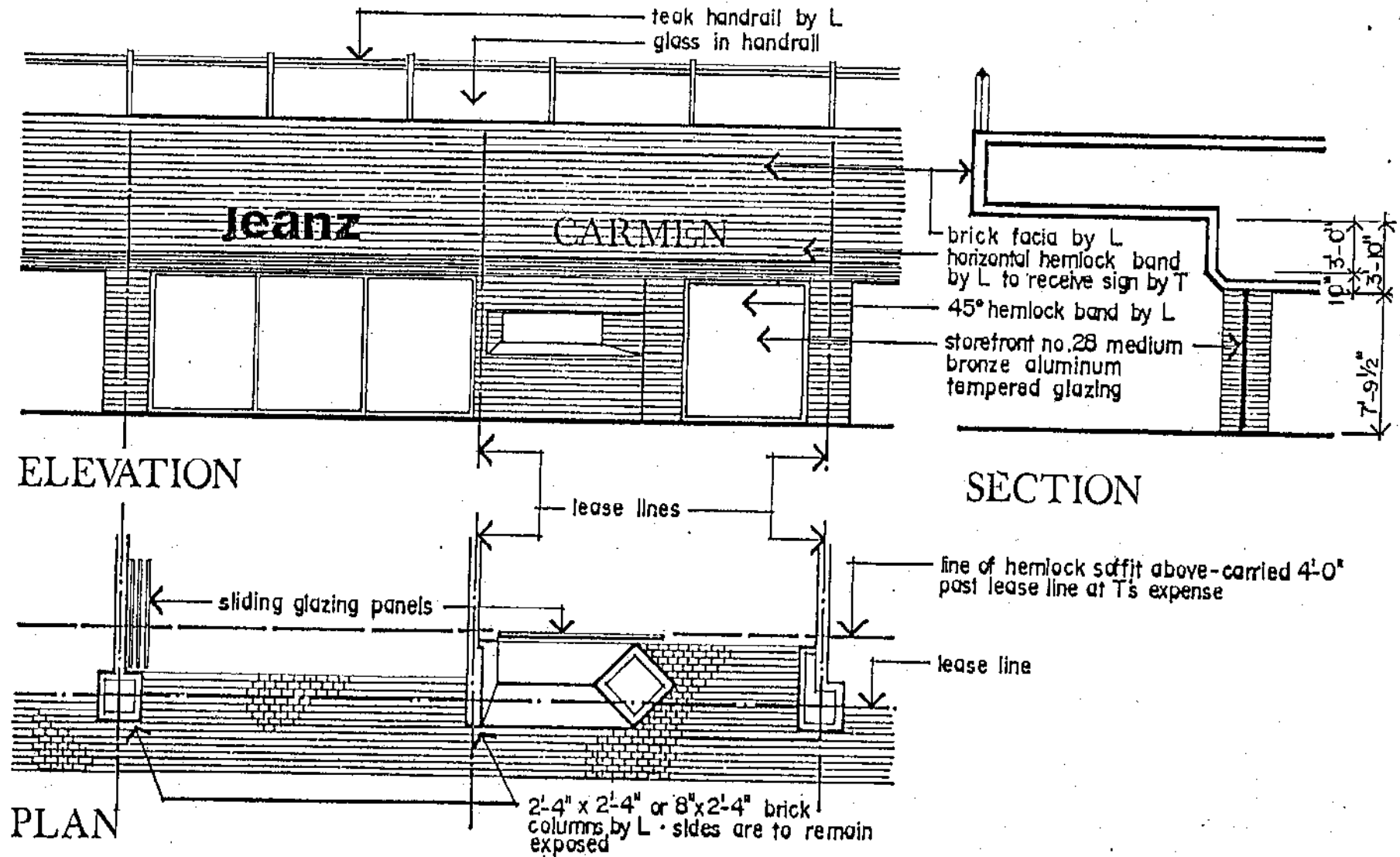


second floor slab above



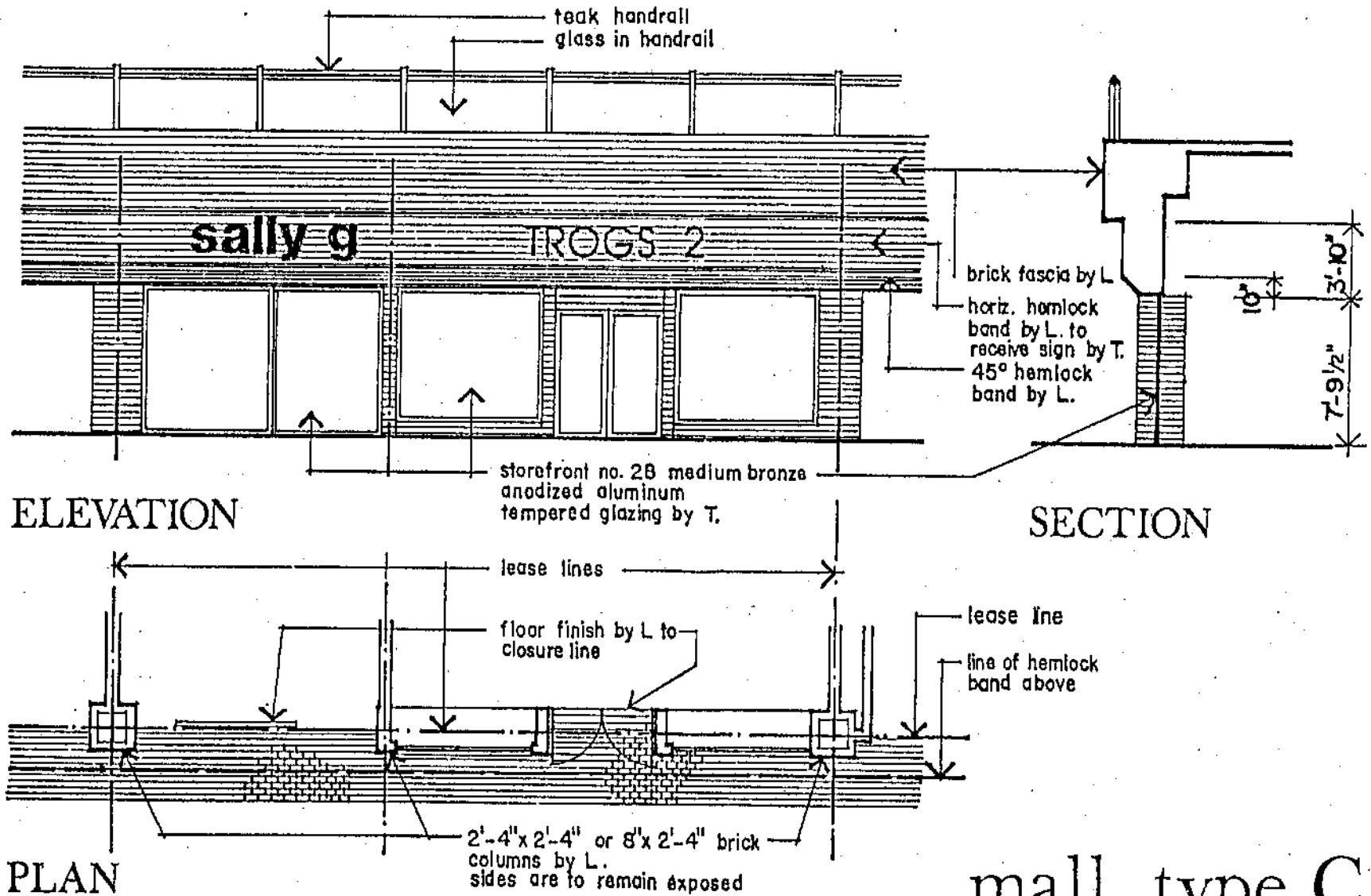
mall type A

# THE COQUITLAM CENTRE

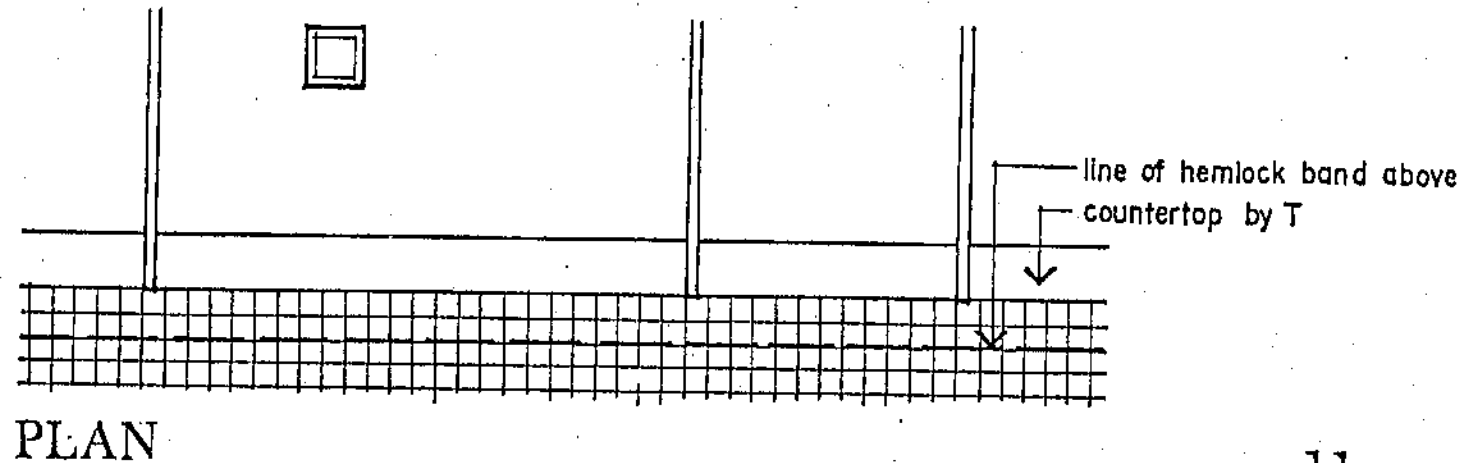
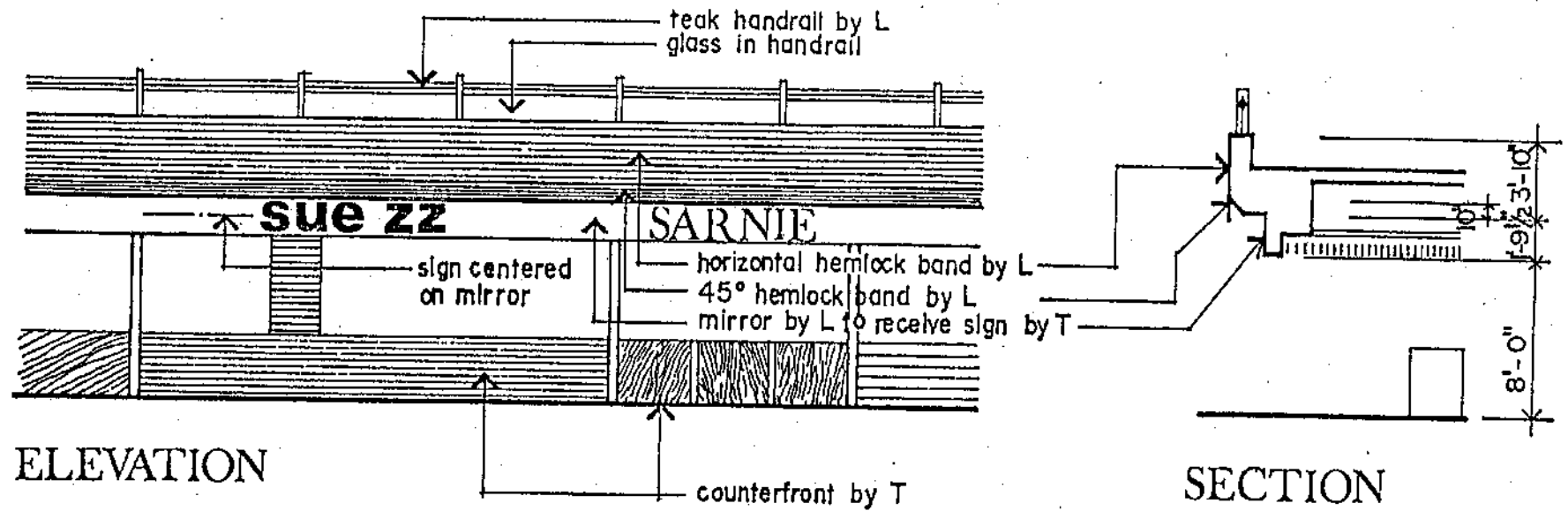


mall type B

# THE COQUITLAM CENTRE

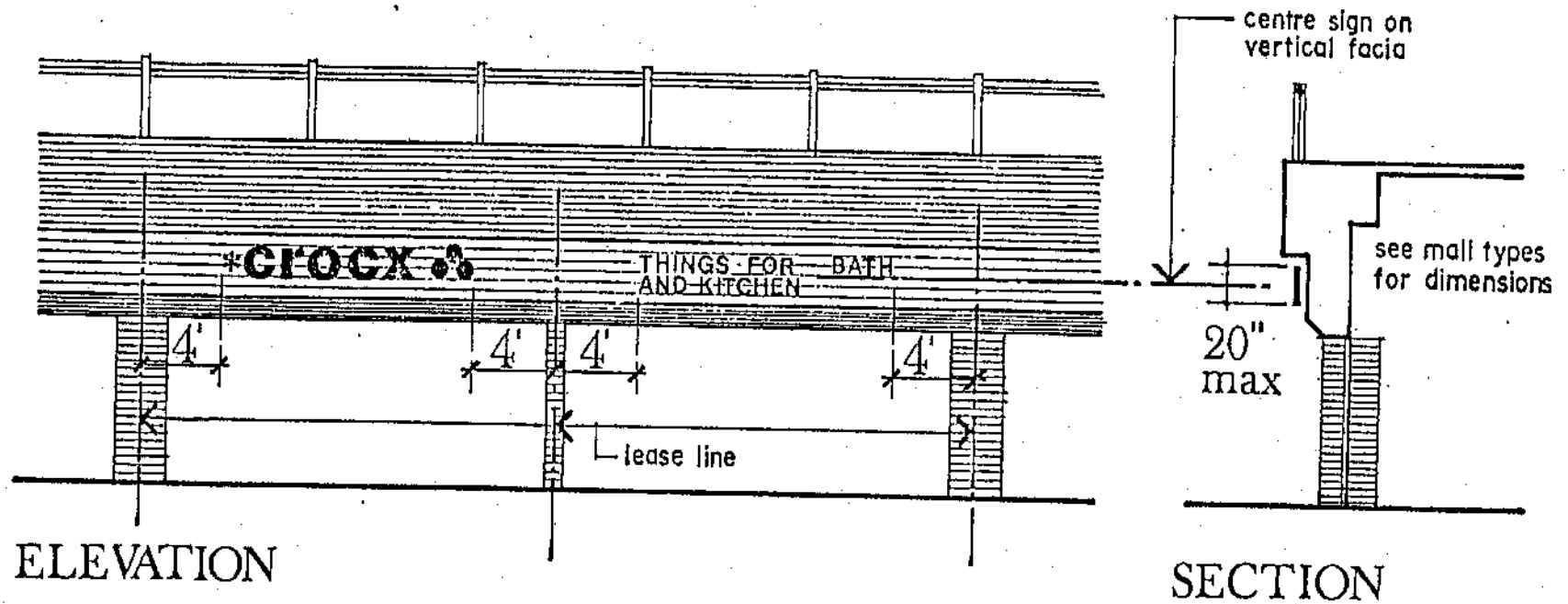


# THE COQUITLAM CENTRE

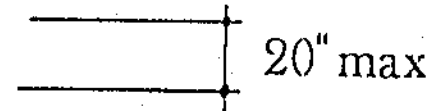


mall type D

# THE COQUITLAM CENTRE



## TYPICAL SIGN



- self illuminated translucent plastic face with metal or plastic sides - face to be removable for servicing
- individual raised channel letters (back-lit)
- non-illuminated polished metal letters
- different logo types permitted

Signage

# THE COQUITLAM CENTRE

SCHEDULE "F"Terms to be Contained in the Agreement  
Referred to in Article 18.03

1. If at any time a party pursuant to the terms of, or as a result of, a mortgage or charge should obtain legal or actual possession of the Occupied Premises or any part thereof during the Term, whether by way of foreclosure, the appointment of a receiver, receiver-manager or otherwise, or if that party should sell or otherwise dispose of the Occupied Premises in the exercise of any of its rights or remedies under the mortgage, charge or encumbrance then and in such event and subject to the terms of the Lease and any other agreement between the Landlord and the Tenant relating to such Lease:

- (a) the Tenant may peaceably and quietly use and occupy the Occupied Premises covered by the Lease without any interruption or denial of or by that party or any person, firm or corporation claiming by, through or under that party; and
- (b) that party will recognize and be bound by the Lease and will keep, observe and perform all of the terms, covenants and agreements on the part of the Landlord to be kept, observed and performed and contained in the Lease and any other agreement between the Landlord and the Tenant relating to such Lease or the Tenant's use or occupation of the Occupied Premises or the Shopping Centre;
- (c) that party will effect any sale or disposition of the Leased Premises subject to the terms contained in the Lease; and
- (d) the Tenant will have the same remedies against that party as it would have had under the Lease against the Landlord.

2. That party will not, but if requested by the Tenant it will, join the Tenant in any proceedings to obtain possession or the right to possession of the Occupied Premises or any part thereof.

- 2 -

3. If that party should receive any of the Additional Rent or other monies payable by the Tenant under the Lease it shall ensure that it is used for the purpose intended under the terms of the Lease.

4. The Tenant will at the request of such party attorn to and become a tenant of such party and will execute such instrument as may be necessary to confirm such attornment.

5. The terms of that Agreement shall enure to the benefit of the Tenant and its successors and assigns and be binding upon that party and its successors and assigns.

PROVIDED, however, that the foregoing agreement shall not be required where the holder of such mortgage or charge agrees to subordinate the registration of such charge to the registration of the Lease so that the Lease is a charge upon the ~~occupied premises~~ ranking in priority to such mortgage or charge.

*Property*

SCHEDULE "G"CONSTRUCTION OF THE SHOPPING CENTREConsultants

1. (a) The Tenant has the right, at the sole expense of the Landlord, to retain its own consultants for the design, construction and testing of the HBC Store and may only change such consultants if reasonably required and if approved by the Landlord, such approval not to be unreasonably withheld.

(b) The Landlord may only change its consultants for the design, construction and testing of the Shopping Centre (other than the HBC Store) if reasonably required and if approved by the Tenant, such approval not to be unreasonably withheld.

Plans, Drawings and Specifications

2. All plans, drawings and specifications, any amendment to those plans, drawings and specifications and any construction or installation, relating to the Shopping Centre (other than the HBC Store) shall be approved by the Tenant and, to the extent to which they directly affect the visibility of, access to or from, or the operation, functionally or aesthetically, of the HBC Store as a first class department store, such approval may be withheld for any reason.

3. The plans and specifications for the HBC Store shall be:



- (a) prepared by the Tenant's consultants at the expense of the Landlord under the Tenant's exclusive direction;
- (b) compatible and harmonious with those for the exterior of the remainder of the Shopping Centre;
- (c) submitted progressively to the Landlord with all reasonable diligence timely to the Landlord's ongoing planning, development and construction of the Shopping Centre; and
- (d) approved by the Landlord, which approval shall not be unreasonably withheld.

#### HBC Store

4. The standard of quality and design of the HBC Store shall be that of the Tenant's store in the Park Royal Shopping Centre, in the Municipality of West Vancouver, in the Province of British Columbia (as established by the plans and specifications therefor initialled for identification by the parties hereto), subject to such changes as the Tenant may reasonably request without entailing overall additional costs to the Landlord unless the Tenant agrees to pay such additional costs, and recognizing the following requirements for the HBC Store which may be different from those of the Tenant's store in Park Royal:

- (a) a normal roof to the standards established for the other major department stores in the Shopping Centre including appropriate insulation and facility for ponding of run-off water as necessary to satisfy

the requirements of every authority competent in respect of Hoy Creek adjacent to the Property;

- (b) outside entrance vestibules for all levels;
- (c) a self-contained heating, ventilating and air-conditioning system (i.e. self-contained central heating and cooling plant) to specification ASHRAE 90-75 of the American Society of Heating, Refrigeration and Air-Conditioning Engineers;
- (d) provision for vertical or horizontal expansion, or both, by the Tenant in accordance with Article 17 hereof;
- (e) pre-loading of the site of the HBC Store;
- (f) water-proofing of the retaining wall at the north perimeter of the lower level of the HBC Store;
- (g) if any control of water pressure beneath the floor slab is determined to be necessary by Golder Brawner & Associates Ltd. or Read Jones Christofferson Ltd., Consulting Engineers, or such others as may be designated by the Tenant, appropriate provision will be made in consultations with Choukalos, Woodburn, McKenzie & Maranda or such other consulting engineers as the Landlord may designate;
- (h) a 24 foot square structural module and structural shear walls;
- (i) an allowance for the installed cost of 75,000 square feet of interior floor tile of the quality specified as aforesaid for the Tenant's store in Park Royal;

- (j) the original supply and installation of F40 WW fluorescent lamps for all lighting fixtures in the HBC Store;
- (k) such features and provisions as may be necessitated by the physical conditions and location of the Property, or by requirements of the National Building Code only as promulgated at the date hereof. Additional costs incurred by the Landlord to satisfy the requirements of future amendments to the National Building Code shall be for the Tenant's account unless the Tenant shall have delivered to the Landlord all plans and specifications (prepared consistently with the aforesaid standard and design of the HBC Store) requisite to support application for issue to the Landlord of every necessary permit, licence or authority for construction of the foundation of the HBC Store and such delivery shall be made by a date which allows the Landlord a reasonable time to make application and acquire such permits, licences and authorities by the date on which the said amendments come into force. It is agreed that a reasonable time therefor is three weeks. The Landlord will provide any plans or information necessary to assist the Tenant herein. If the said plans and specifications are so delivered by the Tenant, the Tenant will not be responsible for increased costs from amendments to the National Building Code even if the Landlord fails to secure such permits, licences and authorities.

Objections

5. Particulars of any objection by the recipient party to any plans and specifications submitted for approval pursuant to paragraphs 2 and 3 of this Schedule shall be stated in writing to the other party within 30 days after such submission, failing which approval shall be deemed to have been given.

Additional Cost

6. All additional costs to the Landlord entailed in every change from the plans and specifications of the HBC Store, prepared and finally approved as aforesaid, shall be for the Tenant's account as follows if such change is requested by the Tenant but shall otherwise be for the Landlord's account:

(a) if the Tenant requests any change to the working drawings and specifications to the HBC Store as finally approved by the Landlord and such change increases the "Construction Costs of the HBC Store" (as hereinafter defined), then the Tenant shall, at its option, either:

- (i) pay such excess to the Tenant; or
- (ii) elect to adjust the annual rental rates per square foot set out in Article 4.01 so that they will be increased by an annual amount which will amortize the amount of such excess over a 35 year period at an amortization constant derived from the Landlord's long term financing of the Shopping Centre when finally

determined, such adjusted rates to replace those in Article 4.01;

- (b) "Construction Costs of the HBC Store" means the costs payable by the Landlord in accordance with the terms of the construction contract to the extent they relate only to the construction of the building comprising the HBC Store as designed and built in accordance with the provisions of this Lease on an improved and serviced site, and the architectural fees directly related thereto and the fees of the consultants for the HBC Store as set forth in paragraph 1 of this Schedule. Improved and serviced site includes, at the Landlord's cost, pre-loading, sanitary sewers, storm sewers, water, natural gas and telephone lines and service, power at secondary voltage to the building line of the HBC Store as well as all adjacent improvements such as sidewalks, landscaping, paving, stripping, and the like.

Reduced Cost

7. If changes to the quality and design of the HBC Store as aforesaid or changes from the plans and specifications of the HBC Store, prepared and finally approved as aforesaid, result in a total cost to the Landlord less than the total cost if such changes had not been made, the Landlord will pay such amount to the Tenant on the Shopping Centre Opening Date.



**THE COQUITLAM CENTRE  
SECOND AMENDMENT OF LEASE AND CONSENT TO EXPANSION  
HUDSON'S BAY COMPANY LEASE**

This Amendment of Lease made the 8th day of October, 1999,

B E T W E E N:

**PENSIONFUND REALTY LIMITED**  
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

**HUDSON'S BAY COMPANY**  
(hereinafter called the "Tenant")

OF THE SECOND PART

WITNESSETH THAT WHEREAS:

- A. The Landlord is the registered Owner of the lands and additional lands described in Schedules "A" and "B", in the Municipality of Coquitlam, in the Province of British Columbia (collectively, the "Lands");
- B. There has been constructed on such Lands a shopping centre known as "The Coquitlam Centre" (the "Shopping Centre");
- C. The Landlord and the Tenant are the landlord and tenant respectively of certain parts of the Shopping Centre under and by virtue of a lease made as of January 6, 1979 (the "Original Lease");
- D. The Tenant's participation in Net Cash Flow of the Shopping Centre pursuant to Article 14 of the Original Lease has been extinguished in 1981 by virtue of the Amending Indenture made January 29, 1981 between Praxis Group Ltd., Daon Development Corporation and the Tenant.
- E. By Amending Indentures made January 6, 1979 and January 29, 1982 between Praxis Group Ltd., Daon Development Corporation and the Tenant the Original Lease was further amended and supplemented.
- F. The Landlord and the Tenant entered into an Amendment of Lease and Consent to Expansion made October 11, 1989 (the "First HBC Supplemental Lease") pursuant to which the Tenant consented to an expansion of the Shopping Centre and each of the Tenant and the Landlord agreed to certain amendments to the Original Lease;

- G. The Original Lease, the Amending Indentures referred to in preambles D and E above and the First HBC Supplemental Lease are herein collectively referred to as the "Lease";
- H. The Landlord has completed an expansion to the Shopping Centre, all in accordance with the First HBC Supplemental Lease (the "First Expansion");
- I. Sears Canada Inc. ("Sears") has leased the original Woodward's Store (the "Sears Store") pursuant to an agreement to lease (the "Sears Lease") dated May 12, 1993 and, from and after such date, for all purposes under the Lease, Woodward's, the Woodward's Store and Woodward's Lease shall be deemed to refer to Sears, the Sears Store and Sears Lease respectively;
- J. Morguard Investments Limited, on behalf of the Landlord, has entered into a letter agreement with Zellers Inc. ("Zellers") dated June 7, 1999 pursuant to which, subject to certain conditions precedent, the Landlord will construct a further expansion of the Shopping Centre (the "Second Expansion"), including a Zellers department store of approximately 115,000 square feet of Gross Leaseable Area (the "Zellers Store") and Zellers will finish the Zellers Store and thereafter open it for business (such date of opening for business being the "Zellers Opening Date").

NOW THEREFORE AND FOR CERTAIN GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties covenant and agree as follows:

1. **Defined Terms**

Terms which are defined in the Lease shall have the same meanings when used herein as are ascribed to them respectively in the Lease.

2. **Consent to Expansion**

- 2.1 The Tenant hereby consents to the construction of the Second Expansion (including without limitation renovations to the Mall, extensions of some Commercial Retail Units' storefronts and removal and relocation of the HBC Outdoor Selling Area) all substantially in accordance with the plan dated September 20, 1999 attached as Schedule "C" on which the Second Expansion is cross-hatched.
- 2.2 The Tenant hereby waives the requirement for the submission of other plans and/or specifications for the Second Expansion.

3. **Amendments of the Lease**

Each of the Landlord and the Tenant agrees that, subject as hereinafter provided, the provisions of this Section 3 shall have effect from and after the date the



foundations of and for the Zellers Store are first poured (the "Effective Date"). Upon the Effective Date occurring, the Original Lease shall be and the same is hereby further amended as follows:

- (a) in respect of Article 3.02(a), the first sentence is deleted and the following inserted in its place:  
  

"The Tenant shall have the options to renew this Lease beyond the initial term for thirteen (13) successive renewal terms of five (5) years each."
- (b) the existing minimum Parking Facilities ratio requirement (the "Ratio") under Article 10.02(o) of the Lease (5.0 car parking spaces for each 1,000 square feet of Gross Leaseable Area of premises which house retail businesses) will be further reduced to a Ratio of 4.75.
- (c) notwithstanding Article 11.01(a) and (b) or any other provisions in the Lease, each of the Landlord and Tenant agrees that, if Eatons shall cease to lease and/or occupy and operate the Eatons Store and/or if the Eatons Lease shall be terminated, in addition to the Landlord's existing rights under the Lease, the Landlord shall be entitled to re-develop (including any expansion or contraction) and re-lease the Eatons Store for any retail or commercial use or uses permitted by law.
- (d) Article 11.01(c) is deleted and replaced by the following:  
  

"If Sears assigns the Sears Lease other than in circumstances as provided therein where the Landlord's consent thereto is not required or without the prior written consent of the Tenant, the operating covenant of the Tenant in Article 11.01(a) shall terminate."
- (e) Article 11.02 is deleted and replaced with the following:  
  

"If at any time during the Term Sears ceases to operate the Sears Store, then the Tenant may at any time and from time to time give written notice to the Landlord of such failure and if the Landlord does not assiduously take and pursue proceedings to cure such failure or such failure is not rectified within six (6) months after the giving of such notice, the operating covenant of the Tenant in Article 11.01(a) will be suspended until the expiry of twelve (12) months after the Sears Store is again operating and the Landlord has given written notice to the Tenant to that effect."
- (f) Article 13.06(a) is deleted and replaced by the following:  
  

"(a)notwithstanding anything to the contrary contained or suggested elsewhere herein, the Tenant shall not be required to pay any dues or otherwise make any financial contribution to

the merchants' association or any promotion fund used by the association for the advertising or promotion of the Shopping Centre."

- (g) notwithstanding Article 17.08 or any other provisions in the Lease, the Landlord shall have the right to construct Parking Facilities in a parking deck which may be located south of the HBC Store and west of the Eatons Store. Subject to the requirements of governmental authorities having jurisdiction, the Tenant shall be entitled to signage on such parking deck identifying its trade name, which signage shall comply with the Tenant's reasonable design specifications which may or may not provide for illumination; such signage shall be installed by the Landlord at its sole cost and expense. The Tenant shall assume full responsibility, at its sole cost and expense, for the operation and maintenance of any such identification signage of the Tenant located on the parking deck.

- (h) Article 17.08(c) is deleted and replaced by the following:

"The areas of the Mall, Parking Facilities and other Common Facilities shall in no way be materially diminished save for any diminishment caused by displacement arising out of any alteration or expansion constructed in a manner consistent with a first-class regional shopping centre."

- (i) Article 20 is deleted in its entirety.

- (j) HBC Outdoor Selling Area

As of the date of this Agreement, each of the Landlord and the Tenant agrees that the HBC Outdoor Selling Area comprises approximately 1,900 square feet of space and is being utilized for storage of merchandise intended for sale in the HBC Store. The Tenant agrees to vacate and surrender its right, title and interest in the HBC Outdoor Selling Area on or before October 12, 1999. In consideration for such surrender, on or before October 12, 1999 the Landlord will provide the Tenant with empty CRU space (the "Temporary OSA") in the Shopping Centre having approximately 1,900 square feet for the purpose of storage, without payment of Rent and Additional Rent but the Tenant shall be responsible for keeping the Temporary OSA in a reasonable state of repair and cleanliness. The location of such space shall be subject to the Tenant's prior approval, which approval shall not be unreasonably withheld or delayed. This space may be used on an indefinite temporary basis solely for the purpose of storage pending completion of the Second Expansion.

On or before the date upon which the Tenant takes possession of the Temporary OSA, the Landlord shall pay to the Tenant an amount to compensate the Tenant for disruption of business and costs of labour

incurred by the Tenant as a result of the relocation of the HBC Outdoor Selling Area to the Temporary OSA. Such compensation shall be \$50,000 plus GST.

The Second Expansion shall include the construction by the Landlord of permanent fully enclosed and heated storage space (the "Permanent OSA") to replace the Temporary OSA. The Permanent OSA will be, at the option of the Landlord, (i) either in close proximity to the existing HBC Outdoor Selling Area or (ii) a new outdoor selling area located on the west wall of the HBC Store but will in any event contain approximately 1,900 square feet of space. The Permanent OSA shall be adjacent to and have direct and exclusive access from the HBC Store and will be constructed by the Landlord, at its sole cost and expense, including the cost of creating and installing any doorway connecting the Permanent OSA to the HBC Store and effecting any repairs or alterations to the interior of the HBC Store necessitated by the Permanent OSA.

The plans and specifications for the Permanent OSA shall be subject to the Tenant's prior written approval, which approval shall not be unreasonably withheld or delayed. The exact location of the Permanent OSA shall similarly be subject to the Tenant's prior written approval having regard to its concerns relating to accessibility and security, which approval will not be unreasonably withheld or delayed.

Construction of the Permanent OSA shall be completed by the Landlord on or before initial opening of the Second Expansion for business and the Tenant shall thereupon be given immediate possession of the Permanent OSA and at the same time vacate and surrender its right, title and interest in the Temporary OSA. From and after the date of such possession, the Permanent OSA shall be deemed to be part of the premises demised to the Tenant under the Lease subject to all terms and conditions contained in the Lease, save that no rent or Additional Rent (other than realty taxes and utility consumption charges) shall be payable by the Tenant in respect of the Permanent OSA. The parties acknowledge and agree that the Permanent OSA may only be used for storage or for any other use permitted under the Original Lease.

(k) **Relocation of North Entrance to HBC Store**

At the Tenant's option, exercisable no earlier than the Zellers Opening Date and no later than seven (7) years following the Zellers Opening Date (the "Alternate Expansion Option Period"), if the Tenant, in its sole opinion, but acting reasonably and in good faith, shall be of the opinion that the new loading dock constructed to the north of the HBC Store as part of the Second Expansion and the truck traffic in such area have a material and detrimental effect on the pedestrian traffic access to the HBC

Store through the existing north entrance to the HBC Store, the Landlord at its sole cost and expense shall re-locate such existing pedestrian northern entrance to a position further west along the northern side of the HBC Store as reasonably specified by the Tenant. The new entranceway shall be constructed by the Landlord in accordance with the plans and specifications prepared by the Tenant and approved by the Landlord, which approval will not be unreasonably withheld. The Landlord shall also be responsible, at its sole cost and expense, for the cost of removing and or closing the existing northern entrance and integrating the new northern entrance into the interior of the HBC Store, including, without limitation, the relocation of existing services and utilities, the repair and refinishing of the exterior and interior of the HBC Store and the re-arrangement of the merchandising aisles within the HBC Store within reasonable proximity of the new northern entrance.

**4. Option to Expand the HBC Store**

If, as and when the Zellers Opening Date occurs, Article 17 of the Original Lease shall be amended to incorporate the following provisions:

- (a) throughout the Alternate Expansion Option Period the Tenant shall have the option, in lieu of exercising the right to expand the HBC Store granted to it under the provisions of Article 17, to expand the HBC Store in accordance with the terms and conditions hereinafter more particularly provided by giving the Landlord no less than three (3) months prior written notice of such election. If the Tenant should fail to provide written notice of such election to the Landlord prior to the expiration of the Alternate Expansion Option Period, or shall fail to commence construction of such expansion within one (1) year following the giving of such notice, the said option (the "Alternate Expansion Right") shall expire and the Tenant shall thereafter have only such right to expand the HBC Store as is granted to it under the provisions of Article 17 existing prior to the date of execution of this Agreement.
- (b) The terms and conditions governing the Tenant's exercise of the Alternate Expansion Right shall be as follows:
  - (i) subject to complying with the provisions of Article 17.01(a), (b) and (c) of the Original Lease, the Tenant shall have the right to construct, at its sole cost and expense, a two-storey expansion of the HBC Store (including any necessary repairs and changes to store canopies and adjacent sidewalks to the store structure with the Landlord being responsible for any necessary repairs or changes to any Common Facilities required by the Alternate Expansion) having an aggregate Gross Leaseable Area on approximately two equal levels of up to thirty-eight thousand

(38,000) square feet, the exact location of which expansion (the "Alternate Expansion") being more particularly identified on Schedule "C". Construction of the Alternate Expansion shall be deemed to commence once the foundations of the Alternate Expansion are first poured.

- (ii) each of Articles 17.05(b) and (c) shall be deleted effective as of the date the Tenant commences construction of the Alternate Expansion.
- (iii) For the purposes of this Agreement, "Grand Re-Opening Date" means the date which is the earlier of (a) sixty (60) days following the date upon which the Tenant has opened the Alternate Expansion to the public for business and (b) the date upon which the Tenant has, following completion of alterations within the original HBC Store, recommenced or commenced (as the case may be) business in all or substantially all of the retail selling area of the HBC Store, including the Alternate Expansion. The Landlord shall pay to the Tenant upon the Grand Re-Opening Date an amount equal to Eighty (\$80.00) Dollars per square foot of the Gross Leaseable Area of the Alternate Expansion (the "Expansion Construction Allowance") together with any provincial, federal or other governmental sales, value added or goods and services tax ("GST") applicable to such payment to the extent the Tenant is required pursuant to the applicable legislation to collect the same. The Landlord's obligation to pay will be subject to any holdbacks required by applicable lien legislation or arising out of lien registrations. If the Landlord fails to make payment of the Expansion Construction Allowance or GST as required, the Tenant shall be entitled to deduct the amount so payable by the Landlord, together with interest thereon, from any payments which the Tenant is required to make to the Landlord under the Lease. The outstanding amounts owing by the Landlord shall bear interest from the date payment is required to be made until payment has been made in full (including the accrued interest) at a rate per annum equal to the rate charged from time to time by the Canadian Imperial Bank of Commerce at its main Toronto branch to its most preferred commercial borrowers (commonly known as the "prime rate") plus two percent (2%). Interest shall be calculated and compounded at the end of each calendar month.
- (iv) effective as of the Grand Re-Opening Date, and thereafter throughout the balance of the Term (including any renewal term), the Tenant shall pay to the Landlord, in accordance with the

provisions of Article 4 of the Original Lease, an annual rent for the Alternate Expansion equal to Nine Dollars and Eighty-Seven Cents (\$9.87) per square foot of its Gross Leaseable Area, plus GST.

- (v) the Tenant shall be responsible for paying all amounts otherwise payable under the Lease in respect of the Alternate Expansion (including, without limitation, Realty Taxes and utilities but in any event excluding, in respect of the Alternate Expansion, contributions to the Merchants' Association or promotion fund) provided that, notwithstanding the foregoing, no contribution towards Common Facilities Maintenance Cost shall be attributable to or payable by the Tenant in respect of the Alternate Expansion under the provisions of Article 8 of the Lease.
- (vi) effective as of the Grand Re-Opening Date, for all purposes under the Lease, the Alternate Expansion shall be and become a part of the HBC Store save that the provisions of Article 16.01(a) shall be supplemented by the following:

"the Tenant shall pay, upon being invoiced therefor, as additional rent, a portion of the costs and expenses incurred by the Landlord in completing its obligations under this subsection (a), which portion shall be computed with reference to a fraction (expressed as a percentage), the numerator of which is the Gross Leaseable Area of the Alternate Expansion and the denominator of which is the Gross Leaseable Area of the HBC Store (including the Alternate Expansion)."

## 5. Lands

The Tenant acknowledges that the Landlord has acquired two parcels of land adjacent to the Lands each identified on Schedule "C" as "Future Development Site" (the "Excluded Lands"). The Tenant agrees that the Excluded Lands or any portion thereof may at the option of the Landlord, be included in the Lands of the Shopping Centre in which case the portion so included will be subject to the terms of this Lease. In addition, the Tenant agrees that at the option of the Landlord the Excluded Lands or any portion thereof may be sold or otherwise disposed of by the Landlord and may be re-developed by the Landlord separate and apart from the Shopping Centre in each case without in any way being affected by the terms of the Lease.

## 6. General Provisions

- 6.1 Except as hereby amended, the Lease is hereby ratified and confirmed.

- 6.2 This Agreement shall be binding upon the Landlord and the Tenant and their respective successors and assigns and shall also enure to the benefit of the successors and assigns of the Landlord and the permitted successors and assigns of the Tenant.
- 6.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- 6.4 Each of the parties hereto shall perform such further acts and execute such further documents as may be required from time to time to give proper effect to the intent of this agreement.

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

**PENSIONFUND REALTY LIMITED**

By: \_\_\_\_\_

By: \_\_\_\_\_

**HUDSON'S BAY COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Schedule "A" - the Lands  
Schedule "B" - the Additional Lands  
Schedule "C" - Site Plan

SCHEDULE ADESCRIPTION OF LANDS

ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the Municipality of Coquitlam, in the Province of British Columbia, described as:

Firstly:

Lots 103 and 105  
District Lot 384A  
Group 1  
Plan 51877  
New Westminster District

Hereto is annexed Easement P28436 over Part (Plan 54467) of the South Half of Parcel "A" (Explanatory Plan 12668) of Lot 5, Plan 148

Secondly:

Lot 98  
Block E of District Lot 384A  
Group 1  
Plan 52027  
New Westminster District

SCHEDULE BDESCRIPTION OF ADDITIONAL LANDSFirstly:

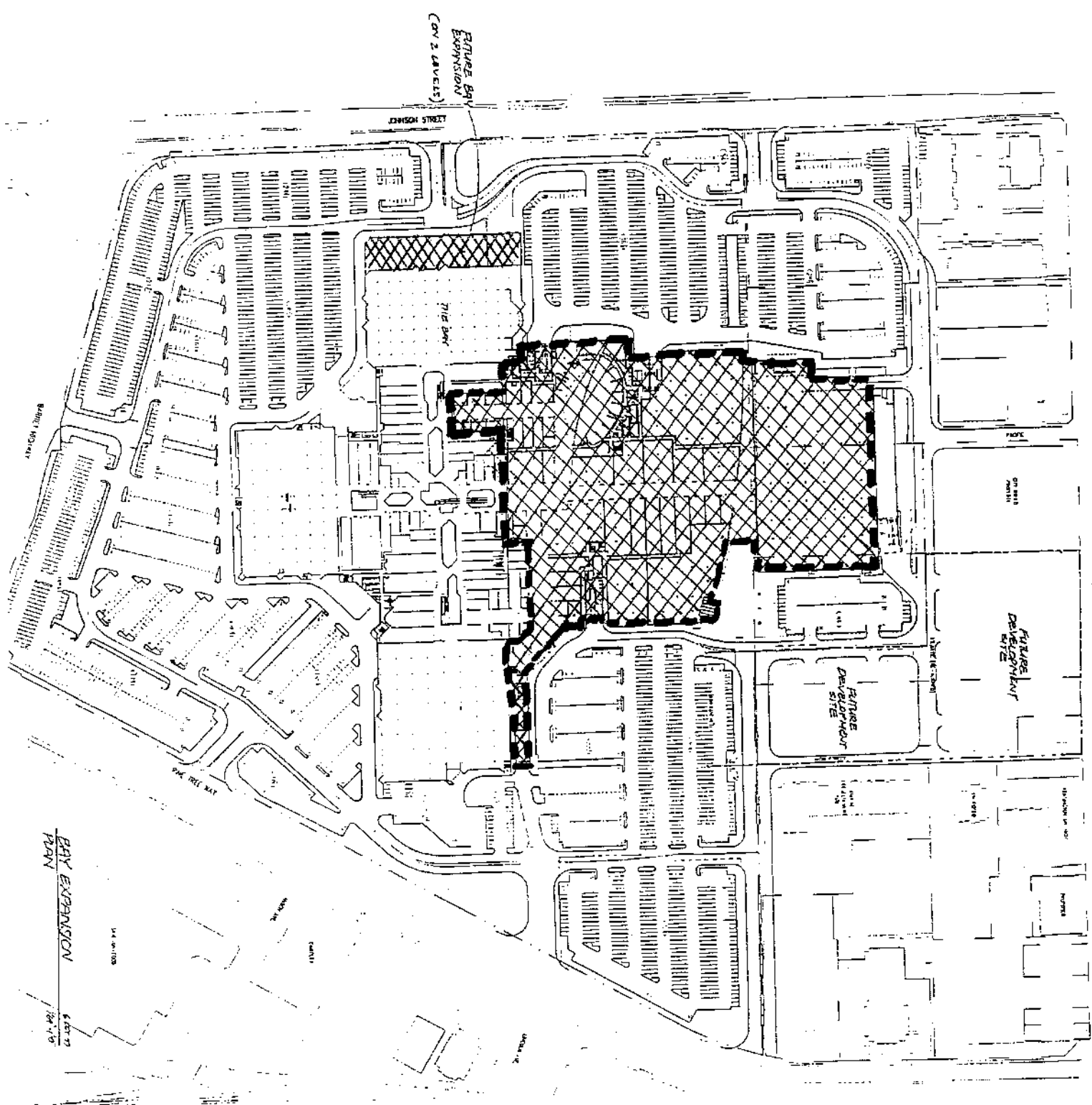
Lots 73, 74 and 75 of  
District Lot 384A  
Group 1  
New Westminster District  
Plan 30180

Secondly:


Lot 149  
District Lot 384A  
Group 1  
New Westminster District  
Plan 66060

Handwritten signature and initials, possibly 'J.R.' and 'W.S.', located in the bottom right corner of the page.





SCHEDULE C TO AMENDMENT OF LEASE  
MADE OCTOBER 8, 1998 BETWEEN  
HUDSON'S BAY COMPANY AND  
PENSIONFUND REALTY LIMITED

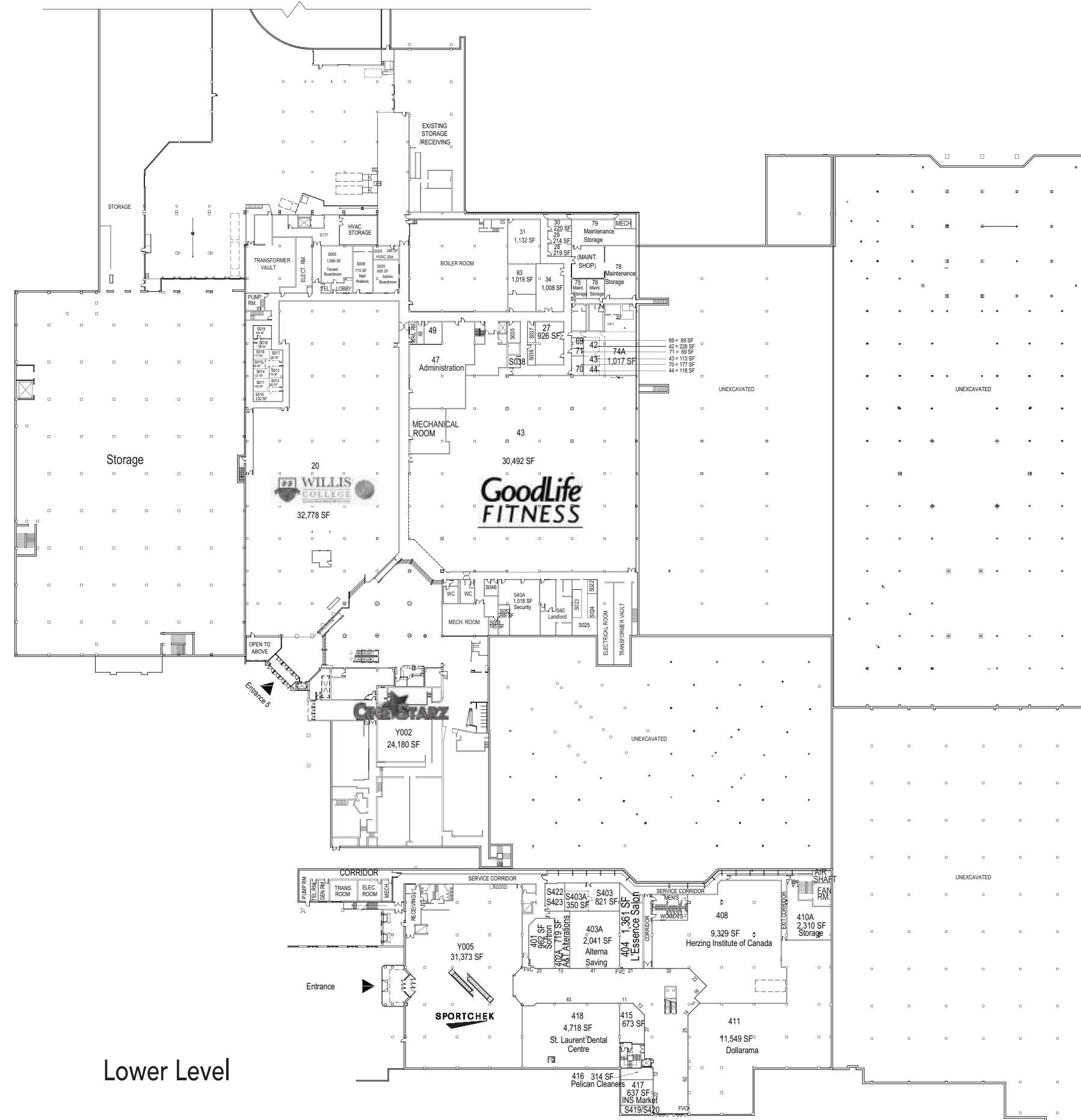


**THIS IS EXHIBIT "G" TO THE  
AFFIDAVIT OF DAVID WYATT  
SWORN REMOTELY BEFORE ME AT  
THE CITY OF TORONTO,  
ON THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**

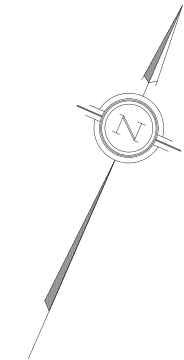


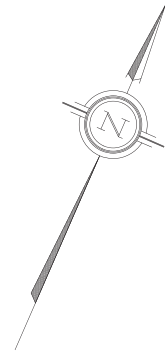
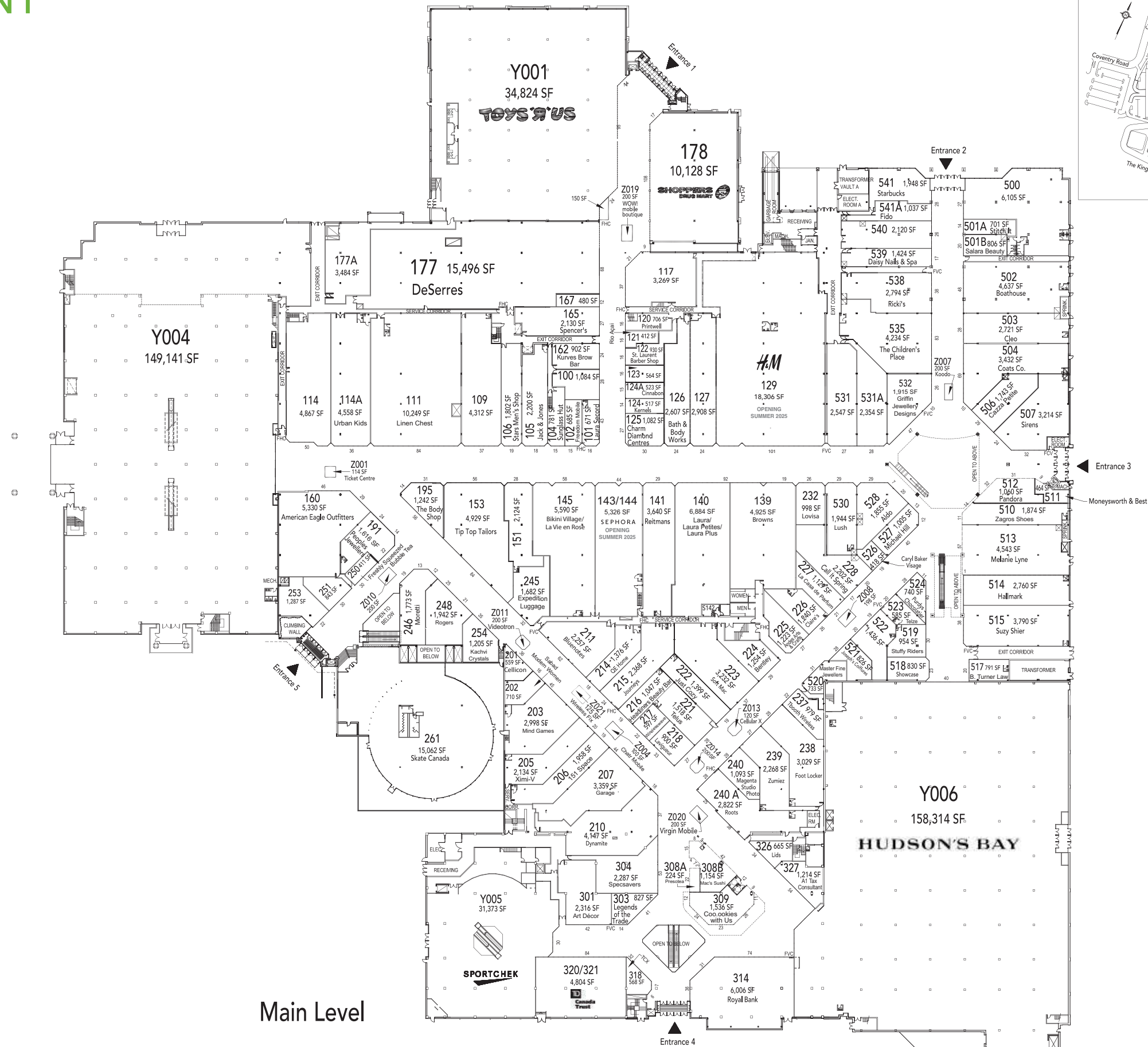
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Commissioner for Taking Affidavits  
Linda Galessiere

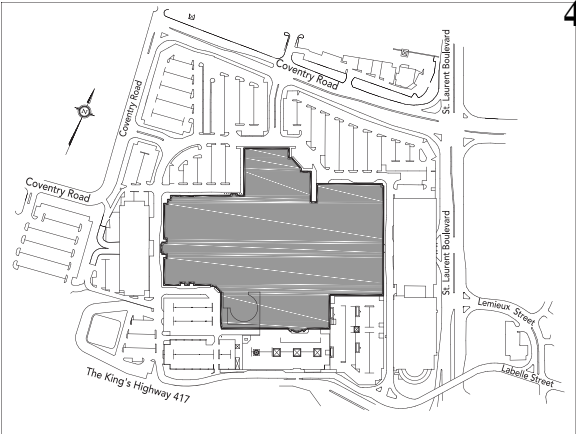
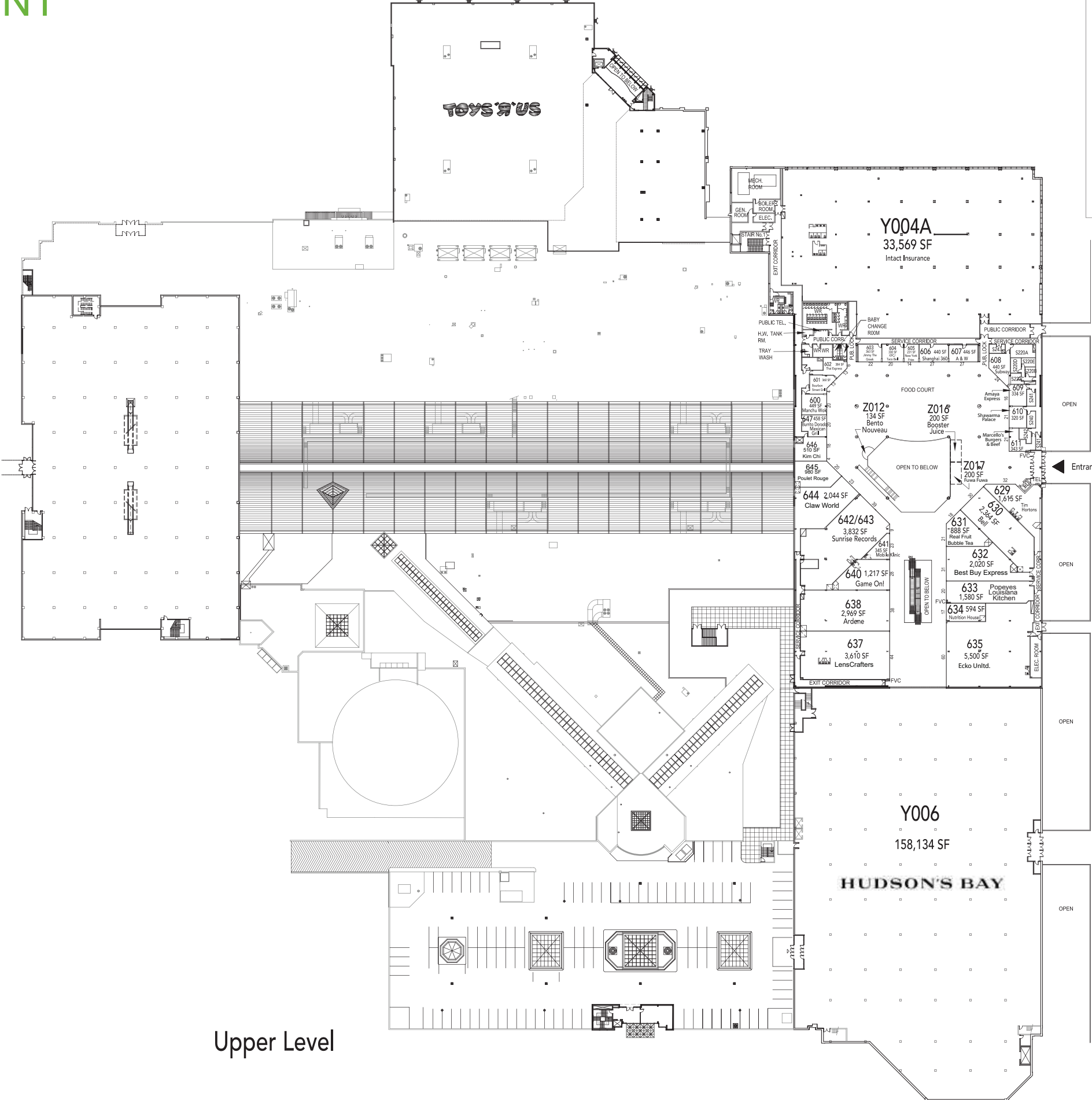


Lower Level





Main Level



**THIS IS EXHIBIT "H" 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**

Signed lease  
April, 1997

**LEASE**

**THE BAY, ST LAURENT**

**OTTAWA**

*ST LAURENT, OTTAWA*  
*BAY DEPARTMENT STORE LEASE*

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<i>Food Court</i>	- outlined in GREEN (on Merchandising Plan)
<i>Bay Department Store</i>	- outlined in RED (on Site Plan)
<i>Bay Shop</i>	- outlined in RED (on Merchandising Plan)
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<i>Rooftop Vestibule and Access</i>	- outlined in GREEN (on Rooftop Plan)
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<i>Rooftop Staircase</i>	- outlined in RED (on Rooftop Plan)
<i>Rooftop Skylight</i>	- outlined in PURPLE (on Rooftop Plan)
<i>Possible Future Office Tower</i>	- outlined in BLUE (on Office Tower Plan) (see subclause 20 00(3))

**BAY DEPARTMENT STORE LEASE**

**THIS LEASE** is dated as of the 25th day of March, 1997

**AMONG**

ST LAURENT SHOPPING CENTRE LIMITED, a company incorporated  
under the laws of the Province of Ontario

and

DEVAN PROPERTIES LTD a company incorporated  
under the laws of the Province of Ontario

(hereinafter collectively called the "Landlord")

**OF THE FIRST PART**

**- AND -**

HUDSON'S BAY COMPANY, a company continued under the  
Canada Business Corporations Act,

(hereinafter called the "Tenant")

**OF THE SECOND PART**

**- AND -**

713949 ONTARIO LIMITED, a company incorporated under the  
laws of the Province of Ontario

as bare trustee for the Landlord

**WHEREAS**

- (A) 713949 Ontario Limited is the registered owner in fee simple of the Shopping Centre Lands and holds title to the Shopping Centre Lands in trust, as bare trustee for the Landlord,
- (B) The Landlord is the beneficial owner in fee simple of the Shopping Centre Lands, and
- (C) This Lease and the respective covenants and agreements of the parties hereto are entered into by the parties in consideration of the rents, covenants and agreements herein contained

## ARTICLE I

## DEFINITIONS, SCHEDULES AND REPRESENTATIONS

1 00 **Definitions** In this Bay Lease the terms defined in this clause 1 00 are used with the meanings so indicated as follows

- (1) **"Adjusted Gross Leasable Area"** means, for the Bay Department Store and any other Major Department Store located in the Shopping Centre from time to time, 75% of the Gross Leasable Area thereof
- (2) **"Affiliate"** of any corporation means any other corporation which is a subsidiary of such first-mentioned corporation, which has such first mentioned corporation as a subsidiary or which is a subsidiary of a corporation of which such first-mentioned corporation is also a subsidiary. A corporation is a subsidiary of another corporation if, but only if, any one or more of such other corporation and its subsidiaries collectively own all of the outstanding shares in the capital of such first-mentioned corporation,
- (3) **"Agreed Common Facilities Replacement Costs"** means depreciation, calculated in accordance with generally accepted accounting practices and procedures, on costs of a capital nature in excess of insurance proceeds in respect of repairs or replacements to Common Facilities (except to the extent that repairs or replacements of maintenance and cleaning equipment required by reason of normal wear and tear or damage constitute costs of a capital nature which have otherwise been included in Common Facilities Operating Cost) made by the Landlord in accordance with sound property management principles, but there shall be specifically excluded that amount by which the cost of such repair or replacement of a capital item exceeds the initial cost of such item where such excess is attributable to an increase in materials or workmanship, such depreciation to be charged on a straight line basis over the estimated life of such replacement, but in any event excluding the cost of any repairs or replacements of a capital nature in excess of insurance proceeds to the extent such either (in respect of any one item) exceeds \$50,000 or (in any fiscal year adopted by the Landlord for the computation of Common Facilities Operating Cost) exceeds, in the aggregate, \$100,000 unless such costs have first been approved by the Tenant, acting reasonably (provided that the approval by the Tenant to any such capital replacement shall not be withheld if, over the estimated life of the capital replacement, the annual cost which would be incurred by the Landlord in repairing the facility to be replaced could reasonably be expected to exceed the amount of the annual depreciation in respect of such capital replacement which would be included in the cost of maintaining and operating Common Facilities plus the annual cost which would be incurred by the Landlord in repairing the facility as replaced, any dispute as to whether or not such approval may be withheld by the Tenant shall be settled by arbitration pursuant to the provisions of this Lease) such amounts of \$50,000 (in respect of any one item) and \$100,000 (in the aggregate in any fiscal year) shall each be adjusted by multiplying such amount by the fraction which the CPI at the commencement of the fiscal year for Common Facilities Operating Cost in which the cost of a capital nature is incurred as most recently published, is of the CPI last published prior to July 1, 1980,
- (4) **"Bay Department Store"** means the department store building initially comprising 158,314 square feet of Gross Building Area and 145,074 square feet of Gross Leasable Area on approximately two equal levels which has been constructed on the portions of the Shopping Centre Lands which is shown outlined in RED on the Site Plan, as from time to time altered, reconstructed or expanded in accordance with the provisions of this Lease and includes the Rooftop Vestibule and Access, the Rooftop Mechanical Areas and Improvements and the Rooftop Staircase,
- (5) **"Bay Lease" or "Lease"** means this lease as from time to time amended,

- (6) **"Bay Shop"** means the store premises initially comprising 307 square feet of Gross Leasable Area which the Tenant leases for use for selling purposes pursuant to clauses 2.02 and 16.00 and which is shown outlined in RED on the Merchandising Plan
- (7) **"Bay Shop Opening Date"** means April 8, 1992,
- (8) **"Bay Outdoor Selling Area"** means an area outlined in PURPLE on the Site Plan having an approximate area of 8,000 square feet, as it may be from time to time expanded, relocated and constituted,
- (9) **"Common Facilities"** means the common areas, facilities, utilities and services, utility distribution systems benefiting more than one tenant and other improvements on the Shopping Centre Lands, as the same from time to time may be altered, reconstructed or expanded, and which are from time to time intended, made available and maintained for the use and enjoyment in common of the Tenant and other tenants, including the officers, agents, employees, customers, and invitees of and licensees having lawful business with each such tenant, and without restricting the generality of the foregoing shall comprise the Parking Facilities, access roads, driveways, entrances and exits, sidewalks, Mall, ramps, pylon and other signs and landscaped areas of the Shopping Centre, and (to the extent not included in any leased or leasable premises) interior and exterior stairways, corridors, escalators, elevators, passageways, first-aid stations and comfort stations (if any), nurseries, public washrooms, compactor rooms to the extent not otherwise excluded below and the roof over the Mall but excluding all rentable premises and portions thereof, the Bay Outdoor Selling Area and any other outdoor selling area, all kiosks in the Mall and any other portions of Parking Facilities and the Mall, licensed or otherwise, used for retail selling or other private purposes (such as displays or promotions) other than by the Merchants' Association or the Landlord for promotional activities (if permitted hereunder) while so used, and in any case excluding washrooms, compactor rooms, corridors, loading and access facilities, including docks and truck receiving and delivery facilities, and electrical and mechanical vaults and rooms and facilities therein, which in each case are appropriate and intended predominantly for use only by one tenant or a limited group of tenants and its and their employees,
- (10) **"Common Facilities Operating Cost"** means all reasonable and proper costs, charges and expenses incurred by the Landlord for and properly attributable to the maintenance, operation, insurance and repair and supervision of all Common Facilities, computed in accordance with generally accepted accounting practices and procedures and without any duplication, and includes without limitation
- (i) the cost of operating and maintaining the systems for the supply of utilities (including electricity for lighting) to, and of the utilities consumed in, the Common Facilities and the operating cost of heating and air-conditioning enclosed portions of the Common Facilities,
  - (ii) the cost of wages and salaries (including fringe benefits) paid to personnel to the extent actually engaged in, or engaged in the supervision of, the physical operation, cleaning and maintenance of Common Facilities, except those in an overhead or administrative capacity (with respect to whom costs are recovered as a pre-estimated amount as provided in paragraph (ix) of this subclause),
  - (iii) the cost of cleaning and other janitor services in removing snow and refuse from, and supervising and policing, the Common Facilities, and the associated cleaning and maintenance supplies,
  - (iv) 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 maintaining landscaped areas which are in each case part of such Common Facilities,

- (v) the cost of repairs to Common Facilities including replacements necessarily made to renovate or maintain such Common Facilities so as to cause them to be in good and substantial repair to the extent that such replacements do not constitute an expense of a capital nature but are either (i) wholly chargeable in a fiscal period in accordance with generally accepted accounting principles or (ii) deferred or amortized in accordance with generally accepted accounting principles (in which case that amount which equals only the amortized portion shall be included provided the Tenant shall have approved such amortization or deferral acting reasonably) but excluding all repairs or replacements made to remedy defects in construction or made to improve the standard of such Common Facilities (if and to the extent by way of new construction, capital additions or replacements or otherwise of a capital nature, and not just to maintain then existing facilities),
- (vi) the cost of operating and maintaining public address and background music systems, information facilities and other facilities for the general benefit of customers of the Shopping Centre in Common Facilities,
- (vii) the cost of premiums or such other costs for fire and all insurance in respect of Common Facilities which the Landlord is required to maintain pursuant to this Bay Lease or shall reasonably maintain or be required by any Mortgagee of the Landlord to maintain (which may include, without limitation, fire insurance with extended coverage or all risks endorsements, boiler and machinery insurance, where applicable, and public liability insurance),
- (viii) the Agreed Common Facilities Replacement Costs and periodic depreciation at standard rates upon the initial capital cost of equipment used for cleaning, operating and maintaining Common Facilities which the Landlord might otherwise have leased and which by its very nature requires periodic replacement, and
- (ix) as an agreed pre-estimate of the cost of overhead and administration and other indirect or non-allocable costs incurred in connection with the operation and maintenance of Common Facilities, a sum equal to ten percent (10%) of the aggregate of the costs referred to in paragraphs (i) to (vi) inclusive of this subclause, which sum shall be applied only after making the deductions and applying the exclusions hereafter referred to,

but there shall be excluded therefrom

- (a) the costs of improvements, additions, capital replacements (except to the extent permitted under paragraph (viii) of this subclause) and other expenses which are in each case of a capital nature in accordance with normal accounting practice, the costs of management and supervision except as otherwise provided in paragraph (ii) of this subclause, the costs of overhead and indirect costs, interest, debt service, capital amortization and other similar costs,
- (b) all Excess Costs,
- (c) all costs of operating and maintaining permitted kiosks and other facilities in the Mall or elsewhere in the Common Facilities which are of a commercial nature and produce revenue for the Landlord,
- (d) all Food Court Costs allocable to the Food Court Tenants,

and there shall be deducted therefrom

- (e) all monies recovered (which, if the Landlord fails to comply with its obligations to insure under this Bay Lease, includes moneys which would reasonably have been recoverable if the Landlord had so complied and used its reasonable efforts to recover) under policies of insurance, or 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 such Common Facilities the cost of which has been included hereunder,
  - (f) recoveries made by the Landlord under construction warranties relating to Common Facilities to the extent applicable to defects, the cost of repair of which would otherwise be included hereunder;
  - (g) all revenues received by the Landlord (after deduction of expenses not otherwise included pursuant to the provisions of this subclause) from the use of or with respect to any Common Facilities including those from the use of or with respect to any exhibitions, displays, auditoria, conference rooms, public address and background music systems, public telephones, public lockers, coat checking, information facilities, child care and nursery facilities, washrooms, and revenues from parking charges as contemplated by subclause 7.04, in each case,
  - (h) all moneys recoverable from tenants whose premises are not included in the applicable denominators referred to in Article 10, and which are expressed to be by way of a recovery of a contribution to any or all expenses included in Common Facilities Operating Cost, and
  - (i) all moneys recoverable from tenants of rentable premises and which are expressed to be by way of a surcharge or other similar recovery of a contribution to any or all expenses included in Common Facilities Operating Cost and not an unallocated part of a general rent or a general contribution, whether fixed or pro rata thereto (such as recoveries under clause 6.08 and similar provisions contained in leases of space in the Shopping Centre), and for the purpose of determining such costs, all reasonable allocations shall be made where necessary,
- (11) **"CPI"** means the Consumer Price Index (all items for regional cities) for the City of Ottawa (or any index published in substitution for the Consumer Price Index or any other replacement index most nearly corresponding thereto reasonably designated by the Landlord if the Consumer Price Index is no longer published) published by Statistics Canada (or by any successor thereof or any other governmental agency including a provincial agency) In the case of any required substitution, the Landlord shall be entitled to make all necessary conversions for comparison purposes,
  - (12) **"Excess Costs"** means in regard to any parking decks or structures which are not shown on the Site Plan, any cost of repairing or replacing such parking decks or structures which is incremental to the repairing or replacement cost which would have been incurred if the Parking Facilities therein had been provided at ground level (with no structures below),
  - (13) **"Food Court"** means those portions of the Common Facilities, approximately as shown outlined in GREEN on the Merchandising Plan, which are designated by the Landlord from time to time for use in support of Food Court Tenants' operations and includes without limitation, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use,

- (14) **"Food Court Costs"** means those costs and expenses incurred or reasonably attributable by the Landlord specifically or exclusively from time to time in respect of the maintenance and operation of the Food Court as such (as opposed to the maintenance and operation of such area as one of the enclosed malls of the Common Facilities) Such costs and expenses include without limitation and without duplication
- (i) salaries, wages, benefits and other costs of bus-boys and other personnel to the extent employed for cleaning and servicing the Food Court
  - (ii) garbage and waste collection and disposal,
  - (iii) rental of equipment and signs of and for Common Facilities,
  - (iv) the cost of repairs or replacements to, and maintenance and operation of, the furniture, fixtures and furnishings in or serving the Food Court,
  - (v) amortization and interest on the unamortized balance or depreciation and interest on the undepreciated balance with respect to the cost of any repairs or replacements included in paragraph (iv) of this subclause (determined in a manner consistent with all other Food Court Tenants), the cost of which is not charged in full in the fiscal year for the determination of Common Facilities Operating Cost, and
  - (vi) the incremental cost of additional security, policing and supervision for the Food Court

From the total of the above costs there shall be deducted the contributions, if any, made by tenants or occupants of space who are not Food Court Tenants

- (15) **"Food Court Tenant"** means a tenant of premises initially designated as such on the Merchandising Plan as from time to time varied by the Landlord with the prior approval of the Tenant, acting reasonably,
- (16) **"Greater Toronto Area"** means the area comprised at the date of this Bay Lease by the Municipality of Metropolitan Toronto and the Regional Municipalities of York, Durham, Halton and Peel
- (17) **"Gross Building Area"** means, with respect to the Bay Department Store, the area of the floor space on any level therein as determined by actual measurement, computed by measuring to the exterior finish of permanent outer building walls and without deduction for indentations or for columns and projections necessary to the building, but excluding the Rooftop Vestibule and Access, the Rooftop Mechanical Areas and Improvements, the Rooftop Staircase and the exterior loading dock which is roofed and enclosed on three sides
- (18) **"Gross Leasable Area"** means, with respect to any building or portion thereof in the Shopping Centre, the number of square feet of floor space on each level within such building or portion thereof which is intended to be leased or licensed (including, in the case of mezzanines, 50% only of such floor space), and shall include the area occupied by kiosks and other facilities in the Common Facilities which are of a commercial nature and produce revenue for the Landlord, but shall exclude all penthouses, exterior rooftop mechanicals, loading docks and truck receiving and delivery facilities, including stairwells, elevator machine rooms, vertical transportation facilities, public washrooms, underground electrical and mechanical vaults and any other rooms devoted exclusively to electrical or mechanical equipment, and any areas not enclosed and heated such as any outdoor sales areas, and shall be calculated in every case by measuring from the building line of the exterior surfaces of exterior walls and from the building line of the

exterior surfaces of interior walls or barriers separating areas intended to be leased from Common Facilities and other space not intended to be leased or licensed, and from the centre line of party or demising walls separating areas intended to be leased or licensed from other areas intended to be leased or licensed, as applied to any facility in the Mall or in the Parking Facilities within a building or similar structure which is used for retail selling or other private purposes other than outdoor sales areas. "Gross Leasable Area" means the area occupied by such facility including in the case of a kiosk any surrounding area used in connection with it, which surrounding area shall be deemed to be equal to the area of the kiosk, provided that with respect to the denominator of the fraction determining the Tenant's share of Common Facilities Operating Costs under Article 10 hereof, the area of such kiosks for purposes of inclusion in the denominator shall be prorated on a per diem basis for the applicable fiscal year to coincide with the number of days during which such kiosk is located in the Mall,

- (19) **"Hydro Lands"** means the lands forming part of the Shopping Centre Lands which are shown outlined in PINK on the Site Plan, as more fully described in Schedule "A" hereto under the heading "PART TWO-Leasehold Lands and Premises"
- (20) **"Hydro Lease"** means the lease between Ontario Hydro, as landlord, and St Laurent Shopping Centre Limited, as tenant, dated as of April 22, 1981, covering the lease of the Hydro Lands for a term of 21 years less a day from March 1, 1981
- (21) **"Landlord"** means St Laurent Shopping Centre Limited and Devan Properties Ltd., each as to an undivided 50% interest, and their respective successors and assigns,
- (22) **"Leased Premises"** means the Bay Department Store which is demised to the Tenant under this Bay Lease, and includes where the context requires or permits the Bay Shop, the Bay Outdoor Selling Area, the Tenant Licensed Parking Area and the appurtenant rights, easements and licenses of the Tenant in respect of Common Facilities, all as provided in this Bay Lease,
- (23) **"Major Department Store"** means a conventional department store (which, as of the date of this Lease, would be without limitation and for the purpose of illustration only those department stores operating under the name "Eaton's", "Sears", "the Bay" or "Hudson's Bay Company"),
- (24) **"Mall"** means the enclosed pedestrian concourses which are and from time to time may be constructed as part of the Shopping Centre, and being part of the Common Facilities, as from time to time altered, reconstructed or expanded subject to and in accordance with this Lease, and includes, without limitation, the pedestrian concourses as initially constructed and the Food Court in the Shopping Centre as shown on the Merchandising Plan,
- (25) **"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 and is annexed as Schedule C to this Bay Lease, as from time to time amended,
- (26) **"Mortgage"** means any deed or trust deed registered against the Shopping Centre containing a mortgage, pledge, charge, transfer or, as the context may require, any such mortgage, pledge, charge, transfer, and "Mortgagee" means any lender, trustee or other creditor in whose favour such Mortgage may subsist,
- (27) **"New Parking Deck"** means that parking deck shown outlined in BROWN on the Parking Garage Plan and providing direct access to the second level of the Bay Department Store,
- (28) **"Office Tower Plan"** means the location plan attached hereto as Schedule "H",

- (29) **"Opening Date"** means March 13, 1991,
- (30) **"Original Term"** means the original term of this Bay Lease as set forth in clause 3 00 hereof,
- (31) **"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 subject to and in accordance with this Lease, and includes the new Parking Deck and all other parking decks or structures, the Rooftop Parking Facilities, all improvements associated with parking, and all entrances exits, roads, ramps and other means of access to parking which are within the Shopping Centre and includes the parking areas and roads and other means of access thereto at grade level initially constructed in the Shopping Centre and which are shown on the Site Plan,
- (32) **"Parking Garage Plan"** means the site and location plan annexed as Schedule "G" to this Bay Lease,
- (33) **"parking space"** wherever referred to herein, subject to legal requirements being met, means a parking space which complies with the parking space dimensions and other specifications provided therefor under Subclause 7 04(c)(3),
- (34) **"Permitted Transferee"** means each of the T Eaton Company Limited and/or Sears Canada Inc., or an Affiliate of any such party which is the successor to the department store business of such party or otherwise is an operator of a department store business carried on under the same name as, and with operating, merchandising and servicing practices similar to those of the department store business then carried on by such party in the Province of Ontario,
- (35) **"Prime Rate"** means the rate of interest per annum (expressed as a percentage) quoted by Canadian Imperial Bank of Commerce from time to time at Toronto as its prime lending rate for loans in Canadian dollars to prime commercial borrowers,
- (36) **"Real Property Taxes"** means any and all general taxes and school taxes (which includes rates, assessments, levies, charges, and impositions but excludes local improvement taxes levied in respect of improvements solely benefitting or required for the Shopping Centre Lands), general or special from time to time levied or imposed with respect to real property (including land, buildings, fixtures, and accessories and improvements to them) by municipal or other governmental authorities having jurisdiction, interest, fines or penalties for non-payment shall be excluded, and costs of contesting the amount or validity of any such taxes shall be included (only to the extent reasonably incurred in the common interests of occupants of the Shopping Centre), but taxes which are primarily of the nature of taxes on income, capital, business, place of business or otherwise personal to the taxpayer, and not primarily of the nature of taxes on real property, shall be excluded,
- (37) **"Retail Premises"** means rentable premises used and occupied or designed to be used and occupied by businesses which provide goods or services to the public such as are commonly found at a mall level of a shopping centre and includes, without limiting the foregoing, in addition to retail stores (including department stores and food supermarkets) chartered banks, trust companies dry cleaners, barber shops and restaurants and snack bars, but excludes premises used for recreational, commercial office, residential and hotel or motel purposes, and professional or medical offices (provided such are not located on the Mall),
- (38) **"Rooftop Mechanical Areas and Improvements"** means those parts of the Bay Department Store which are located on the roof of the Bay Department Store from

time to time (other than the Rooftop Vestibule and Access and the Rooftop Staircase) and which do not form part of the Rooftop Parking Facilities, including, without limiting the generality of the foregoing

- (a) the air handling units located on the said roof and the vents ducts and other mechanical features connecting the said units to the interior of the Bay Department Store including the platforms separating the said units from the paved surface of the Rooftop Parking Facilities, but excluding the fences or other enclosures surrounding the air handling units, (which fences and enclosures form part of the Rooftop Parking Facilities), the location of which fences are shown marked in ORANGE on the Rooftop Plan,
  - (b) the skylight shown outlined in PURPLE on the Rooftop Plan, including the concrete base upon which the skylight is directly installed and attached, but excluding the cladding and bumper guards which are located on the exterior of such base and which form part of the Rooftop Parking Facilities,
  - (c) all vents, vent pipes and stacks connected to the Bay Department Store's ventilating or air handling systems which project above the roof of the Bay Department Store, but excluding the bollards and other protection devices erected around such vents, vent pipes and stacks (which bollards and other protection devices form part of the Rooftop Parking Facilities), and
  - (d) such other mechanical, electrical, plumbing, telecommunication, heating, ventilation and air-conditioning equipment and facilities as the Tenant may reasonably require in the operation of the Bay Department Store from time to time throughout the Term and which may be installed upon the roof of the Bay Department Store pursuant to the provisions of Clause 8.00 of this Lease
- (39) **"Rooftop Parking Facilities"** means, the part of the Parking Facilities located on the roof of the Bay Department Store and depicted on the Rooftop Plan, including, without limiting the generality of the foregoing, the parapet wall constructed on the perimeter walls of the Bay Department Store to hide motor vehicles from general view when they are parked in the Rooftop Parking Facilities, the snow removal gates located on the said roof, and the enclosures, fences, cladding, bumper guards, bollards and other items identified as forming part of the Rooftop Parking Facilities in the definition of "Rooftop Mechanical Areas and Improvements"
- (40) **"Rooftop Plan"** means, the plan showing the improvements on the roof of the Bay Department Store, and which is annexed as Schedule "B-1" to this Bay Lease,
- (41) **"Rooftop Staircase"** means the staircase shown outlined in RED on the Rooftop Plan, connecting the Rooftop Parking Facilities to the second floor and ground floor of the Bay Department Store and providing fire route access to the exterior of the Bay Department Store at ground level,
- (42) **"Rooftop Vestibule and Access"** means, the climate controlled vestibule, staircase and elevator area, including its roof, walls, floor and door, located on the roof of and forming part of the Bay Department Store, as shown outlined in GREEN on the Rooftop Plan, and providing access to and from the Rooftop Parking Facilities and the Bay Department Store,
- (43) **"Sears Department Store"** means the department store shown by the word "SEARS" on the Site Plan,
- (44) **"Shopping Centre"** means the Shopping Centre Lands and all 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 St-Laurent Shopping Centre,

- (45) **"Shopping Centre Lands"** means the lands which are the site of the Shopping Centre in the City of Ottawa in the Regional Municipality of Ottawa-Carleton as shown outlined in ORANGE on the Site Plan (including the Hydro Lands) and which are more particularly described in Schedule "A" annexed to this Bay Lease,
- (46) **"Site Plan"** means the site and location plans of the Shopping Centre Lands (including the prohibited building area referred to in subclause 20 01(3) outlined in YELLOW) and the improvements initially constructed thereon, and which are annexed as Schedule B to this Bay Lease
- (47) **"Tenant"** means Hudson's Bay Company and its successors and permitted assigns as tenant under this Bay Lease,
- (48) **"Tenant Licensed Parking Area"** means the ten (10) car parking spaces licensed for the exclusive use of the Tenant pursuant to clause 2 01, as more particularly provided for in clause 16 02 and as such may from time to time be relocated by mutual agreement,
- (49) **"Term"** means the entire term of this Bay Lease including the Original Term, 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
- (50) **"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, prohibition by order of governmental authority, law or regulation, act of God, or the occurrence of fire, enemy or hostile action, civil Commotion 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)

**1 01 Schedules** The Schedules to this Bay Lease form part hereof and are as follows

Schedule A	Description of Shopping Centre Lands
Schedule B	Site Plan
Schedule B1	Rooftop Plan
Schedule C	Merchandising Plan
Schedule D	Common Facilities Operating Cost Breakdown
Schedule E	Charges for Heating, Ventilation and Air-Conditioning Services relating to the Bay Shop
Schedule F	"Landlord's Work" and "Tenant's Work" on Bay Shop
Schedule G	Parking Garage Plan (see subclause 7 04(e))
Schedule H	Office Tower Plan (see subclause 20 00(3))

**1 02 Landlord's Representations** The Landlord warrants and represents to the Tenant that at the date of this Bay Lease and at the date of execution and delivery of this Lease

- (1) The Landlord is the beneficial owner of all portions of the Shopping Centre Lands other than the Hydro Lands, and is the tenant of the Hydro Lands under the Hydro Lease, and has the authority to enter into this Lease,
- (2) The zoning and construction of the Shopping Centre as at the date hereof, including the Bay Department Store, the Common Facilities and other rentable premises therein, and the use of the various portions thereof for their intended or permitted purposes, in each case does not contravene and is not prevented or restricted as at the date hereof by any provision of any statute, by-law, order or regulation of any governmental authority having jurisdiction or of any agreement to which the Landlord is a party or is bound. This representation shall not be applicable to construction completed by the Tenant

- (3) The tenants and occupants of the Shopping Centre including the Tenant and their respective employees and those having lawful business with them including customers have legal access to the Shopping Centre and their respective premises therein and such access is not prevented or materially, adversely restricted or altered by any statute by-law order or regulation of any governmental authority having jurisdiction or of any agreement to which the Landlord is a party or is bound as of the date hereof,
- (4) No Mortgage registered against the Shopping Centre Lands or any part thereof as of the Opening Date or as at the date of execution of this Bay Lease adversely interferes with or restricts the rights of the Tenant under this Lease. The Landlord shall obtain a properly executed written agreement with the Tenant, in a form satisfactory to the Tenant (acting reasonably), from the holder of each and every Mortgage registered against the Shopping Centre Lands prior to the registration of this Bay Lease in accordance with clause 25.05 hereof wherein the holder of such Mortgage agrees to do no act or thing which shall disturb the Tenant's possession of the Leased Premises for any reason other than one which would entitle the Landlord to terminate this Lease in accordance with the provisions hereof and, in the event that the said holder takes possession of the Shopping Centre or otherwise acquires the Landlord's interest therein, to be bound by the terms and conditions of this Bay Lease, and to require any purchaser or acquirer of its interest in the Mortgage or the Shopping Centre to enter into a similar agreement with the Tenant,
- (5) The Landlord's interest in the Shopping Centre Lands is good and marketable and subject to no encumbrances (except for any Mortgage which is subject to the Landlord's covenant and warranty in subclause 1.02(4)) which materially and detrimentally affect the Tenant's interest under this Lease, and
- (6) There are no restrictions imposed by private agreement binding upon the Landlord which conflict with the rights of the Tenant under this Lease

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## ARTICLE 2

### **DEMISE AND GRANT OF RIGHTS**

**2.00 Demise of Bay Department Store** The Landlord leases the Bay Department Store to the Tenant for the Term, upon and subject to the covenants and provisions expressed in this Bay Lease, together with the benefit of all rights and privileges granted to the Tenant by this Bay Lease

**2.01 Rights to Bay Outdoor Selling Area and Tenant Licensed Parking Area.** The Landlord grants to the Tenant, upon and subject to the covenants and provisions expressed in this Lease, (a) if not prohibited by municipal zoning by-laws, the right and license at any time and from time to time during the Term and not terminable by the Landlord during the Term (but subject always to the provisions of clause 16.01), to occupy and use the Bay Outdoor Selling Area and (b) the right and license at any time and from time to time during the Term and not terminable by the Landlord during the Term to occupy and use the Tenant Licensed Parking Area

**2.02 Demise of Bay Shop** The Landlord leases the Bay Shop to the Tenant for that portion of the Term commencing on the Bay Shop Opening Date (but subject to prior termination as provided in clause 16.00), upon and subject to the covenants and provisions of this Bay Lease, to occupy and use for the Tenant's exclusive benefit

**2.03 Rights to Common Facilities** 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 only with the Landlord and other tenants and licensees of the Shopping Centre and their respective employees and those having lawful business with them including their customers, the right and license during the Term and not terminable by the Landlord during the Term, to use the Common Facilities as the same may exist from time to time and at all reasonable times as contemplated by this Bay Lease whether the Bay Department Store is open for business or closed for business for the purposes for which such Common Facilities are appropriate and intended and provided, and in particular, without limiting the generality of the foregoing, such right and license of use shall include

- (1) the right subject as aforesaid 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 recognized or permitted under clause 17.01 of 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 subject as aforesaid to pedestrian passage and re-passage through every portion of the Mall (excluding those portions thereof which are occupied by 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,
- (3) the right subject as aforesaid to the use and benefit of utilities and services to be provided by the Landlord, in accordance with the provisions of this Bay Lease, and
- (4) the right subject as aforesaid 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

**2.04 Upper Vertical Boundaries** The upper vertical boundaries of the Bay Department Store are the underside of the waterproofing roof membrane, the upper side of the roof of the Rooftop Vestibule and Access and the points of juncture between the parapet walls located on the perimeter of the Bay Department Store, and the perimeter walls of the Bay Department Store

**2.05 Reservation of Rights** The Landlord reserves the following rights in respect of the Bay Department Store

- (a) the right of structural support for the Rooftop Parking Facilities and the ramp connecting the Rooftop Parking Facilities to the adjacent parking deck,
- (b) the right to use for ventilation the air shaft which passes through the Bay Department Store and is designated "Reserved Ventilation Shaft" on the Site Plan

### ARTICLE 3

#### **TERM, RENEWALS AND RIGHT OF TERMINATION**

**3 00 Original Term.** The Original Term shall be for twenty (20) years commencing on the Opening Date and ending on the 12th day of March 2011

**3 01 Renewal Terms** The Tenant shall have the options

- (1) first, to renew this Bay Lease for a first renewal term of ten (10) years commencing on March 13 2011, immediately after the expiration of the Original Term referred to in clause 3 00, and
- (2) second, if such first option shall have been exercised, to further renew this Bay Lease for a second renewal term of ten (10) years commencing on March 13, 2021, immediately after the expiration of the first renewal term, and
- (3) third, if such first and second options shall both have been exercised, to renew this Bay Lease for a third renewal term of ten (10) years commencing on March 13, 2031, immediately after the expiration of the second renewal term, and
- (4) fourth, if such first, second and third options shall all have been exercised, to renew this Bay Lease for a fourth renewal term of ten (10) years commencing on March 13, 2041, immediately after the expiration of the third renewal term, and
- (5) fifth, if such first, second, third and fourth options shall all have been exercised, to renew this Bay Lease for a fifth renewal term of ten (10) years commencing on March 13, 2051 immediately after the expiration of the fourth renewal term, and
- (6) sixth, if such first, second, third, fourth and fifth options shall all have been exercised, to renew this Bay Lease for a sixth renewal term of ten (10) years commencing March 13, 2061, immediately after the expiration of the fifth renewal term, and
- (7) seventh, if such first, second, third, fourth, fifth and sixth options shall all have been exercised, to renew this Bay Lease for a seventh renewal term of ten (10) years commencing on March 13, 2071, immediately after the expiration of the sixth renewal term, and
- (8) eighth, if such first, second, third, fourth, fifth, sixth and seventh options shall all have been exercised, to renew this Bay Lease for an eighth and final renewal term of ten (10) years, commencing on March 13, 2081, immediately after the expiration of the seventh renewal term and finally expiring on March 12, 2091

Unless this Bay Lease shall have been sooner terminated pursuant to clauses 3 03, 12 00(3), 24 00, 24 01 or 24 02, 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 not later than one (1) year prior to the end of the Original Term in the case of the first of such options, or one (1) year prior to the end of the then current renewal term in the case of any of the seven subsequent options (and in which event only, such option of renewal shall be deemed not to have been exercised, and 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) 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, shall apply during each renewal term specified in this clause 3 01, except that there shall be no options to renew beyond the eighth renewal option provided for in this

clause 3 01, and any provision which expressly has application only during the Original Term shall not apply during any renewal term

**3 02 *Landlord's Right to Extend.*** The Landlord shall have the right to be exercised by written notice to the Tenant, to require the Tenant to exercise the first option to extend the Lease for a period of ten years following the Original Term, provided that the Landlord shall give such notice by no later than 12 months prior to the end of the Original Term

The parties hereto hereby acknowledge and agree that that Landlord has required the Tenant to exercise the first option to extend the Lease for a period of ten years following the Original Term such that as of the date of signing of this Lease, the Term will expire on the 12th day of March, 2021

**3 03 *Overholding*** If the Tenant shall remain in possession as an overholding tenant after the Original Term or any renewal term, save pursuant to a renewal term which has been deemed to have been exercised under the terms of this Bay Lease or other agreement between the Landlord and the Tenant the Tenant shall be deemed to be a tenant from month to month terminable on no less than six (6) months prior written notice given by the Landlord or the Tenant at a monthly rental equal to one-twelfth (1/12th) of the annual basic rent contemplated by clause 4 01 for the last year of the Term immediately preceding the commencement of such month-to-month tenancy, and otherwise upon all the terms and provisions of this Bay Lease, modified as is appropriate to such a monthly tenancy

**3 04 *Tenant's Right to Terminate.*** During the Term if any restrictive covenant or zoning or other by-law or municipal or other governmental regulation shall have taken effect which would (i) prevent the operation of the Shopping Centre as a shopping centre, or (ii) prevent reasonable access thereto in the manner contemplated by this Bay Lease so as to preclude the operation of the Bay Department Store as a department store, or (iii) which would prevent the use of the Bay Department Store as a department store and the Landlord shall not have commenced to rectify such situation within 60 days and thereafter is not proceeding actively and diligently to so rectify the Tenant may terminate this Bay Lease upon notice to the Landlord. Whether or not the Landlord is attempting to so rectify, if such is not rectified within 550 days, such right of termination shall be exercisable. For greater certainty, if such operations or use may be continued as a legal non-conforming use, then such by-law or regulation shall be deemed not yet to have taken effect until such operations or use may not be continued

If the Landlord is precluded from operating or causing the Shopping Centre Lands to be continually used and operated as a first class shopping centre together with access thereto in the manner contemplated by this Bay Lease, by reason of any restrictive covenant or zoning or other by-law or municipal or other governmental regulation the Landlord covenants and agrees to use its best efforts to remedy or rectify such cause and during the period in which the Landlord is so precluded from operating it shall be deemed not to be in breach of its obligations under clause 7 00

**3 05 *Soft Opening*** Notwithstanding any of the foregoing provisions of this Article 3, the parties hereto hereby acknowledge and agree that the Tenant shall have the right, free of any payments under this Lease to open the Bay Department Store for three (3) days prior to the Opening Date (and which three-day opening will not constitute an opening of the Bay Department Store for business with the public) for doing business with only the employees of the Tenant and/or invited holders of credit cards of the Tenant

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# ARTICLE 4

## RENT

**4 01 Amount of Rent** From and after the Opening Date the Tenant covenants and agrees to pay to the Landlord during the Term an annual basic rent in respect of the Bay Department Store equal to

- (i) during each of the first to fifth Lease Years inclusive of the Original Term, an annual basic rent of Four Dollars (\$4 00) for each square foot of Gross Building Area of the Bay Department Store,
- (ii) during each of the sixth to tenth Lease Years inclusive of the Original Term, an annual basic rent of Four Dollars and Twenty-Five Cents (\$4 25) for each square foot of Gross Building Area of the Bay Department Store,
- (iii) during each of the eleventh to fifteenth Lease Years inclusive of the Original Term, an annual basic rent of Four Dollars and Fifty Cents (\$4 50) for each square foot of Gross Building Area of the Bay Department Store,
- (iv) during each of the sixteenth to twentieth Lease Years inclusive of the Original Term and throughout the first ten-year renewal term commencing immediately after the expiration of the Original Term, as specified in clause 3 01, an annual basic rent of Five Dollars (\$5 00) for each square foot of Gross Building Area of the Bay Department Store, and
- (v) during each subsequent renewal term specified in clause 3 01, an annual basic rent of Three Dollars (\$3 00) for each square foot of Gross Building Area of the Bay Department Store

In this Lease the expression "Lease Year" or "lease year" means successive periods of twelve (12) months commencing on March 13, 1991 and on successive anniversaries of that date

The annual basic rent for the Bay Shop during each Lease Year while the Bay Shop forms part of the Leased Premises shall commence on the Bay Shop Opening Date and shall be equal to

- (vi) during the period commencing on the Bay Shop Opening Date and expiring at the end of the fifth Lease Year, an annual basic rent of ninety-three dollars and seventy-five cents (\$93 75) for each square foot of Gross Leasable Area of the Bay Shop, being an amount equal to 75% of the fair market rent per square foot of Gross Leasable Area (the "Fair Market Bay Shop Rent Rate") that would otherwise be charged by the Landlord for the Bay Shop premises, having regard to the use thereof specified in this Lease, as of the Opening Date,
- (vii) thereafter, during each subsequent period of five (5) years throughout the Term or until such earlier date as the lease of the Bay Shop is terminated hereunder, commencing with the Lease Year commencing on March 13, 1996, the aforesaid annual basic rent for the Bay Shop shall be adjusted by the percentage change in the aforesaid Fair Market Bay Shop Rent Rate which would have otherwise occurred over the immediately preceding five year period

The annual basic rent for the Bay Shop shall be payable at the same times and in the same manner and be subject to the same prorations and adjustments as are provided in respect of

rent for the Bay Department Store. For the purposes of calculating rent under this clause 4 01, rent for any broken portion of a calendar month on termination of this Bay Lease shall be appropriately adjusted being calculated at a rate per day equal to 1/365th of the applicable annual basic rent for the broken portion of the calendar month involved.

**4 02 Payment of Rent.** The annual basic rent in the amount specified in clause 4 01 shall be paid in lawful money of Canada to the Landlord at such place in Canada as the Landlord may from time to time direct in writing on the first day of each month during the Term in respect of which such rent is payable in equal monthly instalments in advance. The annual basic rent shall be payable without any previous notice or demand of the Landlord, and without any abatement, set-off or deduction whatsoever except as specifically provided for in this Bay Lease.

**4 03 Additional Rent.** In addition to the annual basic rent referred to in clause 4 01, all sums of money required to be paid by the Tenant to the Landlord under this Bay Lease and whether or not such sums of money are expressed or referred to as being rent, shall, when in default, be deemed to be additional rent and payable and recoverable as rent.

**4 04 Goods and Services Tax.** In addition to the rent payable hereunder, the Tenant will pay to the Landlord (acting as agent for the taxing authority if applicable) or directly to the taxing authority (if required by the applicable legislation) the full amount of all goods and services tax, sales taxes, value-added taxes, other taxes (collectively and individually, "GST") imposed on the Tenant in respect of the rent payable by the Tenant under this Lease or in respect of the rental of space by the Tenant under this Lease. GST so payable by the Tenant (i) will be calculated and paid in accordance with the applicable legislation, and (ii) despite anything else in this Lease, will be considered not to be rent, but the Landlord will have all of the same remedies for and rights of recovery with respect to such amount as it has for non-payment of rent under this Lease or at law. To avoid duplication, the Tenant will not reimburse the Landlord, in whole or in part, for any GST paid or payable by the Landlord in respect of goods or services supplied to the Landlord or any manager of the Shopping Centre in connection with the maintenance, operation, repair, insurance, or administration of the Shopping Centre.

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## ARTICLE 5

### GENERAL COVENANTS

**5 00 Covenants of the Tenant.** The Tenant covenants with the Landlord

- (1) to pay when due the rent stipulated in Article 4 and the contributions in respect of the Common Facilities Operating Cost stipulated in Article 10 in the amount and manner therein provided, 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.

**5 01 Covenants of the Landlord.** The Landlord covenants with the Tenant

- (1) that the Tenant shall and may peaceably possess and enjoy the Leased Premises for the Term hereby granted, without any interruption or disturbance from the Landlord, or any other person or persons lawfully claiming by, from or under it,
- (2) to observe and perform all the covenants and obligations of the Landlord under this Bay Lease,

- (3) throughout the Term, the Landlord shall observe and perform all obligations covenants and responsibilities which the Landlord is required to observe and perform pursuant to the terms and conditions of the Hydro Lease, and the Landlord shall use its best efforts to enforce against all parties to the Hydro Lease, their successors and assigns thereunder for the benefit of the Tenant, the obligations of all such parties under the terms of the Hydro Lease which materially affect the Tenant's use and occupation of the demised premises under the Lease or which are required to ensure the continued operation of the Shopping Centre (including all the parking facilities and parking area forming part thereof and located upon the Lands) as a single, integrated shopping centre complex in compliance with the terms of the Lease or which are prerequisite to the performance or observance of the Landlord's covenants, warranties and representations hereunder.
- (4) throughout the Term the Landlord shall not cause or agree to any surrender of the Hydro Lease or to amend the Hydro Lease (except for such amendment to the Hydro Lease as may be required to provide for the continued existence of the Hydro Lease throughout the Term of the Lease) unless it has first obtained the Tenant's written consent thereto, which consent shall not be unreasonably withheld or delayed.
- (5) the Landlord shall indemnify the Tenant and save it harmless from and against any and all claims, actions, damages, liabilities, loss, costs and expenses whatsoever, including, without limitation, legal expenses and those expenses incurred in respect of loss of business or diminution of value in the Tenant's leasehold interest under the Lease arising from any occurrence or situation occasioned by any action or course of conduct taken in compliance with the terms and conditions of the Hydro Lease by any party thereto which effectively causes a breach of the Landlord's covenants, warranties and agreements contained in this Lease or which prevents the Landlord from performing or observing the same,
- (6) the Landlord shall use its best reasonable efforts to obtain the written agreement of all parties to the Hydro Lease to amend the Hydro Lease to the extent necessary to provide the Landlord with such successive rights to renew and/or extend the term of the Hydro Lease so as to cover the entire duration of the Term of the Lease, including all extensions of the initial term of the Lease which the Tenant exercises pursuant to the provisions of Article 3 hereof. The parties hereto hereby acknowledge and agree that, if the Landlord should fail in such efforts, the Hydro Lease and such rights as the Landlord may have thereunder in the Hydro Lands and such rights as the Tenant may have therein under the terms of this Lease shall be extinguished upon the expiry of the Hydro Lease.

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## ARTICLE 6

### **OCCUPANCY OF LEASED PREMISES**

**6 00 Use of Leased Premises** Except with the prior written consent of the Landlord, the Tenant shall cause the following requirements to be met

- (1) throughout the Term, the Bay Department Store shall, provided
  - (i) the Landlord continuously operates and maintains the Shopping Centre as a first class shopping centre (for comparable shopping centres of comparable age), and
  - (ii) the tenant of the Sears Department Store and the tenant of every other Major Department Store in the Shopping Centre, covenants with the

Landlord to continuously operate a Major Department Store and the Landlord uses its reasonable best efforts to enforce such covenant,

and subject to the provisions of this Bay Lease, and in particular to clause 21 00(7), be continuously used and operated throughout the Term as a Major Department Store in a manner consistent with the standards of similar first-class department stores operated by the Tenant in first-class shopping centres in the Greater Toronto Area. Without limitation the Landlord represents and warrants to and covenants with the Tenant that the installation and operation of automatic teller machines and cash dispensers in the Bay Department Store is and will be permitted,

- (2) the Bay Outdoor Selling Area, while used and occupied by the Tenant, may be used and operated for the retail sale of any type or types of merchandise and services normally sold in department stores or outdoor selling areas associated with department stores, and which may include without limitation plants, shrubs, gardening supplies and outdoor living, recreational and sports merchandise,
- (3) the Tenant Licensed Parking Area, while used and occupied by the Tenant, may be continually used only for the parking of vehicles
- (4) the Bay Shop, while used and occupied by the Tenant, shall, be continually used and operated only for the sale at retail of all or any of the following items

Hot Dogs in a variety of sizes  
 European Sausages  
 French Fries - regular, seasoned and novelty  
 Onion Rings  
 Poutine  
 Variety of hot and cold toppings  
 Coleslaw  
 Tossed Salad  
 Morning Coffee Break Pastries/Biscuits etc  
 Variety of Coffees  
 Tea  
 Soft Drinks  
 Bottled Juices and Drinks  
 Milk  
 Dispenser Crystal Drinks  
 Malt/Soft Ice Cream  
 Miscellaneous Packaged Potato Chups/novelty items

The Landlord will not withhold or delay its consent unreasonably to the retail sale of such other food items as the Tenant may request from time to time, acting reasonably, provided that the retail sale of such other items is complementary to the general merchandising policy in the general area in which the Bay Shop is located, and

- (5) no activities which are described in clauses 14 04 and 7 01(3) shall be carried on in the Leased Premises

**6 01 Name of Business** Unless and until the Tenant shall assign this Bay Lease or sublet the Bay Department Store in accordance with the provisions of Article 21, the Tenant shall operate the whole of the Bay Department Store under the name "the 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 retail department store business of Hudson's Bay Company or its successors is from time to time being carried on in the Greater Toronto Area (but this shall not apply to the Bay Outdoor Selling Area, which may be operated under such name or names as the Tenant may from time to time determine, provided however that the name given the Bay Outdoor Selling Area shall not create the appearance to the public of being a business entity independent and separate from the Bay Department

Store), and the Tenant shall operate the Bay Shop under the name "Chicago Franks" or "Malt Stop" or such other name as is used in a majority of the Tenant's mall operations in the Greater Toronto Area which are of a similar use character and size

**6 02 Hours of Business and Mall Access to Bay Department Store** From and after the Opening Date and during the Term while the Bay Department Store is required to be open for business the Bay Department Store shall be open to the public for business during at least 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 (having regard to the type of business being conducted in the particular premises), consistent with the provisions of this Bay Lease and consistent with the requirements of a first-class shopping centre similar in size to the Shopping Centre, and that nothing herein shall require the Bay Department Store or portions thereof to be open during hours other than those which have been generally established by the Tenant for the operation of its other comparable department stores in the Greater Toronto Area provided in no event will its normal hours of business be less than 40 hours in each normal week presently comprising from Monday to Saturday inclusive, notwithstanding the foregoing, in no event will the Bay Department Store be required to be open (a) during public holidays, or (b) when prevented by by-law or other governmental restriction or (c) when prevented by Unavoidable Delay In addition nothing herein shall prevent the Bay Department Store from being open for business during those hours permitted by law and the Tenant may be so open during such hours It is understood that when the Bay Department Store is open for business there will be access to the Bay Department Store from the Mall The Landlord and the Tenant shall consult with regard to Shopping Centre hours of business and the hours of business for the Bay Department Store and shall each give reasonable consideration to the suggestions and recommendations of the other pertaining thereto, and each of the Landlord and the Tenant shall give reasonable prior notice to the other of any change from time to time in either the Landlord's regulations pertaining to Shopping Centre hours of business or the Tenant's hours of business pertaining to the Bay Department Store (which notice shall be no less than 30 days)

**6 03 Display Window Lighting** The Tenant shall keep any display windows of the Bay Department Store suitably illuminated during all hours when the Bay Department Store shall be open to the public for business, and shall provide limited lighting in the immediate vicinity of the Mall entrances to the Bay Department Store during all hours when the Shopping Centre is open for business but the Bay Department Store is closed

**6 04 Nuisance, etc.** 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 or about 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 any dangerous, inflammable or explosive 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, and if the Tenant shall breach this provision the Landlord shall have the right (without limiting any other remedy it may have) to recover from the Tenant on demand within ten (10) days of the Tenant being invoiced therefor the amount of any additional premium cost incurred by the Landlord as a result of such breach

**6 05 Receiving and Shipping** The Tenant shall not load or unload any merchandise, supplies or other materials or any debris or refuse except in the truck receiving area forming part of the Bay Department Store, but this shall not apply to manual deliveries or shipments of small parcels to and from the Bay Department Store 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 Outdoor Selling Area or the Bay Shop In the case of the Bay Shop, the Landlord hereby grants to the Tenant a non-exclusive license to use the truck receiving areas designated from time to time for use by Food Court Tenants



**6 06 Prohibited Merchandising Activities in Common Facilities** The Tenant shall not carry on any merchandising activities or display any merchandise in the Common Facilities, other than in the Bay Outdoor Selling Area or as part of a promotion approved by the Landlord

**6 07 Heating and Air-Conditioning** The Tenant shall at its own expense, subject to Unavoidable Delay, heat and air-condition the Bay Department Store (other than portions thereof which 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 and maintain, repair and replace the systems for heating and air-conditioning the Bay Department Store as required. The Bay Shop shall be heated and air-conditioned as provided in clause 16 00. The Bay Outdoor Selling Area need not be heated or air-conditioned

**6 08 Additional Common Facilities Operating Costs** If and whenever the Leased Premises or any part thereof are to be open for business during any hours which are not within the general hours of business for the Shopping Centre as established pursuant to clause 7 02, the Tenant shall give reasonable prior notice to the Landlord (which shall be not less than 30 days). If the Leased Premises or any part thereof are so open for business, the Landlord, in addition to the Tenant's contribution to Common Facilities Operating Cost payable pursuant to clause 10 00 hereof, may require the Tenant to reimburse to the Landlord the incremental cost (or an equitable part thereof based upon Gross Leasable Area, if other occupants of rentable premises of the Shopping Centre shall similarly have remained open for business) incurred by the Landlord in operating the Common Facilities during the extra hours involved resulting therefrom. Consistent with the foregoing, if the Leased Premises or any part thereof are closed for business during any hours which are not within the general hours of business for the Shopping Centre as established pursuant to clause 7 02 or on a public holiday (including Sundays), the Landlord shall not include in Common Facilities Operating Cost the incremental cost incurred in operating the Common Facilities during such extra hours involved and resulting therefrom

**6 09 Access to Mall** If and whenever the Bay Department Store is required to be open for business, the Tenant shall keep the entrances to the Bay Department Store fronting on the Mall open in such a manner as to allow convenient access between the Bay Department Store and the Mall

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## ARTICLE 7

### OPERATION OF SHOPPING CENTRE

**7 00 Operation of Shopping Centre.** The Landlord shall (subject to the provisions of clause 20 00(3) in respect of any additional uses) throughout the Original Term and during the next thirty (30) years, if the Tenant renews this Bay Lease, and provided the Tenant continuously operates a first-class department store as required pursuant to subclause 6 00(1) of the Bay Lease, and during each successive ten (10) year period provided the Tenant and the occupant of another Major Department Store in the Shopping Centre both exercise their corresponding renewal options and both continue to operate first-class department stores and provided that the Shopping Centre can during such ten (10) year period still be operated on a reasonable and economic basis, cause the Shopping Centre (excluding the Leased Premises) to be continually used and operated as a first-class shopping centre (for comparable shopping centres of comparable age), and not for any other purpose without the consent of the Tenant

**7 01 Standards of Operation** For so long as the Landlord is obligated to operate or cause to be operated a shopping centre on the Shopping Centre Lands (excluding the Leased Premises) or any part thereof pursuant to clause 7 00, the Landlord shall cause such

shopping centre to be managed, operated and maintained in accordance with the standards of operation and maintenance which have been adopted by first-class shopping centres (of comparable size and age) in Canada, and without limiting the generality of the foregoing, the Landlord shall

- (1) maintain or cause to be maintained at the Shopping Centre a management office and a competent full-time manager and a sufficient staff of management operating and maintenance personnel to perform adequately the proper management, promotion, 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 any use of or conduct of any business or activity in any premises in the Shopping Centre which contravenes any provision of this Bay Lease (including Clause 14 04) or which is a nuisance or annoyance or is not in keeping with the standards of first-class shopping centres, and to prevent any other activity in the Shopping Centre which is not in keeping with the character of the Shopping Centre, or the display of any signs or advertising in respect of any such prohibited use, business or activity,
- (4) prohibit any display or sale of merchandise in the Common Facilities whether or not the Shopping Centre is open or a majority of the Tenants are permitted to be closed or in any other place in the Shopping Centre outside the confines of rentable premises therein, other than
  - (i) in kiosks in the Mall which are permitted under this Bay Lease, or
  - (ii) in the Bay Outdoor Selling Area and other outdoor selling areas recognized or permitted under clause 17 01, or
  - (iii) as part of any general shopping centre promotion which has been approved by the Landlord and which has also been approved either by the Merchants' Association referred to in clause 15 00 or by the Tenant (the approval of the Tenant, when requested, not to be unreasonably withheld), and in no event will the Common Facilities or any part thereof be used or permitted to be used for what is commonly known as a farmers' market or flea market or any similar purpose,
- (5) apply any revenue which may be derived by the Landlord from use of the Common Facilities or general shopping centre promotions, after deduction of expenses, in reduction of Common Facilities Operating Cost to the extent that such revenues are not paid to the Merchants' Association for the purposes of advertising and promoting the Shopping Centre (but this provision shall have no application to rents, licence fees or other revenues derived by the Landlord from kiosks in the Mall permitted under clause 17 00 or from outdoor selling areas recognized or permitted under clause 17 01), and
- (6) implement and enforce a Landlord's sign policy applicable to all tenants of the Shopping Centre as contemplated by clause 23 01, and prohibit and prevent all signs in the Common Facilities other than signs which are permitted under this Bay Lease and by the Landlord's sign policy

**7 02 Hours of Business** The Landlord shall use its best efforts to cause the Shopping Centre to be open for business on every day of the week permitted by law and during at least those hours during which other similar shopping centres in the same trading area are

open for business which in any event shall be not less than forty (40) hours in each normal week presently comprising from Monday to Saturday inclusive. The Landlord shall use its best efforts to cause as many tenants of the Shopping Centre as possible, and at least substantially all of the merchandising tenants on the Mall, including the occupant of any other Major Department Store, to remain open for business during such established hours of business subject to Unavoidable Delay. Notwithstanding the foregoing, in no event will the Shopping Centre or any part thereof be required to be open (a) during public holidays, or (b) when prevented by by-law or other governmental restriction or (c) when prevented by Unavoidable Delay.

**7.03 Mall.** The Landlord shall maintain and operate or cause to be maintained and operated the Mall and have it and the entrances and other means of access thereto open during (i) the hours established by the Landlord from time to time pursuant to clause 7.02 or (ii) when requested in writing by the Tenant, the hours when the Bay Department Store is open for business in accordance with the provisions of clause 6.02, and shall cause the Mall to be properly lighted and heated and air-conditioned as may be required so as to maintain therein reasonable standards of comfort, subject only to Unavoidable Delay such as, without limitation, interruptions caused by breakdowns of systems and equipment therefor provided repairs are effected diligently in accordance with the provisions of clause 12.02.

**7.04 Parking Facilities.** For so long as the Landlord is obligated to operate or cause to be operated a shopping centre on the Shopping Centre Lands or any part thereof pursuant to clause 7.00 (but subject to clause 7.02) the Landlord shall cause the following requirements with respect to the Parking Facilities to be complied with:

- (a) The Parking Facilities shall be kept
  - (1) maintained and operated and open, including the means of access thereto, at all times when the Shopping Centre or the Bay Department Store is open for business,
  - (2) adequately lighted whenever required during the hours specified in subclause 7.04(a)(1) and lighted at all other times in accordance with the practice of a prudent and careful landlord to facilitate their use during hours of darkness,
  - (3) with parking spaces and aisles properly striped and otherwise marked and with the appropriate traffic and direction signs,
  - (4) with adequate supervision of the flow of traffic therein whenever reasonably required and otherwise policed and supervised in accordance with the standards of high-quality shopping centres,
  - (5) free of refuse and debris and with all appropriate measures taken to keep them reasonably free of snow and ice during winter months, and
  - (6) with whatever steps being taken as are appropriate and reasonable to prevent the use of the Parking Facilities either for any purpose not permitted hereunder and to prevent the use of the Parking Facilities by persons other than the Landlord, tenants and licensees 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 without the written consent of the Tenant, which consent will not be unreasonably withheld in the following circumstances: if imposition of parking charges is the common practice in shopping centres similar in size to the Shopping Centre in the Regional Municipality of Ottawa-Carleton and charges are reasonably necessary to control parking, secure turnover and discourage non-customer parking, and imposition of parking charges would not materially

adversely affect the business conducted in the Shopping Centre. If the Tenant shall consent to the imposition of reasonable parking charges, all revenue derived from the imposition of such charges after deduction of expenses incurred in connection with altering the Parking Facilities to implement paid parking and operating paid parking (it being agreed that the Landlord shall not include such expenses in Common Facilities Operating Cost) shall be applied and credited wholly to reduce Common Facilities Operating Cost, to the extent not paid to the Merchants' Association or the Promotion Fund (as defined in Section 15.03) for the purpose of advertising and promoting the Shopping Centre.

- (c) The Landlord shall at all times maintain or cause to be maintained sufficient parking spaces to
  - (1) meet all legal requirements as they now exist, in respect of present construction on the Shopping Centre Lands and cause to be met all the then applicable legal requirements, in respect of future construction on the Shopping Centre Lands, subject to exceptions from such legal requirements permitted by any legal non-conforming use and subject to the provisions of clause 19.00(4), and
  - (2) maintain (i) not fewer than 50 parking spaces for each 1,000 square feet of Gross Leasable Area of the Shopping Centre (excluding the Bay Outdoor Selling Area) and (ii) for hotels, apartment buildings and shopping centre commercial uses (provided they are non-retail in nature) which may be from time to time permitted hereunder (if any), only that number of parking spaces which represent the then current good practice in the industry, governmental requirements permitting, determined by assuming that the parking spaces to be permitted for such uses will be the only parking spaces available therefor, and
  - (3) in any event the Landlord shall provide within 250 feet of the exterior entrances to the Bay Department Store not less than 802 parking spaces together in every case with adequate means of access thereto, as shown on the Site Plan and Parking Garage Plan.

The design and layout of Parking Facilities including the 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), which approval the Tenant acknowledges it has given with respect to the Parking Facilities and means of access constructed as at the date of this Lease. The size of each parking space shall be in accordance with municipal requirements, but shall not be initially less than 8'86" x 19'68" (excluding means of access thereto) shall not be reduced in size at any time in the future without the Tenant's approval, which approval shall not be unreasonably withheld if and to the extent that good shopping centre practice from time to time current is to provide parking spaces and aisle widths of smaller size. Any parking spaces displaced by the Bay Outdoor Selling Area shall be included for the purposes of determining whether the Landlord is in compliance with the requirements of Subsection 7.04(c)(2).

- (d) The parties hereto hereby acknowledge that the Landlord has constructed Parking Facilities on top of the roof of the Bay Department Store, and the Landlord hereby acknowledges and agrees that the construction, maintenance, repair, restoration and replacement of the said Parking Facilities located upon the roof of the Bay Department Store shall be the sole responsibility of the Landlord and that the said Parking Facilities shall at no time be considered to be part of the Bay Department Store and that the Tenant shall at no time be required to

contribute to the cost of the said maintenance, repair, restoration and replacement of the said Parking Facilities except to the extent provided under Article 10 of this Bay Lease. The parties hereto hereby further acknowledge and agree that the Landlord shall not effect any alteration or repairs to the said Parking Facilities located upon the roof of the Bay Department Store without the Tenant's prior consent, which consent shall not be unreasonably withheld or delayed. The parties hereto hereby further acknowledge and agree that, throughout the Term, there shall be reserved for the Tenant's use a sufficient area of the roof of the Bay Department Store for the location of the Tenant's mechanical, electrical plumbing, telecommunication heating, ventilation and air-conditioning equipment and facilities and such other systems as are reasonably required by the Tenant in the operation of the Bay Department Store, as provided under Article 8.

- (e) The Landlord hereby covenants and agrees that, throughout the Term, the New Parking Deck shall provide direct access by means of a pedestrian connection to the Bay Department Store, as shown on the Parking Garage Plan attached as Schedule "G".

**7 05 Landlord's Rules and Regulations** The Landlord may from time to time establish reasonable rules and regulations, which shall not be inconsistent with the terms of this Bay Lease, applicable to all tenants in the Shopping Centre and governing the use of Common Facilities (including without limitation the Mall, the Food Court and Parking Facilities). The Tenant shall be consulted as to any rules and regulations or changes therein which are proposed and the Tenant's approval thereof shall be obtained (but such approval shall not be unreasonably withheld). 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 or cause to be enforced such rules and regulations.

**7 06 Employee Parking** The Landlord, with the Tenant's approval (such approval not to be unreasonably withheld), shall designate an area or areas within the Parking Facilities for use by employees of the Tenant and other tenants and occupants of the Shopping Centre. The Tenant shall inform its employees of such areas and shall instruct its employees to park only in areas specifically designated for such purpose from time to time by the Landlord. The Landlord shall use its reasonable efforts to cause all tenants of the Shopping Centre and their employees (including the employees of the Tenant) to park only in such designated areas, including the incorporation of a provision to this effect in all new leases to tenants of the Shopping Centre. Such areas may be located outside of the Shopping Centre Lands during peak periods of retail shopping, such as during the period from November 15 to December 31 in each year, and the Landlord shall use its best efforts to incorporate this provision in all new leases to tenants of the Shopping Centre. Neither the Landlord nor the Tenant shall be required to enforce the parking by employees in areas located outside of the Shopping Centre Lands unless both the Landlord and the Tenant agree as to the necessity to enforce same, and the Landlord shall have no obligation to provide such off-site parking.

**7 07 Commuter Parking** The Landlord shall use its reasonable efforts to prevent passengers of public transit facilities from using the Parking Facilities for parking purposes.

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## ARTICLE 8

### UTILITIES AND SERVICES

**8 00 Utilities and Services** The Landlord shall provide or arrange for the provision to within five (5) feet of the perimeter of the Bay Department Store at a point or points acceptable to the Tenant, acting reasonably, of electrical service, cable TV service, water mains, gas, and storm and sanitary sewers, if and as from time to time required for the

proper conduct of the Tenant's business in the Leased Premises. The Tenant acknowledges that the electrical service, cable TV service, water mains, gas and storm and sanitary sewers have been provided by the Landlord at points on the perimeter of the Bay Department Store acceptable to the Tenant. The Tenant shall pay consumption charges due to public utilities or services or other suppliers for any electricity, cable TV, gas or water actually consumed by the Tenant, its licensees, concessionaires or occupants of the Leased Premises. The computation of consumption charges shall be by separate meters installed in the Leased Premises initially at the Landlord's expense. The Landlord will also provide where necessary and without expense to the Tenant the appropriate rights of passage through the Shopping Centre Lands for public utilities or services or other suppliers to furnish or for the Tenant to obtain means of bringing all utilities and services to a reasonably convenient point at or within the limits of the Bay Department Store through the appropriate pipes, conduits or other appropriate means of distribution thereto in and through the Shopping Centre, to be installed at the expense of the Landlord, and without unreasonable interference with the normal business activity of the Tenant. 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 to portions of the systems therefor not within the Leased Premises 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. The Landlord shall also grant such easements to or make such other arrangements with the telephone utility as shall facilitate the provision of telephone service and enable the Tenant, at its own expense, to be served by telephone. If the Tenant shall at any time require a utility or service which is in addition to those provided for and contemplated above, the Tenant shall provide it or arrange for it to be provided at its own expense, and the Landlord will not unreasonably withhold its permission for an easement or other arrangement appropriate to enable such utility or service to be brought to the Leased Premises.

The Tenant shall have the right to install, maintain, repair, operate and replace on the roof of the Bay Department Store such mechanical, electrical, plumbing, telecommunication, heating, ventilation and air conditioning equipment and facilities and such other systems as are reasonably required by the Tenant from time to time in the operation of the Bay Department Store, provided that the Tenant shall not install upon the Rooftop Parking Facilities any such equipment, facilities or systems or any bollards or other protective devices around the same until it has obtained the Landlord's approval of the location and method of installation therefor (which approval shall not be unreasonably withheld or delayed).

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## ARTICLE 9

### TAXES

**9.00 Tenant's Taxes** The Tenant shall pay or cause to be paid

- (1) Subject to the provisions of subparagraph (1) of clause 9.01 hereof, all Real Property Taxes imposed during the Term in respect of the Bay Department Store and (for the period in each year while actually being used or occupied, and until such time as the Tenant shall have ceased and abandoned its seasonal use thereof and removed therefrom its fixtures and improvements) the Bay Outdoor Selling Area, and (from the Bay Shop Opening Date until such time as the Tenant's rights thereto have been terminated) the Bay Shop, including in each case all the buildings, lands and facilities used in conjunction therewith to the extent assessable and assessed by governmental authorities having jurisdiction, including improvements constructed thereon and therein and all the fixtures and equipment constructed and used by the Tenant or its assignees, subtenants and concessionaires thereon and therein,

- (2) all business taxes (including taxes, utility rates and charges for the supply of utilities and services to the Leased Premises and other taxes personal to the Tenant and its assignees subtenants and concessionaires, and including business assessment for shared use of the Parking Facilities pursuant to subsection 7(4) of the Assessment Act (Ontario), R S O 1990 as the same may be amended or re-enacted from time to time) 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 from the Bay Department Store, and (for the period in each year while used and occupied, and until such time as the Tenant shall have ceased and abandoned its seasonal use thereof) the Bay Outdoor Selling Area, and (until such time as the Tenant's rights thereto have been terminated) the Bay Shop, including in each case all the buildings, land and facilities used in conjunction therewith, including improvements constructed thereon and therein, and all fixtures and equipment constructed and used by the Tenant or its assignees, subtenants or concessionaires thereon and therein, and
- (3) without any duplication of payment, a proportionate share of those Real Property Taxes imposed during the Term which are independently assessed against or attributable to the Common Facilities of the Shopping Centre, if any, which proportionate share shall be expressed as a fraction, the numerator of which shall be the Adjusted Gross Leasable Area of the Bay Department Store and the denominator of which shall be the Adjusted Gross Leasable Area of any Major Department Store where the occupant has in its lease or other occupancy agreement a similar privilege to contribute to such Real Property Taxes based on Adjusted Gross Leasable Area, and the Gross Leasable Area of the balance of the Shopping Centre

All Real Property Taxes and business taxes which the Tenant is obligated to pay or cause to be paid hereunder, including each and every instalment thereof, shall be paid when due to the appropriate taxing authority (or to the Landlord if the Landlord has been charged for them by, and shall have paid them to, the taxing authority as evidenced by receipts or other satisfactory evidence showing such have been paid), subject only to the right of the Tenant to defer, or permit to be deferred, payment thereof in certain circumstances as provided by clause 9 03. The Tenant shall also pay or cause to be paid all penalties and interest imposed with respect to arrears of such payments to the extent such are levied by the taxing authority if such are not paid by the Tenant in accordance with the foregoing requirements. 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 or cause to be paid any Real Property Taxes or business taxes payable under this clause when due, the Landlord, after written notice to the Tenant, and if the Tenant shall fail to pay or cause to be paid the same within fifteen (15) days after receipt of such notice, may pay the same, and the amount so paid by the Landlord shall be forthwith repaid by the Tenant to the Landlord on demand.

**9 01 Landlord's 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 paragraphs (1) and (3) of clause 9 00, including all Real Property Taxes, if any, imposed during the Term which are reasonably and fairly attributable to the Parking Facilities located upon the roof of the Bay Department Store, and
- (2) all business taxes (including taxes personal to tenants and other occupants of the Shopping Centre other than the Tenant capable of constituting a lien against the Shopping Centre Lands) imposed by governmental authorities having jurisdiction in respect of all business and activities carried on by such tenants and other occupants in or upon the Shopping Centre Lands, save those payable in respect of the Leased Premises by the Tenant pursuant to paragraph (2) of clause 9 00

All Real Property Taxes and business taxes which the Landlord is obligated to pay or cause to be paid hereunder including each and every instalment thereof, shall be paid when due to the appropriate taxing authorities, subject only to the right of the Landlord to defer or permit to be deferred payment thereof in certain circumstances as provided in clause 9 03. The Landlord shall also pay or cause to be paid all penalties and interest imposed with respect to arrears of such payments and shall provide the Tenant with a copy of all assessments and tax bills affecting the Shopping Centre forthwith upon receipt by it. 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 or business taxes payable by the Landlord under this clause 9 01. In the event that the Landlord shall fail to pay or cause to be paid any Real Property 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 or cause to be paid the same within fifteen (15) days after receipt of such notice, may pay the same, and the amount so paid by the Tenant shall be forthwith repaid by the Landlord to the Tenant, failing which the amount may be deducted from ensuing contributions of the Tenant to Common Facilities Operating Cost.

**9 02 *Determination of Assessments*** For the purpose of establishing the amount of Real Property Taxes payable by the Tenant pursuant to clause 9 00, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such Real Property Taxes are based.

The Landlord, with the assistance of the Tenant, shall use its best efforts to obtain the separate assessment upon which such Real Property Taxes are based with respect to each of the Bay Department Store, the Bay Outdoor Selling Area, and the Bay Shop and, if and to the extent applicable based on the then current methodology of assessment, the Common Facilities. If such cannot be obtained, the Landlord shall use its best efforts to obtain, with the assistance of the Tenant, sufficient official information to determine the methodology utilized by the assessing authority with respect to the determination of the assessment for Real Property Taxes of the Bay Department Store, the Bay Outdoor Selling Area, the Bay Shop and, if applicable, the Common Facilities. Upon the determination of the methodology of assessment, similar methodology shall be utilized by the Landlord, with the assistance of the Tenant, to allocate the Real Property Taxes payable by the Tenant pursuant to clause 9 00 with respect to the Bay Department Store, the Bay Outdoor Selling Area, the Bay Shop and, if applicable, the Common Facilities. In the event that such official information is not available, the Landlord and the Tenant shall allocate the total assessment of the Shopping Centre in a manner which is equitable and consistent, having regard to the primary method of assessment which the assessing authorities are required to employ so as to arrive at a separate assessment upon which such Real Property Taxes are based in accordance with the Assessment Act.

The parties hereto hereby acknowledge and agree that, as of the date of signing of this Lease, the assessing authorities are using the capitalized income method of valuation to determine the Real Property Tax assessment of the Shopping Centre, and that such assessment methodology results in no identifiable portion of the Real Property Tax assessment of the Shopping Centre being attributable to the Parking Facilities or other Common Facilities of the Shopping Centre.

In the absence of a separate assessment upon which such Real Property Taxes are based and the failure of the Landlord and the Tenant to agree upon the allocation, the allocation shall be determined by arbitration pursuant to the provisions of this Bay Lease, but having regard to the basis of determination set out in this clause 9 02. The allocation which is either agreed upon or determined by arbitration shall, until such time as there is a change in assessments or in the methodology of assessment, or until such time as a separate assessment becomes available, be binding upon the parties, and the allocation so arrived at shall be applied to determine the respective obligations of the parties with respect to Real Property Taxes under this Article 9. If any Real Property Taxes or instalment thereof becomes 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 as 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 the Real Property Taxes respectively payable by them computed the parties shall promptly make the appropriate re-adjustments and additional payment by the Tenant or repayment to the Tenant, as the case may be

**9 03 Tax Appeals** The Landlord may appeal any official assessment or the amount of any Real Property Taxes or business taxes (including other taxes capable of constituting a lien) relating to the Shopping Centre Lands or any part thereof including the improvements (including fixtures and equipment) thereon, and the Tenant may appeal any official assessment or any Real Property Taxes or business taxes relating to the Leased Premises, including the improvements thereon 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. In connection with any such appeal, the party appealing may defer, or permit to be deferred, payment of any Real Property Taxes or business taxes, as the case may be, which it is obligated to pay or cause to be paid under the provisions of this Article 9 to the extent permitted by law, and provided that no part of the Shopping Centre Lands 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 Lands, 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, or any Mortgagee of the Shopping Centre Lands may 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 Tenant nor the Landlord shall institute any appeal without prior written notice to the other party and, where the appeal is being made in order to achieve a re-assessment which is consistent with the basis contemplated by this Bay Lease, both the Tenant and the Landlord shall extend their co-operation and assistance to the other in respect of such appeal.

The Landlord and the Tenant agree that each will negotiate in good faith with the other in an effort to arrive at a fair and equitable determination of Real Property Taxes payable by the Tenant, if the method of taxation of real property as contemplated by this Article 9 is fundamentally changed or no longer exists and is replaced by an alternate method of taxation.

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## ARTICLE 10

### **COMMON FACILITIES OPERATING COST**

**10 00 Contribution to Common Facilities Operating Cost.** Subject to clause 10 02, during each year of the Term of this Bay Lease, commencing with the Opening Date, the Tenant shall pay to the Landlord an amount equal to a proportion of the Common Facilities Operating Cost, which proportion shall be computed with reference to a fraction, the numerator of which is the Adjusted Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until such time as the Tenant's rights thereto have been terminated) the Gross Leasable Area of the Bay Shop (but excluding the Bay Outdoor Selling Area) and the denominator of which is the aggregate of

- (i) the Adjusted Gross Leasable Area of the Bay Department Store and any Major Department Store where the occupant thereof has in its lease or other occupancy agreement a similar privilege to contribute to Common Facilities Operating Cost based on its Adjusted Gross Leasable Area, and
- (ii) the Gross Leasable Area of the balance of the Shopping Centre

Such amount shall be payable by periodic instalments and subject to adjustment all as provided by clause 10 01

**10 01 *Payments and Adjustments*** The Tenant's contributions to Common Facilities Operating Cost shall be paid and adjusted with reference to a fiscal year for the Shopping Centre 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. 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 using the breakdown of accounting information set out in Schedule D (including a detailed breakdown of the allocation of costs as between Common Facilities and rentable premises, it being acknowledged that the inclusion therein of any items not included in Common Facilities Operating Cost is for information only and is not intended to enlarge the Tenant's obligations with respect to the payment of its share of Common Facilities Operating Cost. On or before forty-five (45) days prior to 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, using the breakdown of accounting information set out in Schedule D. 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 calculated. Within fifteen (15) days of being so requested by the Tenant the Landlord shall provide such further information on any item(s) of actual expenditure so that the Tenant may monitor the Common Facilities Operating Cost with a view to suggesting ways to the Landlord of controlling such costs, provided that should the Landlord fail to provide such information, the Tenant shall have the right to inspect the accounts of the Landlord pertaining to the Common Facilities Operating Cost. The Tenant shall be entitled to make reasonable suggestions to the Landlord for the purpose of controlling Common Facilities Operating Cost. Provided such suggestions are consistent with the standards of operation for a first-class shopping centre, are beneficial to the Shopping Centre as a whole and not solely for the benefit of one or a few tenants and do not have the effect of increasing capital costs for the purpose of reducing Common Facilities Operating Cost, the Landlord shall implement such suggestions as soon as is reasonably possible. 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 or (if applicable) broken portion thereof, based on the Landlord's estimate of the Common Facilities Operating Cost as provided to the Tenant in accordance with the provisions of this clause 10 01 to be incurred during such fiscal period or (if applicable) broken portion thereof. Within sixty (60) days after the end of each such fiscal period or (if applicable) broken portion thereof the Landlord shall submit to the Tenant a statement and within ninety (90) days the Landlord shall submit to the Tenant an audited statement (prepared by the independent auditors of the Landlord authorized to practice in the Province of Ontario which statement shall specify that it has been prepared with particular reference to the provisions of this Bay Lease) at the Landlord's expense of the actual Common Facilities Operating Cost incurred during such fiscal period or broken portion thereof in the form contemplated by Schedule D to this Bay Lease 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 accountants at all reasonable times during a period expiring seven (7) years after delivery of such audited statement. Within ten (10) days after the receipt of such audited statement the Tenant shall pay to the Landlord the amount by which any amount found payable by it with respect to such fiscal period or broken portion thereof exceeds the aggregate of the monthly payments made by the Tenant on account thereof during such fiscal year or broken portion thereof and the Landlord shall pay to the Tenant the amount by which any 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, or there is any dispute as to the amount, notice thereof must be given by the party seeking arbitration to the other within three years of receipt of an audited statement in respect of the end of the applicable fiscal period and shall be settled by arbitration pursuant to clause 22 01 of this

Bay Lease provided that the arbitrators shall be knowledgeable in respect of costs and expenses relating to Common Facilities in shopping centres similar to the Shopping Centre and the Tenant pays any reasonable adjustment as determined by the Landlord pending resolution by arbitration. Interest payable by the Tenant in accordance with clause 24 03 shall accrue from and after 30 days following receipt of such audited statement until paid on the amounts shown by such statements to be owing to the Landlord and interest in accordance with clause 24 03 shall accrue from and after the date of any payment of adjustment by the Tenant to the extent such arbitration determines the same not to have been owing to the Landlord hereunder.

**10 02 *Limitation on Tenant's Contribution to Common Facilities Operating Cost***

Notwithstanding clause 10 00, it is understood and agreed that the Tenant's contribution to Common Facilities Operating Cost in the first year of the Term commencing on the Opening Date and ending March 12, 1992 shall not exceed a maximum contribution of one dollar (\$1 00) per square foot per annum of the Adjusted Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until such time as the Tenant's rights thereto have been terminated) the Gross Leasable Area of the Bay Shop. Such maximum contribution shall be reviewed at the end of each Lease Year thereafter and successively increased or decreased for each subsequent Lease Year by a percentage equal to the percentage increase or decrease which has occurred in Common Facilities Operating Cost (expressed as a cost per square foot of Gross Leasable Area of the Shopping Centre) during the immediately preceding fiscal or operating year of the Landlord for the Shopping Centre, provided that such maximum contribution shall never exceed in any Lease Year the sum of two dollars (\$2 00) per square foot of Adjusted Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until such time as the Tenant's rights thereto have been terminated) the Gross Leasable Area of the Bay Shop.

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**ARTICLE 11**

**INSURANCE AND INDEMNITY**

**11 00 *Tenant's Insurance.***

(1) The Tenant shall take out and at all times during the Term keep in force at its own expense and in respect of the Leased Premises, the use and occupancy thereof by it and its subtenants and concessionaires and licensees and the conduct of business thereon the following insurance:

- (i) comprehensive general liability insurance for bodily injury or death and damage to property of others including blanket contractual liability, owners and contractors protective liability, completed operations coverage, non-owned automobile and employers liability insurance coverage with respect to all business conducted in, at, upon or from the Leased Premises, the use and occupancy thereof and the use of the Common Facilities, by the Tenant and by any other person on behalf of the Tenant and by those for whom the Tenant is in law responsible. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributing with, and not in excess of any other insurance obtained by the Landlord or the Landlord's Mortgagees and shall include severability of interests and cross liability clauses,
- (ii) "all risks" property insurance (including flood and earthquake) in respect of the Leased Premises and the Tenant's leasehold improvements situated thereon, and such other property in or forming part of the

Leased Premises (not being property which the Landlord is required to insure pursuant to this Lease) as the Landlord may from time to time require all in an amount of not less than the full replacement cost thereof, with no co-insurance penalties. Such policy or policies shall be primary and non-contributing with and not in excess of, any other insurance obtained by the Landlord or the Landlord's Mortgagees. Notwithstanding the aforesaid the Tenant shall not be obligated to take out or keep in force insurance in respect of loss or damage to the Tenant's trade fixtures, furniture, inventory, stock in trade including merchandise or other contents of the Leased Premises, and if the Tenant so insures the loss payable shall (notwithstanding the provisions of subclause 11.00 (2) (v) (a) hereof) be only to the Tenant without any trust provisions. In addition the Tenant shall carry builder's risk insurance in respect of any construction conducted upon the Leased Premises which costs in excess of \$3,000,000.00 (which amount shall be adjusted at the end of each Lease Year after the first lease year of the Term, based on the percentage change which has occurred in the CPI during such Lease Year).

- (iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Leased Premises or any part thereof and operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant, on a repair and replacement basis. Such policy or policies shall be primary and non-contributing with, and not in excess of, any other insurance obtained by the Landlord or the Landlord's Mortgagees, and
  - (iv) business interruption insurance in such amount as will reimburse the Tenant for all direct or indirect loss of gross earnings attributable to the perils insured against in paragraphs (ii) and (iii) of subclause 11.00 (1) or attributable to prevention of access to the Leased Premises or the Shopping Centre as a result of such perils.
- (2) The insurance described above
- (i) shall, with the exception of the insurance referred to in paragraph (iv) of subclause 11.00(1) of this Lease, include the Landlord as an additional named insured,
  - (ii) shall, with regard to the insurance referred to in paragraph (i) of subclause 11.01(1) of this Lease, include as additional insureds such of the Landlord's Mortgagees for the Shopping Centre, if any, as are requested in writing by the Landlord (and which request shall include the Mortgagee's address),
  - (iii) shall be placed with an insurer or insurers of recognized net worth and reputation duly licensed to carry on the business of insurance in all provinces in Canada,
  - (iv) shall be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by prudent owners and/or tenants in similar circumstances,
  - (v) shall provide that any breach or violation by any named insured of any warranties, representations, declarations or conditions in such policies or in any applications for such policies shall not affect the protection given by the policies to any other insured or loss payee thereunder,
  - (vi) shall, with regard to insurances outlined in paragraphs (ii) and (iii) of subclause 11.01 (1) of this Lease, provide

- (a) that the proceeds thereof shall be payable to the Landlord, such of the Landlord's Mortgagees for the Shopping Centre, if any, as are requested in writing by the Landlord (and which request shall include the Mortgagee's address) and the Tenant as their respective interests may appear. Notwithstanding the aforesaid, the Landlord hereby agrees with the Tenant that all proceeds of such insurance payable in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property, and the Tenant shall not be required to include any such Mortgagee as a loss payable unless such Mortgagee has agreed in writing with the Landlord (which agreement the Landlord covenants with the Tenant to enforce on behalf of the Tenant) or is bound by the provisions of its Mortgage (which particular provisions the Landlord covenants with the Tenant not to amend) that all such proceeds shall be made available for such repair or rebuilding regardless of the existence of any mortgage default (provided further that, where the proceeds which are payable thereunder do not exceed two hundred thousand dollars (\$200,000), (which amount shall be adjusted at the end of each Lease year based on the percentage change which has occurred in the CPI during such Lease year), the foregoing provisions as to loss payable shall not apply and such proceeds shall be payable solely to the Tenant or as it shall otherwise direct),
- (b) that the insurers specifically waive subrogation rights against the Landlord and any loss payee, including their respective employees, officers and directors, with respect to loss, damage or destruction to the insured property, and the Tenant hereby releases the Landlord and any loss payee, including their respective employees, officers and directors, from liability in regard to such loss, damage or destruction and in regard to any loss, damage or destruction of the Tenant's trade fixtures, furniture, inventory or stock in trade, including merchandise or other contents of the Leased Premises, which the Tenant chooses not to insure,
- (vii) shall contain (a) a provision by the insurers to notify in writing all named insureds and such of the Landlord's Mortgagees for the Shopping Centre, if any, of whom the Landlord has given the Tenant written notice (including the Mortgagee's address), not less than thirty (30) days before cancellation or reducing coverage, and (b) a standard mortgage clause endorsement reasonably acceptable to both the Landlord and the Tenant, and
- (viii) may be included in the Tenant's overall corporate insurance policies

(3) The Tenant shall from time to time, whenever reasonably requested, furnish to the Landlord certificates of insurance on the Landlord's standard form to evidence the insurance to be kept in force by the Tenant hereunder. The Tenant shall make its insurance policies available to the Landlord for inspection at all reasonable times during the Tenant's normal business hours, provided that any information obtained by the Landlord pursuant to the provisions of this clause 11.00(3) shall be treated as confidential except that the Landlord may disclose such information on a strictly confidential basis to prospective Mortgagees or purchasers of the Shopping Centre.

(4) If the Tenant shall fail to insure as required under this Lease, the Landlord after at least fifteen (15) days notice to the Tenant may (but shall not be obligated to) 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.

#### **11.01 Landlord's Insurance**

(1) The Landlord shall take out, or cause to be taken out, and at all times during the Term keep or cause to be kept in force, without expense to the Tenant (but subject to the payments and contributions in respect of such expense which the Tenant is obligated to

make under clause 10.00), in respect of the Shopping Centre and the Landlord's operation thereof the following insurance

- (i) comprehensive general liability insurance for bodily injury or death and damage to property of others including blanket contractual liability, non-owned automobile and employers liability insurance coverage, with respect to the Landlord's operation of the Shopping Centre including the Mall and Parking Facilities. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributory with, and not in excess of, any other insurance obtained by the Tenant (except in relation to liability in respect of which the Tenant is required to insure under subclause 11.00(1)(i) hereof), and shall include severability of interest and cross liability clauses,
  - (ii) "all risks" property insurance (including flood and earthquake) in respect of all buildings on the Shopping Centre Lands (but excluding the Tenant Department Store), together with all building equipment and fixed improvements of or associated with such buildings (excluding tenant's trade fixtures) and upon all other fixed improvements on the Shopping Centre Lands (including the Tenant Licensed Parking Area) as any Mortgagee of the Shopping Centre may from time to time require, all in an amount of not less than the full replacement cost thereof, with no co-insurance penalties, and
  - (iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Shopping Centre or any part thereof and operated by the Landlord or by others (other than the Tenant) on behalf of the Landlord, on a repair and replacement basis
- (2) The insurance described above shall
- (i) with regard to the insurance referred to in paragraph (i) of subclause 11.01(1) of this Lease, include the Tenant as an additional named insured, and provide for cross liability and severability of interests,
  - (ii) be placed with an insurer or insurers of recognized net worth and reputation duly licensed to carry on the business of insurance in all provinces in Canada,
  - (iii) be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by prudent owners in similar circumstances,
  - (iv) provide that any breach or violation by any named insured of any warranties, representations, declarations or conditions in such policies or in any applications for such policies shall not affect the protection given by the policies to any other insured thereunder,
  - (v) with regard to insurances outlined in paragraphs (ii) and (iii) of subclause 11.01(1) of this Lease
    - (a) provide that the proceeds thereof shall be payable to the Landlord and the Landlord's Mortgagee, if any, as their respective interests may appear. Notwithstanding the aforesaid, the Landlord covenants with the Tenant that all proceeds of such insurance payable in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property, and if any of such proceeds are to be payable to such Mortgagee the Landlord covenants with the Tenant to require such Mortgagee to agree in writing, or to be bound by the terms of its Mortgage, to make all

such proceeds available for such repair or rebuilding regardless of the existence of any mortgage default and

- (b) provide that the insurers specifically waive subrogation rights against the Tenant, its employees, officers and directors with respect to loss damage or destruction to the insured property and the Landlord hereby releases the Tenant, its employees officers and directors from liability in regard to such loss, damage or destruction
- (vi) contain a provision by the insurers to notify the Tenant in writing not less than thirty (30) days before cancellation or reducing coverage
- (3) The Landlord shall from time to time, whenever reasonably requested, furnish to the Tenant certificates of insurance to evidence the insurance to be kept in force by the Landlord
- (4) If the Landlord shall fail to insure as required under this Lease, the Tenant after at least fifteen (15) days notice to the Landlord may (but shall not be obligated to) 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

**11 02 Indemnity** Each of the Landlord and the Tenant will protect, defend, indemnify and save harmless the other including the other's directors, officers, employees, agents and contractors (collectively the "indemnified party") of and from all fines, suits, claims, demands and actions of any kind or nature which the indemnified party shall or may become liable for or suffer by reason of any breach, violation or non-performance by the party so indemnifying of any covenant, term or provision of this Lease or by reason of any damage, injury or death occasioned to or suffered by any person or persons (including the Landlord or the Tenant, as the case may be), or any property, resulting from any wrongful act, neglect or default on the part of the party so indemnifying or any of its agents, employees, officers or contractors

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## ARTICLE 12

### **REPAIRS AND REBUILDING**

**12 00 Repairs and Rebuilding by Tenant.** Save for the obligations of the Landlord with respect to the Bay Shop and the roof of the Bay Department Store as set out in subclause 12 02, the Tenant shall at all times during the Term maintain and keep in a good and substantial state of repair, order and condition the Bay Department Store and (while leased by the Tenant) the Bay Shop, and (while occupied or leased by the Tenant) any improvements erected by the Tenant on the Bay Outdoor Selling Area consistent with the standards of a careful owner, and accordingly the Tenant will from time to time whenever necessary 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 or any other reason and any necessary replacements and rebuilding, provided however that

- (1) in the course of any repair or rebuilding the Tenant may alter the Bay Department Store to the extent permitted by, and subject to compliance with, the provisions of this Bay Lease pertaining thereto,
- (2) the Tenant shall be entitled to cease, either permanently or temporarily, its use of the Bay Outdoor Selling Area as provided in clause 16 01 and to remove therefrom its fixtures and improvements on permanent cessation of such use (in which event the Tenant shall make good all damage caused by the removal of such fixtures and improvements), and/or to terminate its lease of the Bay Shop as provided in clause

16 00 and to remove therefrom its fixtures and improvements on such termination (in which event the Tenant shall make good all damage caused by such removal) or to leave such fixtures and improvements in place

- (3) if at any time after the commencement of the eighth year of the first renewal term or at any time during any subsequent renewal term the Bay Department Store shall be damaged or destroyed in whole or in part to an extent such that according to the reasonable estimate of the Tenant's architect (the identity of such architect being subject to the approval of the Landlord, such approval not to be unreasonably withheld) the cost of repairing or rebuilding it shall exceed thirty-five percent (35%) of the replacement cost (excluding footings, foundations and pavements) of the entire Bay Department Store and fixtures installed therein, the Tenant may, by notice in writing to the Landlord given within sixty (60) days after the happening of such destruction or damage, elect to terminate this Bay Lease notwithstanding the prior exercise by the Tenant of its right to any renewal term or terms, in which event this Bay Lease shall terminate on a date within a reasonable period thereafter which shall in no event exceed sixty (60) days from the giving of such notice, the Tenant shall be relieved of its obligation to repair or rebuild the Bay Department Store and the Bay Shop, 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 (save and except for proceeds payable in respect of the Tenant's fixtures and equipment which are removable by the Tenant on termination of this Bay Lease pursuant to clause 25 04), 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 obligations to repair, replace or rebuild 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 and within the Leased Premises including all mechanical, electrical, plumbing, telecommunication, heating, ventilation and air conditioning equipment and facilities and other systems that the Tenant may install on the roof of the Bay Department Store, 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 and in accordance with the provisions of clause 24 00(1) 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 and in a reasonable manner to remedy such failure on the part of the Tenant and any reasonable costs incurred by the Landlord in so doing shall be immediately repaid by the Tenant to the Landlord on demand

Except in the circumstances stipulated in subclause 12 00(3) giving rise to a right of the Tenant to terminate this Bay Lease, no loss, damage, destruction or want of repair to the Leased Premises including the Bay Department Store, the Bay Shop and (where applicable) the Bay Outdoor Seiling Area shall permit the Tenant to surrender or terminate this Bay Lease or shall entitle the Tenant to any abatement, suspension or reduction of the rent and other payments and charges payable by the Tenant under this Bay Lease

**12 01 Landlord's Right to Inspect.** The Landlord and any employee, servant or agent of the Landlord designated in writing by the Landlord for the purpose shall be entitled at any reasonable time upon reasonable prior notice to the Tenant and accompanied by a representative of the Tenant, if the Tenant so desires, to enter and examine the state of maintenance, repair and order of the Leased Premises



**12 02 Repairs and Rebuilding by Landlord and Others** The Landlord shall

- (a) in respect of the buildings and improvements on the Shopping Centre Lands (except as hereinafter specifically excluded), at all times during the Term maintain and keep or cause to be maintained and kept in a good and substantial state of repair, order, and condition all such buildings and improvements including without limitation the Common Facilities and all utilities and services thereon necessary for the operation of the Shopping Centre (but excluding the Bay Department Store and the Bay Shop (except as hereinafter provided in subclauses 12 02(b) and 12 02(c) and excluding 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 necessary 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 or any other reason and any necessary replacements and rebuilding, provided however that in the course of any repair or rebuilding the Landlord may alter or expand the buildings and improvements on the Shopping Centre Lands other than the Bay Department Store to the extent permitted by, and subject to compliance with, the provisions of this Bay Lease including without limitation Article 20 pertaining thereto. The Landlord's obligations to repair, replace or rebuild hereunder shall include the obligations 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 buildings and improvements on the Shopping Centre Lands (other than those within or situate on the Bay Department Store and the Bay Shop and other than the improvements on the Bay Outdoor Selling Area), and to keep the portion of the Mall on the Shopping Centre Lands well decorated and all paving in Parking Facilities on the Shopping Centre Lands 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,
- (b) at all times during the Term keep or cause to be kept in good repair, order and condition the foundations, subfloors, exterior weather walls, structural supports and roof of the Bay Shop and the systems and equipment for providing heating and air conditioning and supplying utilities to the Bay Shop, and
- (c) at all times during the Term keep or cause to be kept in good repair, order and condition (and replace and restore from time to time, as required) the structural components and the waterproofing membrane of the roof of the Bay Department Store and all roof covering and other membranes that are required to enable the said roof to be used in part as Parking Facilities for the Shopping Centre (as hereinbefore provided), including the parapet constructed around the perimeter of the roof of the Bay Department Store for the purpose of screening vehicles parked thereupon from view at grade level, 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 from the Tenant (which notice shall specify such default) shall fail to proceed with reasonable expedition and in accordance with the provisions of clause 24 01(1) to comply with its obligations under this clause 12 02 and such failure shall materially and adversely affect the business conducted either in the Leased Premises or portions of the Shopping Centre in reasonable proximity to some part of the Leased Premises or cause material adverse interference with access thereto or otherwise materially adversely affect the Tenant, 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 and in a reasonable manner to remedy such failure on the part of the Landlord and any reasonable costs incurred by the Tenant in so doing shall be immediately repaid by the Landlord to the Tenant on demand

**12 03 *Rebuilding of the Bay Shop*** In the event that the Bay Shop shall be damaged or destroyed and the Tenant does not elect to terminate its rights and obligations with respect thereto under clause 16 00, the Landlord and the Tenant shall perform Landlord's Work and Tenant's Work respectively as specifically set forth in Schedule F, as expeditiously as possible. If a substantial portion of the balance of the Shopping Centre shall also be damaged, and the Landlord establishes a joint opening date for the Shopping Centre as rebuilt, the Tenant will use all reasonable efforts to open for business in the Bay Shop on such joint opening date

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### ARTICLE 13

#### COMPLIANCE WITH STATUTES AND BY-LAWS

**13 00 *Tenant's Compliance*** Except for the repair obligations of the Landlord under clause 12 02, the Tenant shall comply with all legal requirements (including statutes, laws, by-laws, regulations, ordinances and orders of every governmental authority having jurisdiction including those binding on either or both of a tenant or owner of premises) from time to time affecting the condition, equipment, maintenance, use or occupation of the Bay Department Store, the Bay Shop 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 Lands 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 the greater of thirty (30) days or such other period prescribed by law 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 on demand

**13 01 *Landlord's Compliance*** 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 including those binding on either or both of a tenant or owner of premises) affecting the condition, equipment, maintenance, use or occupation of the Shopping Centre Lands (including any repair obligations arising under clause 12 02 but otherwise 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 Lands 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 the greater of thirty (30) days or such other period prescribed by law 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 on demand

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## ARTICLE 14

### LEASES TO OTHER TENANTS

#### 14 00 *Merchandising Plan*

##### Subject to clause 14 05 hereof

- (1) The Landlord represents that the Merchandising Plan, which has been approved in writing by the Tenant, has also been approved by all other parties having a right of approval thereto and that all leases of space in the Shopping Centre which have been made up to and are in existence at the date of this Lease are consistent therewith. In making or permitting to be made 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, including all kiosks in the Mall, the Landlord agrees that except as set out herein, without the written consent of the Tenant (such consent not to be unreasonably withheld except as otherwise provided herein), no lease of any space or location in the Shopping Centre shown on the Merchandising Plan shall be made other than for a type and class of use which is the same as or in substantial conformity with the type and class of use designated for such space or location on the Merchandising Plan. In the case of such space or location on the Merchandising Plan which is (i) within 100 feet of any Mall entrance to the Bay Department Store on each level thereof which has more than one entrance from the Mall and (ii) within 125 feet of any Mall entrance to the Bay Department Store on each level thereof which has only one entrance from the Mall (hereinafter collectively called the "Control Areas") without the consent of the Tenant, which consent may be withheld in the Tenant's sole discretion, no lease shall be made unless the use, type, class, location and design of the premises and identity of the tenant shall have been previously approved by the Tenant for such space or location. Notwithstanding the foregoing, in instances where the Tenant may, in its sole discretion, withhold its consent it agrees that it will consult where necessary in order that any space or location then vacant or about to become vacant will be leased as quickly as possible in accordance with good leasing practice for major retail shopping complexes.
- (2) Upon any expansion of the Shopping Centre occurring as permitted by this Bay Lease, the Landlord and the Tenant shall agree upon amendments to the Merchandising Plan extending it to apply to all newly constructed space intended for occupancy by retail and service tenants, and such amendments shall be made in accordance with good leasing practice for major retail shopping complexes 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.
- (3) Notwithstanding anything to the contrary contained in this Article 14, the Landlord may make occasional changes to the Merchandising Plan without the Tenant's approval provided such changes are not in respect of premises within the Control Areas, do not represent a major change in the merchandising balance of the Shopping Centre, will not materially change pedestrian flow and will not detrimentally affect the Tenant's merchandising environment.
- (4) The Landlord shall ensure that the Shopping Centre is leased in accordance with good leasing practice for first-class shopping centres, shall ensure that tenants are secured complying with the foregoing requirement and will inform the Tenant (and consult with the Tenant where advisable and where expressly required) regularly in the course of such leasing and in the course of its negotiations with specific tenants.
- (5) Subject to the provisions of clause 14 00(3), if the Landlord (acting reasonably) is of the opinion that the space should be leased for a type or class of use which is not the

same as or in substantial conformity with the use designated for such location or space on the Merchandising Plan the Landlord may apply in writing to the Tenant requesting the Tenant's consent to a change in the Merchandising Plan as to the type or class of use for which such location or space is to be leased. Such application shall be accompanied by all information necessary to enable the application to be fairly considered, including particulars of the proposed type and class of use and with respect to premises within the Control Areas such other information as the Tenant may require, acting reasonably, and shall state the Landlord's reason for requesting the change. The Tenant shall promptly consider every such application and shall within fifteen (15) days of its receipt of such application either consent thereto in writing or decline to give its consent, and where it declines to consent for space not within the Control Areas, shall state its reasons in writing for declining.

- (6) Except for space within the Control Areas, the Tenant's consent to any application or approval of any matter under this clause shall not be unreasonably withheld and in particular shall not be withheld on the grounds that any type or class of use is one competitive with the activities of the Tenant so long as such use is not one which is prohibited by any provision of this Bay Lease and is in accordance with good leasing practice in first-class shopping centres but nevertheless the Tenant's consent or approval may, in its sole discretion, be withheld to anyone or all of the type or class of use and identity of tenant if the space or location in question is within the Control Areas.

**14 01 *Required Lease Provisions and Enforcement.*** Subject to clause 14 05 hereof, the Landlord covenants that in every lease to any tenant of Retail Premises in the Shopping Centre the location or space leased shall be required to be used only for a type and class of use which is the same as or in substantial conformity with the use designated for such location or space on the Merchandising Plan (as from time to time amended pursuant to clause 14 00(3)) and for no other use whatsoever. The Landlord will take all reasonable action necessary to enforce such compliance including appropriate and prompt action to restrain or cure any breach thereof.

**14 02 *Assigning and Subletting by Other Tenants.*** Subject to clause 14 05 hereof and further subject to clause 14 00(3) and to the extent that the Landlord is able to impose upon and enforce against, or cause to be imposed upon and enforced against, tenants of Retail Premises in the Shopping Centre covenants in their leases implementing the provisions of this clause 14 02, the Landlord shall not permit any tenant of Retail Premises in the Shopping Centre (other than the Tenant, whose rights and obligations are governed by this Bay Lease, and other than tenants of other department stores, whose respective rights are governed by their respective leases and to which clause 14 03 applies), 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, if to do any such act or thing would result in any substantial change in the type 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 consent of the Tenant in any circumstance where the type or class of use and (where relevant) the identity of the tenant or occupant is a matter in respect of which the Tenant has an express right of approval pursuant to clause 14 00, and where such approval of the Tenant is required it shall be applied for in accordance with the provisions of clause 14 00, and the provisions of clause 14 00 as to the circumstances in which the Tenant may give or withhold its consent shall apply thereto. The Tenant shall respond to the Landlord's request within the earlier of ten (10) business days from the date of such request or the time specified in such request by the Landlord as being set out in the relevant tenant lease.

**14 03 *Department Stores.*** Subject to clause 14 05 hereof, the Landlord will take all reasonable action necessary to enforce or cause to be enforced any provisions of every lease (other than this Bay Lease) to a tenant of a department store (which shall mean and include any department store in the Shopping Centre in excess of 50,000 square feet of Gross Leasable Area carrying varied lines of merchandise, but shall not include a food

supermarket) requiring such tenant to carry on therein the business of a department store, and not to assign or sublet without consent except where, by the terms of such lease, such consent is not required

**14 04 Prohibited Uses** Subject to any provisions of law limiting the validity or enforceability of covenants in leases restricting or regulating use, the Landlord will not permit any of the following activities to be carried on in any part of the Shopping Centre where such activities constitute the principal business and in the relevant leased premises where such activity is being conducted

- (1) any business involving the sale of second-hand goods (except the sale of antiques, or the incidental sale of trade-in merchandise by a tenant whose principal business is the sale of new merchandise but where it is customary in the usual conduct of such business to accept trade-ins in connection with the sale of new merchandise and such traded-in merchandise was actually traded-in at the premises of such tenant in the Shopping Centre in connection with the purchase of new merchandise from such premises), war surplus articles, bankruptcy stock, fireworks or firecrackers, pawnshop, insurance salvage stock or merchandise (including fire sale stock) damaged by fire or purported to be damaged by a fire unless damaged by fire on the respective premises,
- (2) any merchandising in a manner presently known as a "flea-market" or "farmers' market", or any auction (except an antique or fine art auction conducted in the normal course of business in premises in the Shopping Centre leased in compliance with clause 14 00 to a dealer in antiques or fine art),
- (3) any business which by reason of noises, odours or vibrations emanating or likely (having regard to the nature of the business) to emanate therefrom interferes or is likely to interfere unreasonably with the use and enjoyment of Common Facilities or other premises in the Shopping Centre or tend to lower the character of the Shopping Centre,
- (4) unless consented to by the Landlord and the Tenant (which consent may be arbitrarily withheld) during the Term of this Bay Lease, any department store other than those department store that began operating in the Shopping Centre before the Opening Date

**14 05** Notwithstanding the foregoing, the parties hereto hereby acknowledge and agree that if the Tenant is in default of its covenant under subclause 6 00(1) hereof to continuously use and operate the Bay Department Store as a Major Department Store, then for so long as such default by the Tenant continues the Landlord shall cease to be obligated to observe the covenants and conditions set out in clauses 14 00, 14 01, 14 02 and 14 03 of this Article 14 of the Lease

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## ARTICLE 15

### **MERCHANTS' ASSOCIATION**

**15 00 Merchants' Association** The Landlord may cause a Merchants' Association of the Shopping Centre to be formed, the objects of which shall be 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. If formed, the Merchants' Association shall be constituted so as to entitle each member to a number of votes which shall be fair and equitable and its constitution, including its by-laws and permanent rules and regulations, shall be fair, reasonable and not discriminatory. The Landlord shall utilize all reasonable efforts to 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 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

**15 01 *Tenant's Membership in Merchants' Association*** The Tenant will (as soon as the Merchants' Association is formed and incorporated) join and thereafter maintain membership in the Merchants' Association of the Shopping Centre, abide by its constitution including its by-laws and permanent rules and regulations as approved by the Tenant and by its other reasonable rules and regulations, and contribute to its budget in the first year following the Opening Date an amount, per square foot of Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until the Tenant's rights in respect thereof have been terminated in accordance with the provisions of Article 16) the Bay Shop, equivalent to ten cents (\$0 10¢), which amount shall be increased each year thereafter by a percentage equal to one-half of the percentage increase during the previous year in the contributions per square foot of Gross Leasable Area payable by tenants or occupants of Retail Premises (excluding any Major Department Store, food supermarket and the premises occupied by any other anchor tenants) to the Merchants' Association, to a maximum aggregate contribution in any one year on the part of the Tenant of thirty cents (30¢) per square foot of the Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until the Tenant's rights in respect thereof have been terminated in accordance with the provisions of Article 16) the Bay Shop, but provided

- (i) the Merchants' Association shall be constituted as contemplated by clause 15 00 and the Tenant shall have a permanent seat on the directorate or steering committee thereof,
- (ii) the Landlord, the occupants of all other department stores, if any, and at least 90% (by number) of the other tenants of Retail Premises of the Shopping Centre not prevented from belonging thereto by law or established and generally recognized policy from belonging thereto shall be obligated to join and maintain membership in the Merchants' Association, abide by its constitution, by-laws and rules and regulations and contribute to its annual budget on an equitable basis, 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 an annual contribution from it, per square foot of Gross Leasable Area of the Bay Department Store and (from the Bay Shop Opening Date until the Tenant's rights in respect thereof have been terminated in accordance with the provisions of Article 16) the Bay Shop in excess of ten cents (\$0 10¢) (subject nevertheless to the increase, to a maximum contribution of thirty cents (30¢), as provided for in this clause 15 01)

**15 02 *Landlord's Support of Merchants' Association*** The Landlord shall actively support the Merchants' Association, maintain membership therein, and shall contribute to it an amount not less than 25% of its total annual budget (provided that in computing such contributions any amount paid to the Merchants' Association by the Landlord arising out of revenues derived from Common Facilities shall be excluded)

**15 03 *Promotion Fund*** If a Merchants' Association is not formed or ceases to exist, the Tenant shall pay to the Landlord in lieu of any Merchants' Association contribution, for the creation and maintenance of a fund (the "Promotion Fund") for print campaigns and other types of media campaigns and special events designated by the Landlord for the advertisement and promotion of the Shopping Centre and for special occasion and seasonal decorations for the Shopping Centre an annual amount equivalent to the amount which the Tenant was otherwise required to make pursuant to clause 15 01 hereof, but provided

- (i) the Landlord and at least 90% (by number) of the other tenants of Retail Premises of the Shopping Centre shall contribute annually to the Promotion Fund and
- (ii) the Promotion Fund shall be used for the promotion of the Shopping Centre and the common interest of tenants of the Shopping Centre in accordance with good shopping centre practice for first-class shopping centres

The Landlord shall contribute to the Promotion Fund an amount not less than twenty-five percent (25%) of the Promotion Fund's annual budget (provided that in computing such contribution any amount paid to the Promotion Fund by the Landlord arising out of revenues derived from Common Facilities shall be excluded)

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## ARTICLE 16

### ***BAY SHOP, BAY OUTDOOR SELLING AREA AND TENANT LICENSED PARKING AREA***

**16 00 Bay Shop** The following additional provisions shall apply to the Bay Shop, and the Tenant shall comply therewith in the exercise of the rights granted to it as lessee pursuant to clause 2 02, and in addition to compliance with the other provisions of this Bay Lease applicable to the Bay Shop including without limitation the provisions as to the use thereof in subclause 6 00(3), as to taxes thereon in clause 9 00, as to the repair and rebuilding in clause 12 00(2) and as to contributions to Common Facilities Operating Cost in clause 10 00

- (1) The Landlord shall at all times while the Bay Shop is open for business make available systems for the supply of heating and air-conditioning, the utilities consumed thereby and shall repair, replace and maintain such systems in accordance with the standards therefor applicable to the Mall subject only to interruptions caused by the breakdown of systems and equipment for heating and air conditioning provided the Landlord repairs the same diligently in accordance with the provisions of clause 12 02,
- (2) Rent for the Bay Shop shall commence on the Bay Shop Opening Date and continue until the sooner of the termination of this Bay Lease or the surrender by the Tenant (in accordance with the provisions of this Article 16) of its lease of and rights in respect of the Bay Shop, and the amount of such rent shall be the amount specified in Clause 4 01, and shall be payable at the same times and in the same manner and be subject to the same adjustments as are provided in clauses 4 01 and 4 02,
- (3) The Tenant shall at all times operate and regulate those portions of the heating, ventilating and air-conditioning equipment within and exclusively serving the Bay Shop in such a manner as to maintain reasonable conditions of temperature and humidity in the Bay Shop and so that no direct or indirect appropriation of the heating, ventilating and air-conditioning from the Mall occurs and to comply with all of the Landlord's reasonable rules and regulations relating to the operation of such equipment. The Tenant shall pay monthly, in advance such charges for heating, ventilating and air-conditioning as are set out in Schedule E
- (4) The Tenant's lease of, and the respective rights and obligations of the Landlord and Tenant in respect of, the Bay Shop may be terminated (without affecting any other rights of the parties under this Bay Lease in respect of the Bay Department Store, Tenant Licensed Parking Area and the Bay Outdoor Selling Area) by the Tenant at any time during the Term by no less than ninety (90) days prior notice to the Landlord. Upon any such termination occurring, the Tenant shall promptly vacate

and surrender to the Landlord the Bay Shop in the condition such is required to be maintained during the Term and shall remove at its own expense all tenant's trade fixtures and improvements installed by the Tenant in the Bay Shop and repair any damage occasioned by such installation and removal,

- (5) the Tenant may from time to time alter, reconstruct, remove and replace the fixtures and improvements in the Bay Shop, provided that such fixtures and improvements shall always be suitable for their intended use, of good quality, attractive appearance and compatible with the design and architecture of the Mall,
- (6) the Tenant shall have the right to remain in the Food Court as designated and constituted from time to time by the Landlord. The Landlord shall at its expense relocate the Bay Shop to comparable premises having regard to area, access and visibility acceptable to the Tenant (acting reasonably) if the Landlord relocates the Food Court,
- (7) if and for so long as the Bay Shop is fully enclosed the boundaries thereof extend to
  - (a) (i) the exterior face of all exterior walls, doors and windows,
  - (ii) the exterior face of all interior walls, doors and windows separating the Bay Shop from the Common Facilities, and
  - (iii) to the centre line of all interior walls separating the Bay Shop from adjoining leasable areas, and
  - (b) from the top surface of the structural subfloor to the bottom surface of the structural ceiling

If the Bay Shop shall be relocated with the result that such Bay Shop shall have no ceiling abutting the demising walls but rather shall be open to the ceiling of the Shopping Centre building, the boundaries of the Bay Shop shall extend from the surface of the structural subfloor to the height of the demising walls,

- (8) The Landlord and its agents shall have the right to enter any part of the Bay Shop at all reasonable times, upon reasonable prior notice to the Tenant, and accompanied by a representative of the Tenant if the Tenant so desires, to make repairs, alterations, changes, adjustments or improvements to the Bay Shop, the Common Facilities or to other rentable premises. The Landlord shall, in the exercise of its rights under this clause 16.00(8), use every reasonable effort to minimize interference with the Tenant's use and enjoyment of the Bay Shop and with the business activity conducted therein. If the Tenant is not present to open and permit an entry into any part of the Bay Shop at any time when such entry is, in the Landlord's opinion, acting reasonably, necessary to prevent or deal with an emergency, the Landlord may forcibly enter same without rendering the Landlord or its agent liable for such entry,
- (9) The parties hereto hereby acknowledge that prior to the Bay Shop Opening Date the Landlord and the Tenant made certain improvements to and performed certain work in and on the Bay Shop, the particulars of which improvements and work are more particularly set out under the headings "Landlord's Work" and "Tenant's Work" respectively on the list attached hereto as Schedule "F"

**16.01 Bay Outdoor Selling Area.** The following additional provisions shall apply to the Bay Outdoor Selling Area and the Tenant shall comply therewith in the exercise of the rights granted to it pursuant to clause 2.01, and in addition to compliance with the other provisions of this Bay Lease applicable to the Bay Outdoor Selling Area including but not restricted to the provision as to the use thereof in subclause 6.00(2), 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 composed of the area outlined in PURPLE on the Site Plan, comprising approximately 8 000 square feet
- (2) The Tenant may, at its expense and subject to approvals of plans and specifications therefor by the Landlord (such approval not to be unreasonably withheld), construct and from time to time alter, reconstruct, remove and replace structures including fences, awnings, kiosks and lighting fixtures and may install utilities on the Bay Outdoor Selling Area, provided such structures are affixed so as to cause a minimum of damage to any paving thereon, and do not constitute a permanent enclosure and further provided such are not permanently heated or air-conditioned and upon any cessation or abandonment of the Tenant's use of the Bay Outdoor Selling Area which exceeds two years in duration the Tenant shall remove all such structures and shall repair any damage occasioned by such installation or removal in order that the area of the Bay Outdoor Selling Area is in a comparable state of repair at the time of such removal to the remainder of the Parking Facilities located at grade,
- (3) The Tenant may at any time and from time to time cease or abandon its use of the Bay Outdoor Selling Area temporarily, without prejudice to the Tenant's right at any later time and from time to time to recommence and continue such use,
- (4) The Tenant shall be entitled to the use of the Bay Outdoor Selling Area, as contemplated by this clause 16 01, for the entire Term of this Bay Lease, rent free, but subject to all provisions of this Bay Lease expressed to be applicable thereto, including, without limitation the payment of Real Property Taxes and the remaining provisions of this clause 16 01,
- (5) The Tenant's right to the Bay Outdoor Selling Area shall be subject to the municipal zoning by-laws permitting such use, provided that where any governmental approvals are required in order for the Tenant to operate the Bay Outdoor Selling Area for the purposes intended, the Tenant shall prior to such operation give the Landlord notice of its desire to use same and the Landlord shall, with the assistance of the Tenant, use its reasonable best efforts to obtain all such governmental approvals

**16 02 Tenant Licensed Parking Areas** The Tenant Licensed Parking Area shall be located in a remote part of the Shopping Centre as may be agreed to by the parties hereto, each acting reasonably. Should the parties be unable to agree on the location, either party shall have the right to have the location determined by arbitration pursuant to the provisions of clause 22 01

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## ARTICLE 17

### **MALL KIOSKS AND OUTDOOR SELLING AREAS**

**17 00 Mall Kiosks** The Landlord may from time to time place or permit kiosks in the Mall, subject to the following provisions but not otherwise

- (1) In accordance with the provisions of clause 14 00(1) such kiosks shall not be placed within the Control Areas (as defined in clause 14 00(1) without the consent of the Tenant (which may be withheld in the Tenant's sole discretion), 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 (i) those indicated on the Merchandising Plan and (ii) a reasonable number in addition thereto provided the Tenant shall have approved, acting reasonably, the design (which design shall be suitable for its permitted use and compatible with the architecture of the Mall) location and number; and
- (3) The Landlord shall cause such kiosks to be used only for retail and service purposes compatible with a first-class shopping centre

The expression "kiosk", when used in this Lease applies to any fixture or location for the carrying on of any retail or other commercial activity in the Mall, but not to temporary general shopping centre promotions or temporary exhibits which are authorized under subclause 7.01(4)

**17.01 Outdoor Selling Areas** The Landlord may from time to time permit each tenant of any other department store having a Gross Leasable Area of not less than 50,000 square feet to operate an outdoor selling area in respect of its department store. Each such outdoor selling area should be located in the Parking Facilities at a site which is adjacent to or in the vicinity of the store in the Shopping Centre occupied by the tenant thereof (although in no event may such be located so as to impair the visibility of or access to the Bay Department Store), shall not exceed 8,000 square feet and shall be used only as an outdoor selling area, to be operated by such tenant for the purpose of selling any type or types of merchandise normally sold by department stores or outdoor selling areas associated with department stores and appropriate for outdoor sale, including without limitation, garden supplies and recreational and sports equipment

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## ARTICLE 18

### **PLANNING ACT**

**18.00 Planning Act.** It is a condition of this Bay Lease that it is to be effective only if the provisions of Section 50 of the Planning Act (Ontario), as amended from time to time, or any legislation in substitution therefor are complied with. The Landlord shall apply for and utilize its endeavours (with the assistance of the Tenant to the extent required) to obtain the requisite consent of the appropriate authority to this Bay Lease (including any necessary appeals required if consent is not given on terms satisfactory to the Tenant, acting reasonably). Upon the obtaining of such consent the said condition shall have been fully complied with and this Bay Lease shall be fully effective. If consent to this Lease is unable to be obtained in accordance with the foregoing and such continues to be required, notwithstanding anything contained in this Bay Lease the Term shall be deemed to be for a period of twenty-one (21) years less one (1) day. Either the Landlord or the Tenant shall, on demand, co-operate in making such applications or representations to the appropriate authority or authorities and shall do all such other acts and things as may appear necessary or desirable from time to time to make effective the provisions of this Bay Lease which are dependent upon compliance with section 50 of the Planning Act (Ontario), as amended from time to time, or any legislation in substitution therefor.

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## ARTICLE 19

### ALTERATION OF BAY DEPARTMENT STORE

**19 00 Alteration of Bay Department Store** The Tenant shall have the right at any time and from time to time to alter or reconstruct (but not to expand) the Bay Department Store, subject to the following provisions

- (1) The Bay Department Store shall be at all times architecturally compatible with the Shopping Centre and shall be integrated with the Mall in the manner in which it was so integrated at the time of its original construction,
- (2) In the case of (i) any substantial alteration or reconstruction of the Bay Department Store, or (ii) in the case of any structural alteration exceeding \$100,000 (such figure to be adjusted in accordance with any increase or decrease in the CPI over the CPI as at August of 1985), the plans and specifications therefor shall be submitted to the Landlord for its approval within a reasonable period prior to commencement of any work (such period shall not be less than 90 days), but such approval shall not be unreasonably withheld or delayed provided the requirements of this clause are otherwise complied with,
- (3) Any substantial alteration and any reconstruction of the Bay Department Store as hereinbefore contemplated 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 or reconstruction the Tenant will perform all work involved with reasonable expedition (but subject to Unavoidable Delay) and in a good and workmanlike manner and will comply with all applicable municipal by-laws and other legal requirements pertaining to such work. The Landlord shall cooperate with the Tenant and provide all reasonable assistance required by the Tenant in obtaining approvals from governmental authorities required in connection with any substantial alteration or reconstruction of the Bay Department Store

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## ARTICLE 20

### EXPANSION AND ALTERATION OF SHOPPING CENTRE

**20 00 Expansion and Alteration of Shopping Centre** 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 on the Shopping Centre Lands including the Common Facilities but excluding the Leased Premises as follows

- (1) Other than the Sears Department Store and the Bay Department Store, no department store shall be constructed in the Shopping Centre without the consent of the Tenant,
- (2) The premises in the Shopping Centre intended for occupancy by tenants for Retail Premises (other than department stores if applicable and food supermarkets) may from time to time be altered, reconstructed or expanded including construction of additional Retail Premises, subject as follows
  - (i) the aggregate of Retail 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 which consent is to be given or withheld in accordance with the provisions of clause 14 00 but in no event shall the aggregate of the Gross Leasable Area of Retail Premises

existing as at the Opening Date be reduced by more than 10,000 square feet, and

- (ii) any expansion of Retail Premises and any additional Retail Premises resulting in an increase in the Gross Leasable Area of the Shopping Centre as a whole (other than the Leased Premises) shall be designed and located in accordance with plans which have been approved by the Tenant (such 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 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 shopping centre and in accordance with the Merchandising Plan and the provisions of Article 14,
- (3) In addition to the Retail Premises, the Landlord may, subject to the Tenant's prior written approval of the proposed use (which approval will not be unreasonably withheld) and subject to compliance with all other provisions of this clause 20 00 and with the criteria set out in clause 20 01, construct or permit to be constructed on the Shopping Centre Lands buildings for uses compatible with a shopping centre use which shall in any event exclude industrial uses, retail uses which involve outdoor storage, outdoor selling or outdoor display of merchandise, manufacturing and warehousing (except for outdoor selling areas associated with Major Department Stores and the Bay Department Store as permitted by clause 17 01) In particular, the Tenant hereby acknowledges and agrees that the Landlord shall have the right to expand the existing Shopping Centre building by the addition of an office building or tower on the northeastern corner thereof within the area shown outlined in BLUE on the plan attached hereto as Schedule "H"
- (4) 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 shopping centre and in compliance with all the provisions of this Bay Lease, including as to the number of parking spaces to be available from time to time as provided in subclause 7 04(c),
  - (ii) the Mall as it existed on the Opening Date shall not be substantially altered without the consent of the Tenant (not to be unreasonably withheld), but may be extended subject to the criteria set out in clause 20 01, and
  - (iii) 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 Premises in the Shopping Centre including the Leased Premises, and shall have been approved by the Tenant (such approval not to be unreasonably withheld)

**20 01 Additional Conditions on Expansion and Alterations** 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) the Landlord shall use its best efforts to ensure that all new construction on the Shopping Centre Lands including extensions of the Mall and Retail Premises associated therewith alterations or additions to Parking Facilities and all other new construction including the expansion of any existing premises shall be such as to maintain a fair balance among 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) subject only to the permitted addition of an office building or tower under subclause 20 00(3) of this Bay Lease, no building or improvement of any nature other than Parking Facilities consisting of parking spaces at grade level and landscaped areas and walkways shall (without the consent of the Tenant, which may be arbitrarily withheld) at any time be constructed within the area outlined in YELLOW on the Site Plan other than construction of improvements by the Tenant to the extent specifically permitted hereunder,
- (4) outline plans and specifications for any expansion or substantial alteration which the Landlord is entitled to make or permit 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),
- (5) any substantial alteration and any reconstruction or expansion permitted hereunder shall be performed by the Landlord or other party performing the same 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 Shopping Centre and in compliance with all applicable municipal by-laws and other governmental requirements pertaining thereto

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## ARTICLE 21

### **ASSIGNMENTS, TRANSFERS AND MORTGAGES OF INTEREST BY LANDLORD AND TENANT**

#### **21 00**

- (A) ***Restrictions on Assignment, Subletting and Mortgaging by Tenant.*** The Tenant may at any time and from time to time 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 in each of the following circumstances (but not otherwise)
  - (1) The Tenant may assign this Bay Lease or sublet the whole of the Leased Premises to, and may in any event permit the Leased Premises to be used and occupied in whole by any corporation which is an Affiliate of the Tenant but only on condition that such corporation shall remain an Affiliate of the Tenant or that upon ceasing to be an Affiliate of the Tenant 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 corporation with which the Tenant amalgamates or to a parent corporation on a winding up or other dissolution of the Tenant, or
    - (ii) to any corporation to which it sells all or substantially all of its retail department store business and assets in Ontario, provided that any such

purchaser carries on a department store business with substantially similar merchandising, service and operating practices to that carried on by the Tenant prior to such purchase

- (3) The Tenant may sublease or grant concessions or licenses to use and occupy any part or parts of the Leased Premises (other than the Bay Shop which shall be subject to compliance with subclause 21 00(A)(8) hereof) for any use permitted by law provided that
  - (i) the Bay Department Store and the Bay Outdoor Selling Area continue to be operated and retain the appearance to the public of being operated, as a single integrated department store (although the trade name of any subtenant, concessionaire, licensee or other occupant may be displayed within the Bay Department Store), and
  - (ii) any such subtenant, concessionaire, licensee or other occupant within the Bay Department Store is subject to the day to day operational control of the Tenant in matters related to the general standards of the business carried on so as to enable the Tenant to ensure that such standards shall conform to the general business standards of the Tenant itself, and
  - (iii) the Tenant is operating a majority of its department stores in the Province of Ontario on the same or similar sublease, concession or license basis (although not necessarily for the same products or with the same sublessees, concessionaires or licensees or number thereof), and
  - (iv) the Gross Leasable Area of the Bay Department Store sublet, concessioned or licensed pursuant to this subclause 21 00(A)(3) shall not at any one time exceed in the aggregate 35% of the total Gross Leasable Area of the Bay Department Store and no more than 25% of the total Gross Leasable Area of the Bay Department Store shall be sublet, concessioned or licensed to retailers of merchandise commonly known in the Canadian department store industry as "soft goods", and
  - (v) the Bay Outdoor Selling Area shall be operated under the same name under which the Tenant is operating the Bay Department Store,
- (4) The Tenant may mortgage by way of assignment its interest in this Bay Lease or mortgage by way of sublease the whole of the Leased Premises to a Mortgagee which is a recognized financial institution (including a bank, life insurance, trust or mortgage company and a trustee for bondholders) as security in connection with any bona fide general corporate borrowing by the Tenant or an Affiliate provided that such Mortgagee or its successors and assigns in interest shall execute and deliver to the Landlord an undertaking to comply with all of the provisions of this Bay Lease, provided such compliance shall only be required by such Mortgagee if and so long as it is enforcing its security or is in possession of the Leased Premises,
- (5) The Tenant may assign this Bay Lease at any time after March 12, 2021 upon twelve (12) months' prior written notice to the Landlord provided that any such assignee is then carrying on a department store business with substantially similar merchandising, service and operating practices to that carried on by the Tenant prior to such assignment, and such assignee is then in a position to borrow money (without shareholder guarantee) on a long term basis at an interest rate no less favourable than that which would then be available to the Tenant,
- (6) The Tenant may assign this Bay Lease or sublet the whole of the Leased Premises to a Permitted Transferee provided that any such assignee is then in a position to borrow money (without shareholder guarantee) on a long term basis at an interest rate no less favourable than that which would then be available to the Tenant,

- (7) The Tenant may assign this Bay Lease or sublet the whole or any part of the Leased Premises free of any restriction as to use if the Landlord in breach of its covenant, has ceased to operate the Shopping Centre as a first-class shopping centre for a period of six (6) months following notice thereof from the Tenant (the "Tenant Notice"), provided that the Landlord shall have the right, within three (3) months following the Tenant Notice to give notice to the Tenant that it intends to terminate this Lease, if the Tenant does not prior to the end of the fourth month following the Tenant Notice, by notice to the Landlord, withdraw the Tenant Notice, this Lease shall terminate at the end of the sixth (6th) month following the Tenant Notice, and the Landlord shall upon termination, pay to the Tenant the undepreciated cost (as shown on the books of the Tenant) of the Tenant's fixtures and improvements which have been installed in the Leased Premises (which fixtures and improvements shall then become the property of the Landlord), and any costs incurred by the Tenant in terminating this Lease and vacating the Leased Premises, and
- (8) The Tenant may sublease or grant concessions or licenses to use and occupy any part or parts of the Bay Shop, subject only to the prior written consent of the Landlord, which consent the Landlord agrees will not be unreasonably withheld, and
- (9) The Tenant may assign this Bay Lease or sublet the whole (but not less than the whole) of the Leased Premises in any other circumstances not permitted by subclauses 21.00(A)(1) to (8) inclusive (subject, of course, to the Landlord's right of termination hereinafter provided in this subclause (9), provided that the proposed assignee or sublessee is
- (i) then an established and competent operator of not less than ten (10) typical suburban department stores operating in the Province of Ontario, or twenty (20) typical suburban department stores operating in Canada and/or the United States, in each case with not less than 500,000 square feet of Gross Building Area in the Municipality of Metropolitan Toronto (or has binding commitments in respect of any of the foregoing requirements, and pursuant to which commitments completed and operating department stores will ensue within two (2) years from the date of the proposed assignment or sublease),
  - (ii) then carrying on its department store business (or has or is bound by commitments therefor, as aforesaid) with substantially similar merchandising, service and operating practices to those permitted hereunder to be carried on by the Tenant immediately prior to such assignment or subletting, and
  - (iii) then in a position to borrow money (without shareholder guarantee) on a long-term basis at an interest rate no less favourable than that which would then be available to the Tenant

No less than ninety (90) days prior to the proposed assignment or subletting pursuant to this subclause (9), the Tenant shall give notice thereof to the Landlord, which notice shall be accompanied by a full and complete disclosure of the terms of the proposed assignment or subletting as it relates to the Leased Premises, within ninety (90) days of receipt of such Tenant notice, the Landlord may elect, in its sole discretion, to

- (a) consent to the assignment or subletting on the terms disclosed to the Landlord in the notice from the Tenant, or
- (b) terminate this Bay Lease as at the date of the proposed assignment or subletting, or

- (c) enter into a new lease with the proposed assignee or subtenant on the same terms and conditions as the terms and conditions contained in the proposed assignment or sublease (in which event, from and after the effective date of such new lease the Tenant shall be released from its obligations under this Bay Lease save and except for the radius restrictive covenant requirement hereinafter contemplated in this subclause (9))

If the Landlord elects to either terminate this Bay Lease or enter into a new lease with the proposed assignee or sublessee, it must give notice thereof to the Tenant within ninety (90) days of the Tenant notice or it shall be deemed to have consented to the aforesaid assignment or subletting by the Tenant, if the Landlord so elects to terminate or enter into a new lease within such period the Tenant may nevertheless withdraw its notice to the Landlord of such proposed assignment or subletting under this subclause (9), provided notice of such withdrawal is given within twenty (20) days of the Landlord's notice to the Tenant to terminate this Bay Lease or enter into a new lease with the proposed assignee or subtenant. If an assignment or subletting or a new lease under this subclause 21 00(A)(9) is completed, the Tenant agrees that neither it nor any of its Affiliates will, except as hereinafter permitted under this subclause (9), operate or permit to be operated within five (5) miles of the Shopping Centre any department store of any size or category under the same trade name as is then used by the Tenant under this Bay Lease for a period of fifteen (15) years following such assignment or subletting or new lease. The foregoing restriction shall not apply to any such department store locations of the Tenant or any of its Affiliates where initial operation of any such department store commenced more than five (5) years prior to the effective date of such assignment, subletting or new lease contemplated under this subclause (9). The Tenant agrees that it shall not be permitted to assign or sublet pursuant to this subclause (9) in excess of one (1) time during the Term of this Bay Lease.

- (B) **Landlord Restrictive Covenants** The Landlord will not, unless the Tenant consents, enter into any restrictive covenant with any other tenant of premises on the Shopping Centre Lands which has the effect of restricting or of causing the Landlord to restrict the use made of the Bay Department Store, and will whenever requested advise the Tenant in writing of the nature, extent and wording of all restrictive covenants at any time in effect which might have application to the Bay Department Store or the use thereof

- (C) **No Release.** No assignment or subletting by the Tenant under this Article 21 or otherwise shall have the effect of releasing any of the Tenant's obligations under this Bay Lease, except in the following circumstances where the assignee has assumed all the obligations of the Tenant hereunder (in which case the Landlord shall, if requested, grant such a release other than in respect of then existing defaults)

- (i) an assignment of this Bay Lease to a parent corporation on a winding up or other dissolution of the assignor,
- (ii) an assignment of this Bay Lease to a corporation to which the Tenant and any Affiliate operating under the same trade name as the Tenant sells all or substantially all of its similar department store assets and business in the Province of Ontario,
- (iii) an assignment of this Bay Lease to a Permitted Transferee who is then in a position to borrow money (without shareholder guarantee) on a long-term basis, at an interest rate no less favourable than that which would then be available to the Tenant, and
- (iv) an assignment of this Bay Lease to a national major department store operator such as one of those presently carrying on business under the name "Eaton's", "Sears", "the Bay" or "Hudson's Bay Company" who is



then in a position to borrow money (without shareholder guarantee) on a long-term basis, at an interest rate no less favourable than that which would then be available to the Tenant

- (D) **Direct Agreement.** In the case of any assignment made under this clause 21 00 the Tenant shall cause the assignee to enter into a written agreement with the Landlord whereby such assignee agrees to be bound by, to perform or to assume (as the case may be) all of the covenants and obligations of the Tenant under this Bay Lease. Following any permitted assignment of this Bay Lease for all purposes under this Bay Lease, the assignee shall be deemed to be the Tenant hereunder (but this shall not imply any release of the assignor unless otherwise contemplated herein)
- (E) **Furnishing of Information.** The Tenant shall furnish the Landlord with such reasonable information in connection with the financial standing of the proposed assignee or subtenant as shall be reasonably necessary to enable the Landlord to determine whether the conditions of this clause 21 00 have been met. Within 90 days after receiving notice of any proposed assignment or sublease by the Tenant hereunder, if the Landlord's consent is required, the Landlord shall advise the Tenant as to whether or not it will consent thereto and in the event the Landlord will not consent, the Landlord shall advise the Tenant of its reasons for not consenting.
- (F) **Trade Name.** Where an assignment of this Lease or subletting is effected pursuant to the provisions of subclauses 21 00(2), (5), (6) or (9), any such assignee or sublessee shall carry on business in the Leased Premises in the trade name under which it carries on substantially the same business in a majority of its other locations in the Province of Ontario to the business to be carried on in the Leased Premises.
- (G) **Temporary Closure.** Where an assignment has occurred in accordance with the provisions of this clause 21 00, the assignee shall have a reasonable period of time following such assignment to make the Bay Department Store ready for the operation of the assignee's business with the public (provided that such reasonable period of time shall be subject to the Landlord's approval, such approval not to be unreasonably withheld or unduly delayed), and a closure of the Bay Department Store in order to carry out such work shall not constitute a breach by such assignee of the Tenant's obligation pursuant to subclause 6 00(1) hereof to operate the Bay Department Store.

**21 01 Transfers and Encumbrances by the Landlord.** The Landlord may assign, transfer or mortgage its interest in the Shopping Centre or any part thereof or lease the whole of its interest in the Shopping Centre (provided however that the Landlord may lease, license or sublet part of the Shopping Centre where such leases, licenses or subleases are for purposes of permitting the use of premises by licensees or sublessees or demising premises to tenants of Retail Premises or other space where it is intended that such tenants use and occupy such space for retail or commercial purposes) provided that

- (1) Every assignment, transfer, or Mortgage by the Landlord of its interest in the Shopping Centre or any part thereof and any lease by the Landlord of the Shopping Centre Lands (other than leases of specific premises therein) shall be made expressly subject to this Bay Lease and all the rights of the Tenant hereunder whether by way of the registration of a postponement, a non-disturbance agreement (in form acceptable to the Tenant), or otherwise, and
- (2) In the case of every assignment or transfer of the Shopping Centre Lands, the Assignee or transferee shall agree with the Tenant to perform all the obligations of the Landlord under this Bay Lease, such agreement to be in form satisfactory to the Tenant acting reasonably, provided that any Mortgagee of the Landlord shall be bound to so covenant only if and so long as it enforces its security in respect of the Shopping Centre Lands and shall be released from such covenant upon an assignment or transfer of the Mortgagee's interest therein to a third party assignee or

transferee who agrees with the Tenant to perform all the obligations of the Landlord under this Lease, which agreement shall be in a form satisfactory to the Tenant, acting reasonably

No assignment, transfer or Mortgage by the Landlord affecting the Leased Premises shall have the effect of releasing the obligations of the Landlord hereunder

**21 02 Performance of Mortgage Obligations by Tenant.** The Tenant shall make all payments when due and otherwise perform all its obligations under any Mortgage at any time permitted to be made by it pursuant to clause 21 00(A)(4) of this Bay Lease and its leasehold interest thereunder. The Tenant shall obtain an undertaking from any such Mortgagee to give to the Landlord a copy of any written notice (provided such copy is specifically addressed to the Landlord) from time to time of any default under such Mortgage specifying with reasonable particularity the nature and extent of the default.

**21 03 Performance of Mortgage and Other Obligations by Landlord.** The Landlord shall make all payments when due and otherwise perform all its respective obligations under any Mortgage at any time made upon the Shopping Centre Lands and its interest therein, and the Landlord shall duly perform all its obligations under all leases to tenants of portions of the Shopping Centre to the extent that non-performance detrimentally affects the character of the Shopping Centre as a first-class shopping centre or the business carried on in the Leased Premises. The Landlord shall obtain an undertaking from any such Mortgagee to give to the Tenant a copy of any written notice (provided such notice is specifically addressed to the Tenant) from time to time of any default under such Mortgage specifying with reasonable particularity the nature and extent of the default

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## ARTICLE 22

### DETERMINATION OF CERTAIN MATTERS

**22.00 Determination of Gross Building Area and Gross Leasable Area.** The Gross Building Area of the Bay Department Store, the Gross Leasable Area of the Bay Department Store and Bay Shop, and the Gross Leasable Area of any other premises in the Shopping Centre in respect to which it is material under the provisions of this Bay Lease to determine the same, shall, unless accepted and agreed by both the Landlord and the Tenant in writing, be determined at the instance of either party by a surveyor appointed by the Landlord and the Tenant acting jointly for the purpose, or if they cannot agree upon such appointment, appointed upon the application of either party by a Judge of the Ontario Court (General Division). Any Gross Building Area and/or Gross Leasable Area so agreed or determined shall be binding upon the parties but, in the case of any Gross Leasable Area and/or Gross Building Area, subject to redetermination in the manner herein provided if there shall be any expansion, alteration, reconstruction or other change affecting the same

**22 01 Determination 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, then the dispute or disagreement 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 appointment 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 in so appointing may apply to a Judge of the Ontario Court (General Division) 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 or the matter in dispute and the decision of and any costs awarded by any two of them shall be final and shall bind the parties. Subject to the provisions of this clause, the arbitration shall be conducted in accordance with the provisions (if any) of the laws of Ontario from time to time in effect pertaining to arbitration.

**22 02 Costs** In any proceedings under clause 22 00 to determine any Gross Building Area or Gross Leasable Area, each party shall pay one-half the fees and expenses of the surveyor appointed and of all other expenses of such proceedings. In any proceedings under clause 22 01 to determine any question or dispute, the fees and expenses of the arbitrators and all other expenses of such proceedings shall be borne in such manner as the arbitrators may determine.

**22 03 Judicial Remedies Preserved.** The provisions of this Article regarding the determination of certain questions or matters in dispute by arbitration 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 arbitration pursuant to clause 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 clause 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 clause 22 01, but in such case any determination which has already been made pursuant to clause 22 01 shall be binding upon the parties.

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## ARTICLE 23

### **SIGNS**

**23 00 Tenant's Signs** The Tenant shall be entitled at its own expense to erect and maintain identification signs exterior to the Bay Department Store as follows

- (i) signs upon the exterior of the Bay Department Store (including upon or over the entrances thereto and upon any exterior wall thereof), upon the Bay Outdoor Selling Area, upon the Bay Shop and upon the Tenant Licensed Parking Area, in each case similar in size and character to those generally used by the Tenant (or, in the case of a subletting, its sublessee) in connection with other similar facilities operated by it or its Affiliates in Canada and in the case of signs upon the Bay Shop and Tenant Licensed Parking Area, also consistent with the Landlord's sign policy referred to in clause 23 01 and in conformity with all municipal by-laws or other regulations or directives of governmental authorities,
- (ii) directory for the Bay Department Store in the Mall at the entrance to the Bay Department Store,

- (iii) one (1) sign located upon the exterior facade of the main Shopping Centre building facing Coventry Road and two (2) signs upon the New Parking Deck, in each case similar in size and character to those generally used by the Tenant (or, in the case of a subletting, its sublessee) in connection with similar facilities operated by it or its Affiliates in Canada and
- (iv) such other signs as it may desire to have and which the occupant of any other department store, if applicable, is permitted to have or has

The Tenant shall maintain all such signs in good repair and condition. If the Tenant shall choose to install illuminated signs, the Tenant shall pay all consumption charges for utilities in respect of such sign or signs. The Landlord hereby covenants that it shall use its best efforts to obtain such municipal approvals as may be required to permit the erection or installation of the signs described in subparagraph (iii) of this clause 23.00.

**23.01 Landlord's Sign Policy.** The Landlord shall implement, and shall also enforce or cause to be enforced, a sign policy applicable to all tenants of the Shopping Centre and governing signs which may be displayed on or in their premises and in the Shopping Centre and which shall represent good shopping centre practice, maintain the dignity and appearance of the Shopping Centre, and shall be subject to the approval of the Tenant (not to be unreasonably withheld).

The Tenant shall have no right of approval in respect of the signage of and for

- (i) any department store in excess of fifty thousand square feet, and
- (ii) any bank, trust company, cinema or other tenant which operates beyond the usual opening hours of the Shopping Centre,

provided that

- (a) any such tenant is normally entitled to exterior signs in shopping centres similar to the Shopping Centre,
- (b) such signs are consistent with the Landlord's sign policy,
- (c) such signs are similar in size and character to those generally used by each such tenant in connection with other similar facilities operated by each such tenant in Canada, and
- (d) such signs are located on the exterior of the leased premises of such tenant

If the Landlord, subject to compliance with all governmental requirements and restrictions shall erect a free-standing pylon sign to identify the Shopping Centre and elects to identify any other tenants thereon, then the Tenant shall be entitled to have its name thereon in a prominent manner, such sign design will, if the occupant of any other department store is located thereon, provide equal prominence to the trade names of each of the Tenant and the occupant of any other department store if applicable and the design and location will be subject to the approval of the Tenant, such approval not to be unreasonably withheld.

## ARTICLE 24

### REMEDIES AND DEFAULTS

**24 00 Particular Remedies of Landlord.** 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 on demand,
- (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 basic annual rent under clauses 4 01 or (where applicable) 16 00(2) or deemed to be additional rent under clause 4 03, the Landlord shall have all remedies for the recovery of the same as are available in the case of the non-payment of the basic annual rent,
- (3) In the event of the default by the Tenant in the payment of basic annual rent or 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, or in the event of a breach by the Tenant so substantial as to go to the root of the agreement contained in this Bay Lease the Landlord may at its option, and in addition to such other remedies as it may have hereunder, but subject to such equitable or other relief including relief from forfeiture as may be available to the Tenant under the laws of Ontario, enter into and upon the Leased Premises in the name of the whole and terminate this Bay Lease, notwithstanding any provision in this Bay Lease other than this subclause (3) and clause 24 02, the non-performance by the Tenant of any covenants, obligations and agreements of the Tenant in this Bay Lease shall not entitle the Landlord to enter into and upon the Leased Premises and terminate this Bay Lease,
- (4) Notwithstanding the foregoing provisions of clause 24 00(3), the Landlord may not so terminate until and unless it has given any Mortgagee of the Leased Premises of which the Landlord has prior written notice and which has delivered an undertaking required pursuant to clause 21 00(4) notice of default specifying with reasonable particularity the nature of such default and granting to such Mortgagee a similar period of time to that set forth in clause 24 00(3) to remedy such default. Such notice may be given by the Landlord to the Mortgagee at the same time that notice is given to the Tenant, and
- (5) If and whenever the Landlord shall have the right under subclause (3) to enter into and upon the Leased Premises and terminate this Bay Lease it shall, if it so elects, likewise have the right to enter into and upon the Leased Premises without terminating this Bay Lease or any of the obligations of the Tenant and to take possession of all property of the Tenant in the Leased Premises without being liable for any prosecution or damage therefor, and without relieving the Tenant of any of its covenants or obligations under this Bay Lease, and as the agent of and in the name and at the risk and expense of the Tenant to repair or alter the Leased Premises as may be necessary or appropriate and to sublet the Leased Premises and sell or lease as the Landlord shall see fit all or any of such property, all at the expense of the Tenant (the Tenant agreeing to promptly reimburse the Landlord for all costs and expenses including legal fees and realtors' commissions if any incurred

by it in so doing), and to receive and apply all rents and other proceeds derived therefrom against the then and continuing indebtedness and obligation of the Tenant to the Landlord (the Tenant remaining liable for the payment to the Landlord of any deficiency then or thereafter arising, and to indemnify and save harmless the Landlord from all loss, cost and expense arising by reason of the Tenant's default and any action lawfully taken by the Landlord hereunder consequent thereon)

**24 01 Particular Remedies of Tenant.** The Tenant, 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 Landlord hereunder, and unless the Landlord has commenced to remedy such default within sixty (60) days (or such shorter period of time as may be appropriate in the event of a real or apprehended emergency relating to the Common Facilities) after written notice from the Tenant specifying such default given to the Landlord (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 any costs incurred by the Tenant in so doing shall be promptly repaid to it by the Landlord,
- (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, and if such failure shall not have been remedied within thirty (30) days after receipt of written notice from the Tenant specifying the default, 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, excluding basic rent under clauses 4 01 and (where applicable) 16 00(2) but including, without limitation, contributions to Common Facilities Operating Cost under clause 10 00 of this Bay Lease.

**24 02 Bankruptcy or Insolvency of Tenant.** It is understood that any reference to "Tenant" in this clause 24 02 means the Tenant until a permitted assignment of this Bay Lease shall occur and thereafter shall mean any permitted assignee from time to time in possession. If the term granted hereby or the interest of the Tenant under this Bay Lease shall be taken or seized in execution or attachment 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 or insolvent, or its affairs and assets shall be placed in trusteeship, receivership or liquidation, then in each such case, unless a Mortgagee or encumbrancer of the Tenant having security upon the Tenant's interest under this Bay Lease which complies with clause 21 00 shall take possession of the Leased Premises and agree to remedy the Tenant's defaults and perform all the obligations of the Tenant hereunder while in possession in compliance with clause 21 00, the Landlord may at its option and after reasonable notice to such Mortgagees re-enter and terminate this Bay Lease, in which event annual basic rent and additional rent for the three (3) months next ensuing after the then current month shall immediately become due and payable

**24 03 Interest on Sums in Default.** If the Tenant fails to pay any rent or other sum owing to the Landlord when due or payable or the Landlord fails to pay any sum owing to the Tenant when it is due or payable, in each case such sum so owing shall bear interest from the date such sum so owing was due and payable under the applicable provision of this Bay Lease until such sum is actually paid, at a rate equal to 3% plus the Prime Rate in effect compounded semi-annually and such interest shall accrue on, be added to and be recoverable in the same manner as the principal sum upon which it is calculated

## ARTICLE 25

### MISCELLANEOUS PROVISIONS

**25 00 Unavoidable Delay** Whenever in this Bay Lease any act or thing is to be done or performed within a prescribed time, the time for the doing or performance thereof shall be extended for a period equal to the period for which any 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 upon becoming aware of the same 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 and the anticipated duration and consequences of such Unavoidable Delay.

**25 01 Waiver** 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.

**25 02 Certificates** 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 given notice or is aware (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 given notice or is aware (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.

**25 03 Approvals** 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.

**25 04 Ownership of Tenant's Improvements and Removal of Fixtures** It is agreed between the Landlord and the Tenant that, notwithstanding any lease and demise herein, the title to and ownership of all improvements erected by or at the expense of the Tenant in the Bay Department Store, the Bay Outdoor Selling Area and the Bay Shop 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 the Tenant may remove all its fixtures and improvements in the nature of trade or tenants' fixtures which are ordinarily removable by a tenant, but not any improvements of a fixed and permanent nature, provided that the Tenant shall repair any damage occasioned by the removal of such fixtures.

**25 05 Registration** Either party may register this Bay Lease, or if required by either party, the parties shall enter into an agreement memorial, caveat or notice for registration against the Shopping Centre Lands, and which will be appropriate for the protection and recording of the interests of the parties hereunder, in accordance with the laws of Ontario, and which either party may register

**25 06 Liens** 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 or lien being filed or registered against any part of the Shopping Centre Lands, 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 or lien if and so long as the same is being diligently contested, and provided that nonpayment thereof does not render any part of the Shopping Centre Lands 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 statutes available to it for the protection of the Shopping Centre Lands from claims of lien. In the event that either the Landlord or the Tenant shall make default in the payment of moneys justly due in connection with any such construction or other work and a claim or lien shall be filed or registered and such registration shall not have been vacated or promptly secured or discharged within 30 days of notice thereof, 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

**25 07 Notices** 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 c/o Devan Properties Ltd at 33 Yonge Street, Suite 412, Toronto, Ontario, M5E 1G4, Attention President, 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 401 Bay Street, Suite 600, Toronto, Ontario, Canada M5H 2Y4, Attention Vice-President, Real Estate and Development. Any such notice shall be deemed to have been given, if so delivered, when delivered, or if so mailed, except in the case of publicized postal interruptions, on the third next business day excluding Saturdays following its mailing. Any party may by notice in writing to the other change the address to which any notice mailed to it is to be given. All payments required to be made under this Bay Lease shall be delivered or mailed to the above addresses of the Landlord or the Tenant, as the case may be, unless the party entitled to such payment shall otherwise direct in writing

**25 08 Interpretation and Construction.** 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, invalid 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. No provision of this Bay Lease which imposes or requires a party to impose or enforce a restriction against any third party shall be read or interpreted as contemplating any violation of the Combines Investigation Act (Canada), Competition Act (Canada) or any similar legislation, but if and to the extent such imposition or enforcement would cause any such violation, such provision shall be deemed modified to the extent necessary to avoid such violation. The headings and marginal sub-headings 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, and references herein to the parties shall mean the Landlord and the Tenant

**25 09 Successors** 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

**25.10 Applicable Law** This Bay Lease shall be governed and interpreted by and in accordance with the laws of the Province of Ontario



**25 11 Entire Agreement.** This Bay Lease constitutes the entire agreement between the Landlord and the Tenant relating to the subject matter hereof and may be amended only by an agreement in writing signed by the parties hereto and with respect to the subject matter hereof, neither party is bound by any representations warranties, promises, agreements or inducements not embodied herein


**25 12 Acknowledgement of Trusteeship** 713949 Ontario Limited hereby represents that it holds title to the Shopping Centre Lands as bare trustee for the Landlord and that it has no beneficial interest in the Shopping Centre

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

Tenant

HUDSON'S BAY COMPANY

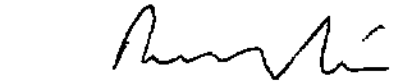
Per 

Per   
(We have the authority to bind the corporation)

Landlord


ST LAURENT SHOPPING CENTRE LIMITED

Per 

Per   
(We have the authority to bind the corporation)

DEVAN PROPERTIES LTD

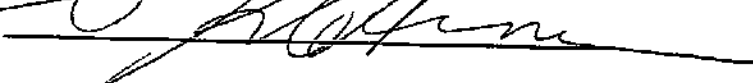
Per 

Per   
(We have the authority to bind the corporation)

Bare Trustee

713949 ONTARIO LIMITED

Per 

Per 

**Legal Description****SCHEDULE "A"****PART A - FREEHOLD LANDS****PIN 04254-0086:**

Part of Block "F", Plan 747, and Part of Block "B", Plan 821, Part of Coventry Road, Plan 747, and Part of Coventry Road, Plan 821, both closed by By-Law registered as Instrument No CT242424, Part of Coventry Road, Plan 747, and Part of Coventry Road, Plan 821, both closed by By-law registered as Instrument No N610034, Part of Block G, Plan 747, designated as Parts 2, 3, 4, 5 and 6, Reference Plan 4R-12750, all in the City of Ottawa, Regional Municipality of Ottawa-Carleton

**SUBJECT TO.**

- 1 The easements set out in Instrument No OT42230 over Part 6, Plan 4R-12750, and
- 2 Instrument No CT257361 over Part 3, Plan 4R-12750 and Instrument No CT257368 over Part 4, Plan 4R-12750

**PIN 04254-0087:**

Part of Block "A", Plan 821, designated as Part 7, Reference Plan 4R-12750, City of Ottawa, Regional Municipality of Ottawa-Carleton

**PIN 04254-0088:**

Part of Block "A", Plan 821, designated as Part 1, Reference Plan 4R-12750, City of Ottawa, Regional Municipality of Ottawa-Carleton

**PART B - LEASEHOLD LANDS****PIN 04254-0071**

Part of Lot 9, Junction Gore, designated as Part 1, Reference Plan 5R-4678, City of Ottawa, Regional Municipality of Ottawa-Carleton

by it in so doing), and to receive and apply all rents and other proceeds derived therefrom against the then and continuing indebtedness and obligation of the Tenant to the Landlord (the Tenant remaining liable for the payment to the Landlord of any deficiency then or thereafter arising, and to indemnify and save harmless the Landlord from all loss, cost and expense arising by reason of the Tenant's default and any action lawfully taken by the Landlord hereunder consequent thereon)

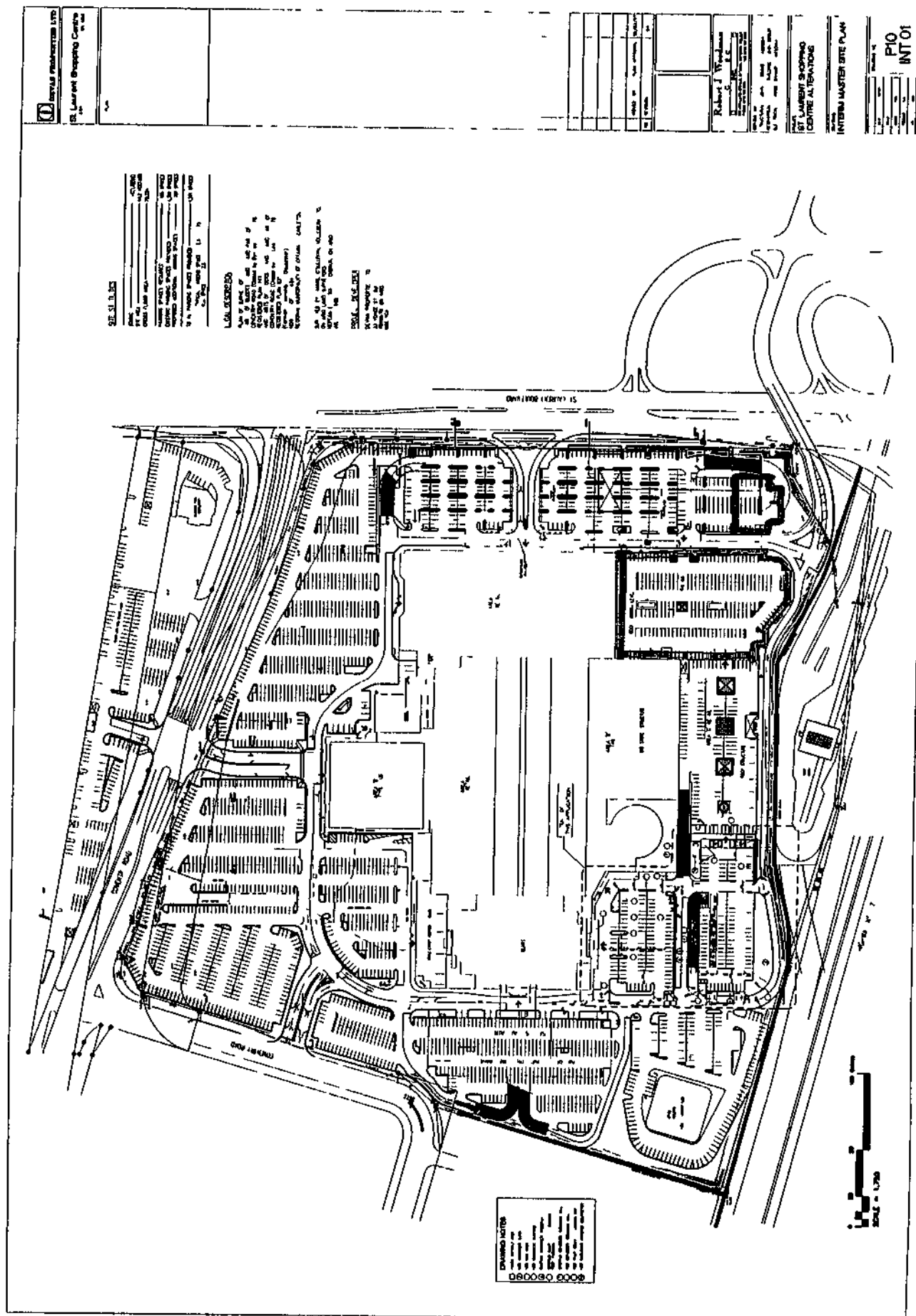
**24 01 Particular Remedies of Tenant.** The Tenant, in addition to all other remedies it may have under the express provisions of this Bay Lease and (to the extent not expressly excluded hereby) under the general law, shall have the right

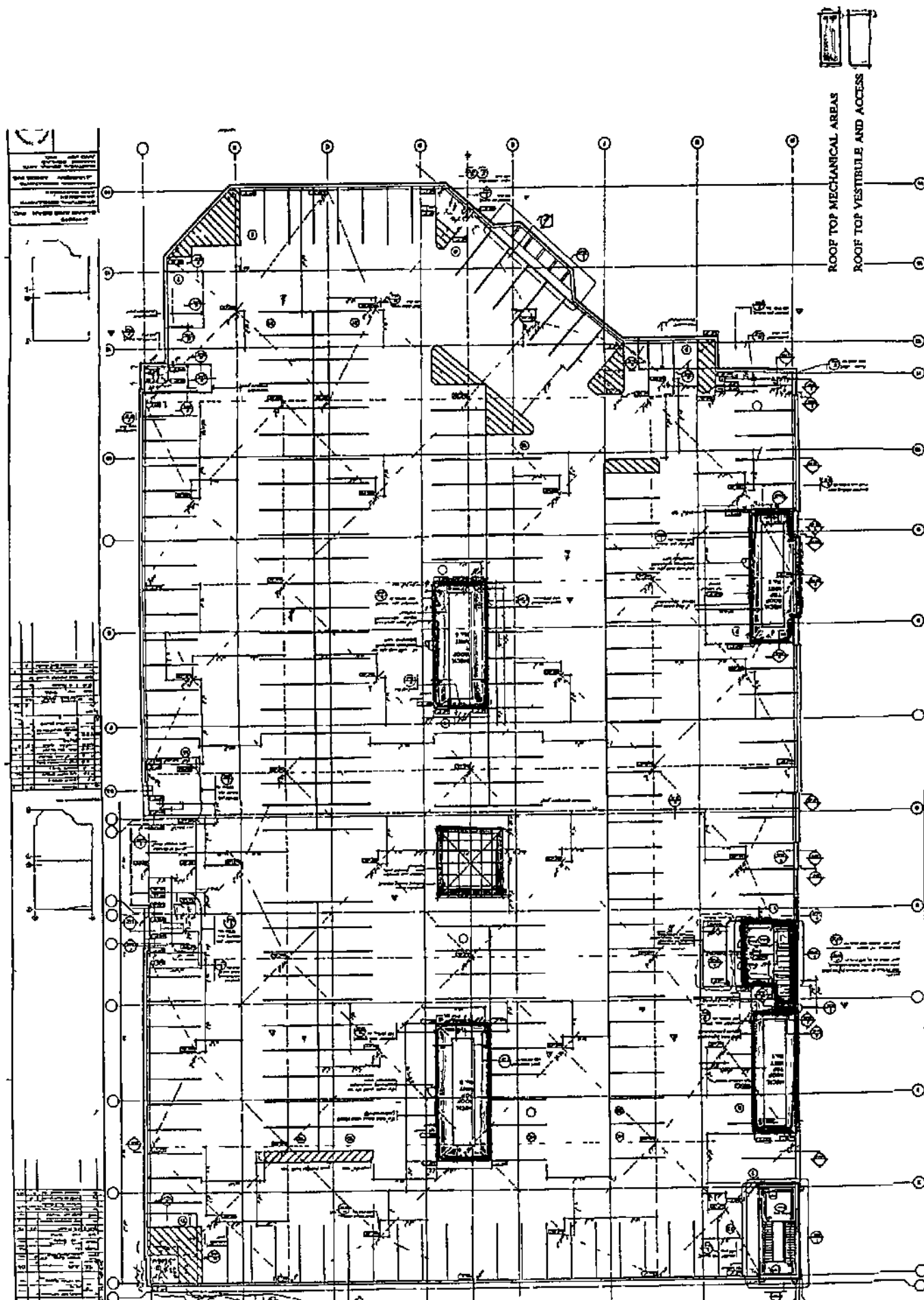
- (1) In the event of any default of the Landlord hereunder, and unless the Landlord has commenced to remedy such default within sixty (60) days (or such shorter period of time as may be appropriate in the event of a real or apprehended emergency relating to the Common Facilities) after written notice from the Tenant specifying such default given to the Landlord (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 any costs incurred by the Tenant in so doing shall be promptly repaid to it by the Landlord,
- (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, and if such failure shall not have been remedied within thirty (30) days after receipt of written notice from the Tenant specifying the default, 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, excluding basic rent under clauses 4 01 and (where applicable) 16 00(2) but including, without limitation, contributions to Common Facilities Operating Cost under clause 10 00 of this Bay Lease

**24 02 Bankruptcy or Insolvency of Tenant.** It is understood that any reference to "Tenant" in this clause 24 02 means the Tenant until a permitted assignment of this Bay Lease shall occur and thereafter shall mean any permitted assignee from time to time in possession. If the term granted hereby or the interest of the Tenant under this Bay Lease shall be taken or seized in execution or attachment 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 or insolvent, or its affairs and assets shall be placed in trusteeship, receivership or liquidation, then in each such case, unless a Mortgagee or encumbrancer of the Tenant having security upon the Tenant's interest under this Bay Lease which complies with clause 21 00 shall take possession of the Leased Premises and agree to remedy the Tenant's defaults and perform all the obligations of the Tenant hereunder while in possession in compliance with clause 21 00, the Landlord may at its option and after reasonable notice to such Mortgagees re-enter and terminate this Bay Lease, in which event annual basic rent and additional rent for the three (3) months next ensuing after the then current month shall immediately become due and payable

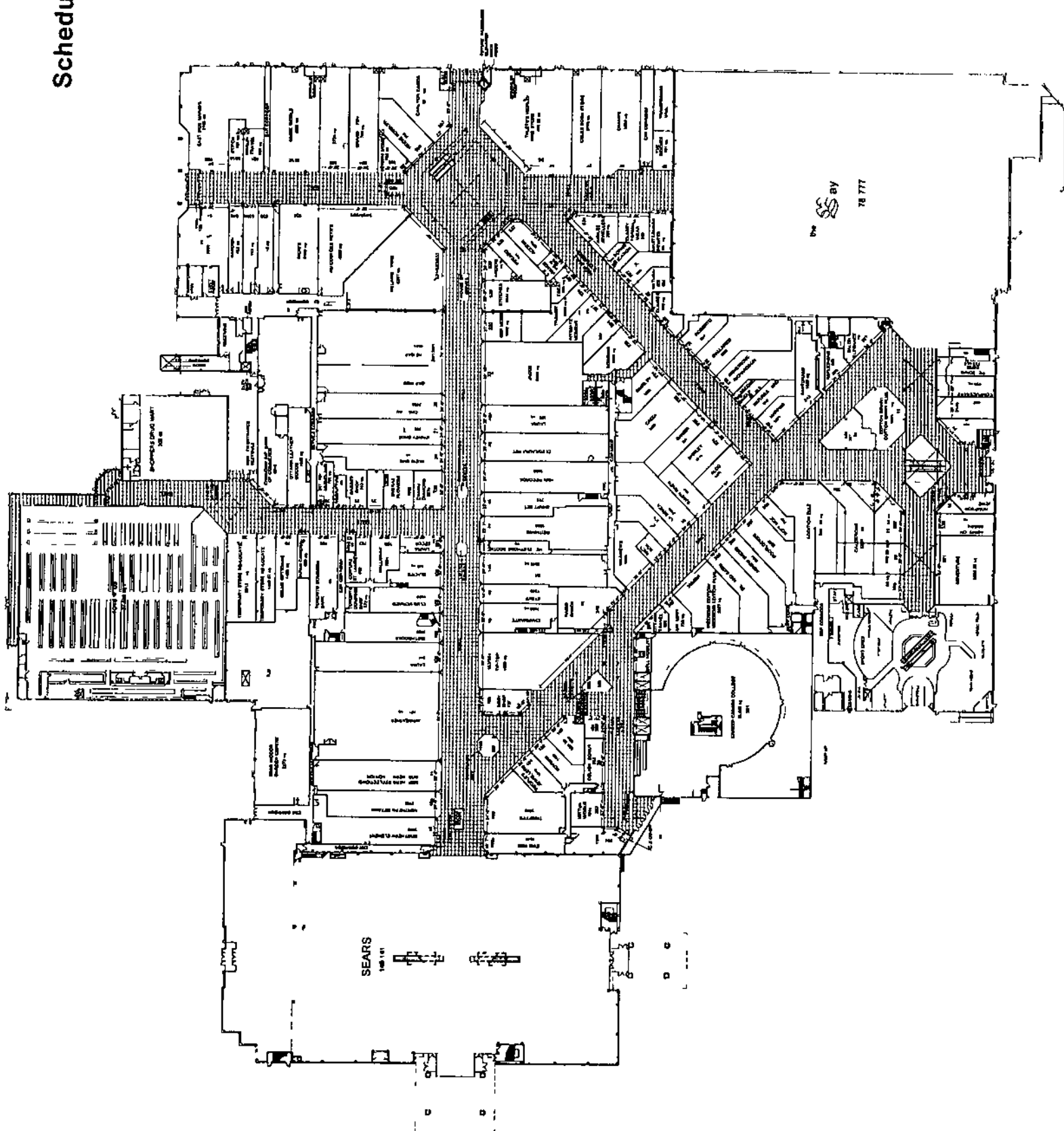
**24 03 Interest on Sums in Default.** If the Tenant fails to pay any rent or other sum owing to the Landlord when due or payable or the Landlord fails to pay any sum owing to the Tenant when it is due or payable, in each case such sum so owing shall bear interest from the date such sum so owing was due and payable under the applicable provision of this Bay Lease until such sum is actually paid, at a rate equal to 3% plus the Prime Rate in effect compounded semi-annually and such interest shall accrue on, be added to and be recoverable in the same manner as the principal sum upon which it is calculated

## Schedule B





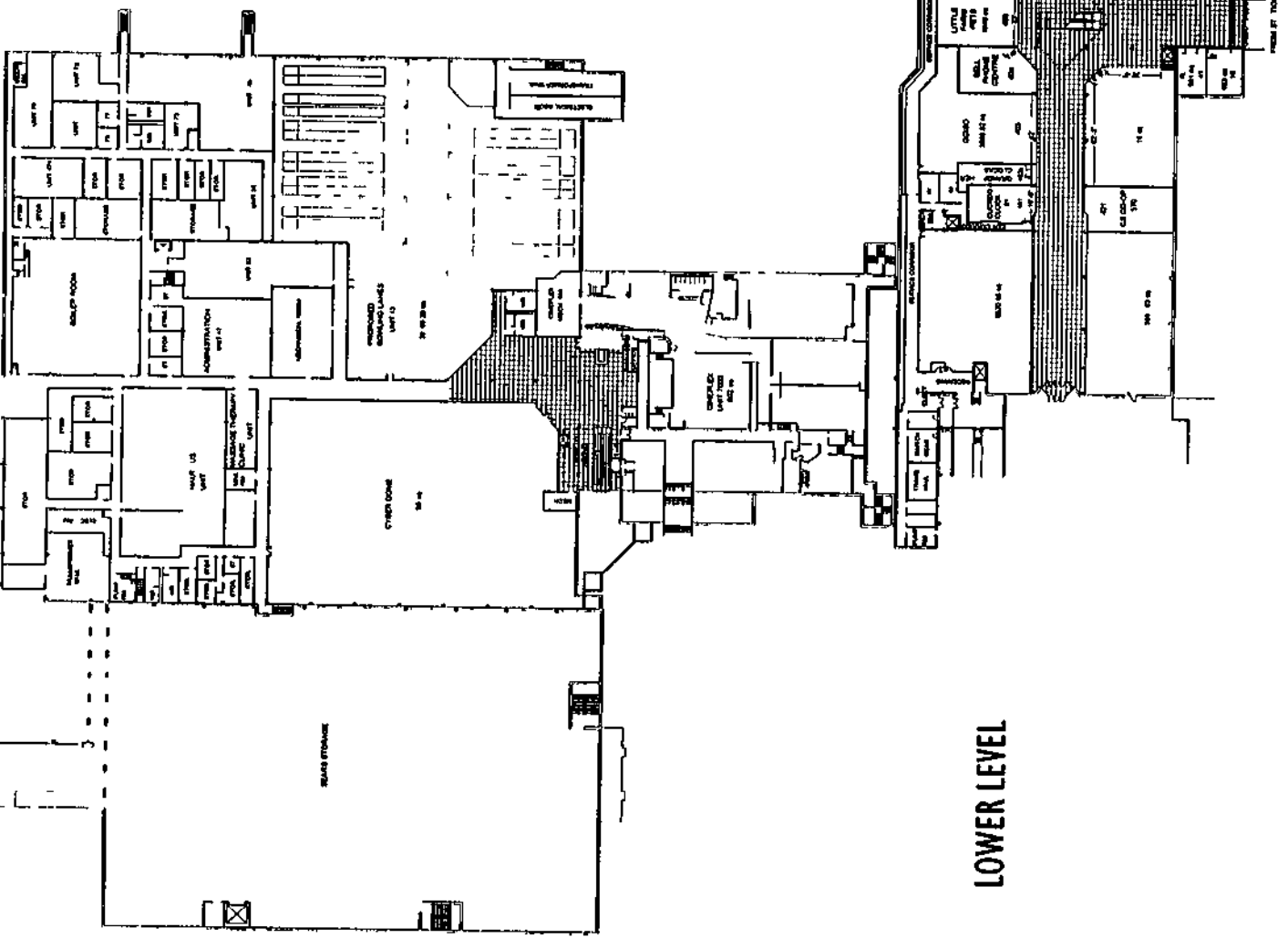
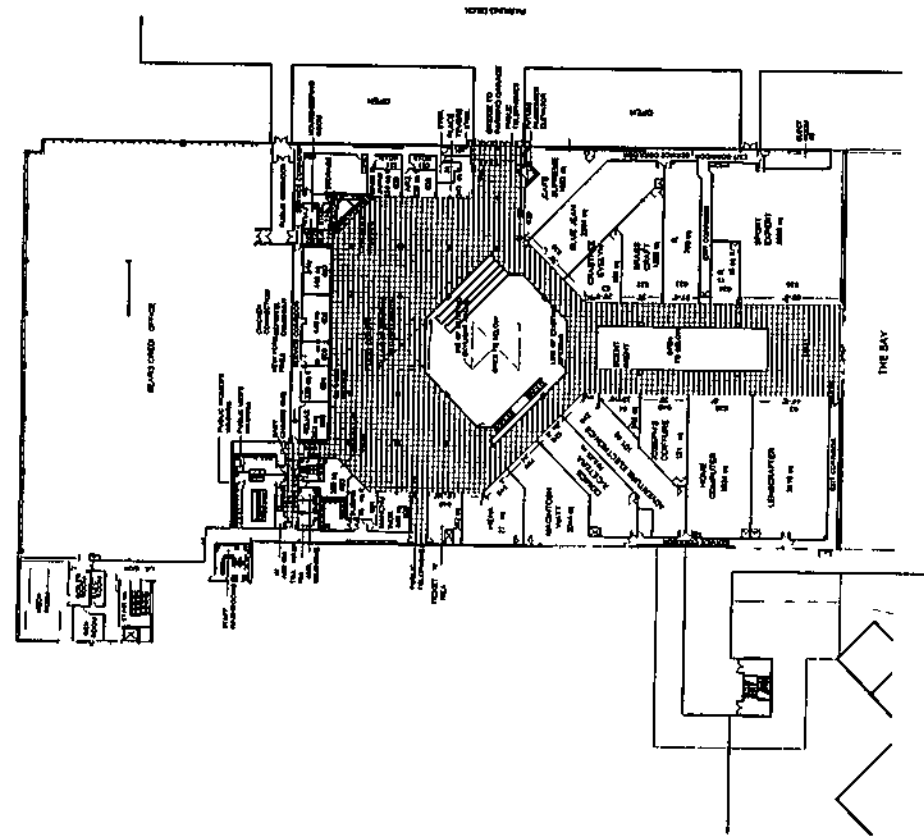
Schedule B-1



UPPER LEVEL

Schedule C (page 2 of 2)

LOWER LEVEL



**SCHEDULE "D"**  
**BAY DEPARTMENT STORE LEASE**  
*Information Relating to Common Facilities*  
*Operating Costs (CFOC) to be provided*  
*by the Landlord (See Article 10)*

HVAC  
WAGES AND BENEFITS  
UTILITIES  
    (i) Gas (fuel)  
    (ii) Electricity  
    (iii) Water  
MAINTENANCE AND REPAIRS  
SUPPLIES  
TELEPHONE  
INSURANCE  
DEPRECIATION  
TRANSFER TO CFOC  
ADMINISTRATION FEE

TOTAL HVAC

INSIDE COMMON FACILITIES

CLEANING - Wages & Benefits  
    - Contracts  
SECURITY - Wages & Benefits  
    - Contracts  
MAINTENANCE - Wages & Benefits  
    - Contracts

UTILITIES  
- Electricity  
- Gas(fuel)  
- Water & Sewage  
REPAIRS & MAINTENANCE  
- Building  
- Equipment  
- Lamp Replacements  
- Supplies  
- General Common Facilities  
LANDSCAPING  
GARBAGE REMOVAL  
ESCALATOR/ELEVATOR  
TELEPHONE  
TOOLS & UNIFORMS  
MUSIC & SIGNS  
COMMON AREA HVAC  
INSURANCE  
REAL PROPERTY TAXES (if applicable)  
AGREED COMMON FACILITIES  
REPLACEMENT COSTS  
DEPRECIATION  
ADMIN FEE  
TOTAL INSIDE CFMC

OUTSIDE COMMON FACILITIES  
MAINTENANCE - Wages & Benefits  
SECURITY - Wages & Benefits  
REPAIRS & MAINTENANCE  
- Building  
- Equipment  
- Parking Lot  
SNOW REMOVAL & SANDING  
EQUIPMENT RENTALS  
EQUIPMENT OPERATING COSTS  
LANDSCAPING  
UTILITIES  
LAMP REPLACEMENT  
TRAFFIC CONTROL  
TOOLS & UNIFORMS  
SIGNS  
REAL PROPERTY TAXES  
(if applicable)  
AGREED COMMON FACILITIES  
REPLACEMENT COSTS  
DEPRECIATION  
ADMINISTRATION FEE

TOTAL OUTSIDE CFMC

TOTAL CFOC



## **SCHEDULE "E"**

### **BAY DEPARTMENT STORE LEASE - ST-LAURENT**

#### ***Charges for Heating, Ventilating and Air-Conditioning Services Bay Shop***

#### **A THE HVAC SYSTEM**

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

#### **B THE OPERATING CHARGE**

- (a) In each fiscal year for the Shopping Centre, the total costs (the "Operating Costs") of the following services (the "Services") operating, maintaining, repairing and replacing the HVAC System, shall be allocated by the Landlord as between the Common Facilities and the Retail Premises based where appropriate on the advice of the Landlord's engineer. The Operating Costs shall include, without limitation costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, and all costs incurred by the Landlord in doing the allocation mentioned above, and in obtaining calculations, if any, of Supplementary Charges (defined in Section C of this Schedule "E"). In the event that any repair or replacement cost is not charged in full in the fiscal year in which same is performed or purchased, there shall be charged in each fiscal year depreciation or amortization on any such depreciation or amortized costs (excluding any fee on account of overhead) and interest (calculated at two percent (2%) above the Prime Rate charged by the Landlord's banker) on the undepreciated or unamortized portion outstanding from time to time.
- (b) That portion of the Operating Costs which is allocated to Common Facilities shall be included in the Common Facilities Operating Cost as defined in clause 1.00(9) of the Lease.
- (c) The net operating costs (the "Net Operating Costs") shall be determined by deducting from that portion of the Operating Costs allocated to such Retail Premises by the Landlord, the following

- (i) Supplementary Charges, if any, and
  - (ii) Operating Costs for the basement areas, if any, as determined by the Landlord's engineer
- (d) The Tenant agrees to pay during each fiscal year of the Shopping Centre, monthly in advance, the following
- (i) the Operating Costs for any basement area of the Bay Shop as determined by the Landlord's engineer,
  - (ii) its share (the "Operating Charge") of the Net Operating Costs determined by multiplying the Net Operating Costs by a fraction, the numerator of which is the Gross Leasable Area of the Bay Shop (excluding any basement area) and the denominator of which is the total Gross Leasable Area of those Retail Premises (excluding basement areas) or portions thereof occupied through such fiscal year and served by the HVAC System of the Shopping Centre
- (e) Should Retail Premises be occupied by tenants who are solely responsible for providing any of the Services, the Tenant's Operating Charge as applied to such Service or Services shall be adjusted by excluding from the denominator referred to above in Section (B)(d)(ii) the Gross Leasable Area of those Retail Premises
- (f) The Tenant's Operating Charge may be estimated by the Landlord for such period as the Landlord determines from time to time and the Tenant agrees to pay as additional rent to the Landlord, the Tenant's Operating Charge as so determined, in monthly instalments in advance, during such period
- (g) The Landlord may, in its sole discretion, if it determines that it is necessary or advisable for efficient and economical management and operation of the Shopping Centre, upon 30 days' written notice to the Tenant remove or permanently cease operating all or any part of the equipment and facilities described in Section A, upon such removal or cessation of operation, if the equipment and facilities which have been removed, or which the Landlord has permanently ceased operating, are not replaced or substituted for by the Landlord, then (i) the Basic Charge shall be reduced accordingly, and (ii) the Tenant shall, at its sole expense and in accordance with the provisions of this Lease including, without limitation, Article 12, install new equipment and facilities which shall, as determined by the Landlord, be adequate to replace the equipment and facilities which have been removed or to replace the service previously provided by equipment and facilities which the Landlord has ceased operating

### **C THE SUPPLEMENTARY CHARGE**

If the combined internal cooling and ventilation requirements of the Leased Premises as calculated by the Landlord's engineer, exceed 8 watts per square foot, the Landlord may elect to levy for each watt in excess of 8, a Supplementary Charge of \$0.05 per square foot per annum of the Gross Leasable Area of the Bay Shop (excluding basement), subject to escalation as follows. The Supplementary Charge is based on a Consumers Price Index ("CPI") for Canada, Major Components - Water, Fuel and Electricity published by Statistics Canada of 275.0 (1971 = 100), and will increase or decrease for each fiscal year for the Shopping Centre to an amount calculated by multiplying \$0.05 by a fraction, the numerator of which is the CPI for the first month of the then current fiscal year and as its denominator 275.0. The Supplementary Charge may be estimated by the Landlord for such period as the Landlord determines from time to time, and the Tenant agrees to pay as additional rent to the Landlord the Supplementary Charge as so determined monthly in advance with each payment of the Basic Charge during such

period Where the aforementioned index is no longer published, the Landlord reserves the right to substitute some other similar index

***D LANDLORD'S ENGINEERS***

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

**SCHEDULE "F"**

**BAY DEPARTMENT STORE LEASE - ST LAURENT CENTRE**

**LANDLORD'S AND TENANT'S WORK RELATING  
TO THE BAY SHOP**

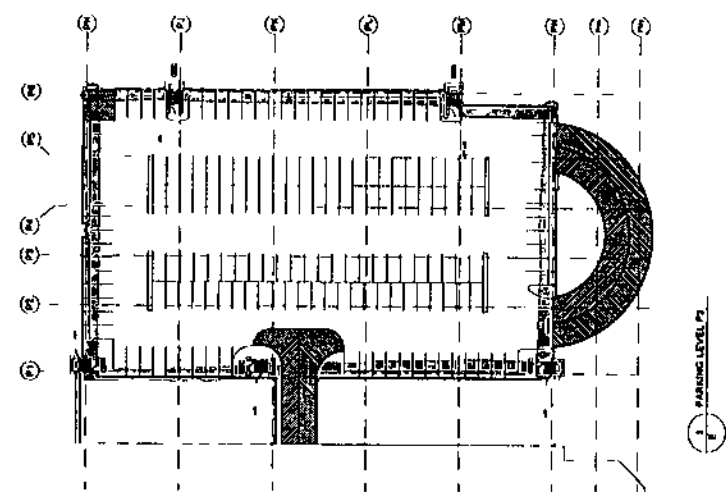
**1 LANDLORD'S WORK**

- a) Walls Dividing walls between stores in drywall, taped and bed to heights of 11 feet or, in the Landlord's discretion, unit masonry or concrete
- b) Rear Entrance Door Rear entrance door where applicable or required by building code  
Location to be designated by the Landlord
- c) Floor Smooth trowelled finished concrete
- d) Plumbing The Landlord will provide, at its expense, a domestic cold water line, a 2" sanitary vent pipe, and a 4" sanitary drainage line for the Tenant's connection at locations determined by the Landlord
- e) Electrical A main electrical service, 60 amperes, at 600 volts, 3 phase, 3 wire, at the Landlord's designated point within the premises
- f) Sprinkler Main A 2" diameter capped sprinkler main to a location within the Bay Shop as determined by the Landlord
- g) Installation of a fan coil or pump unit
- h) Telephone An empty conduit to the Landlord's designated point within the Bay Shop for telephone service
- i) Natural Gas The Landlord to arrange and pay for installation of natural gas line and gas meter if required by the Tenant

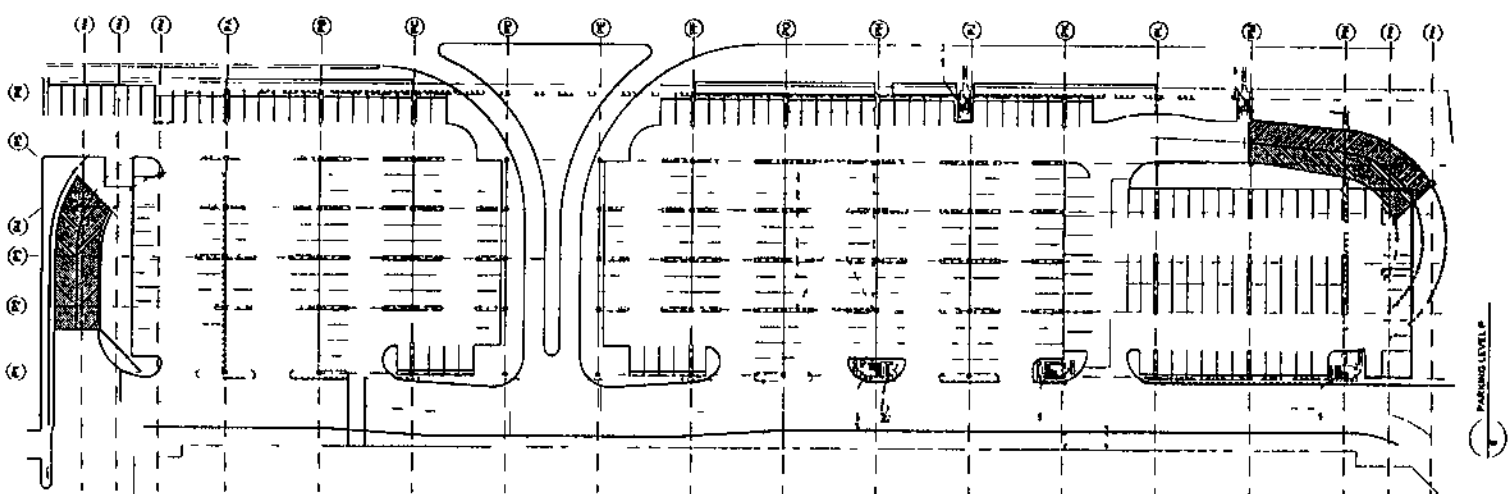
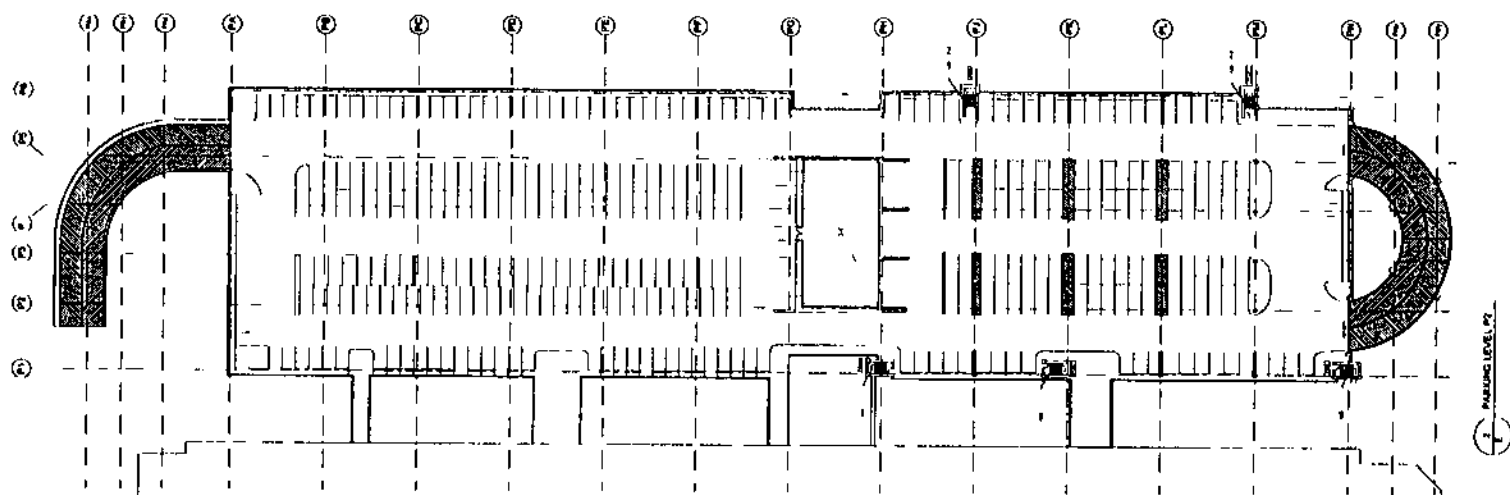
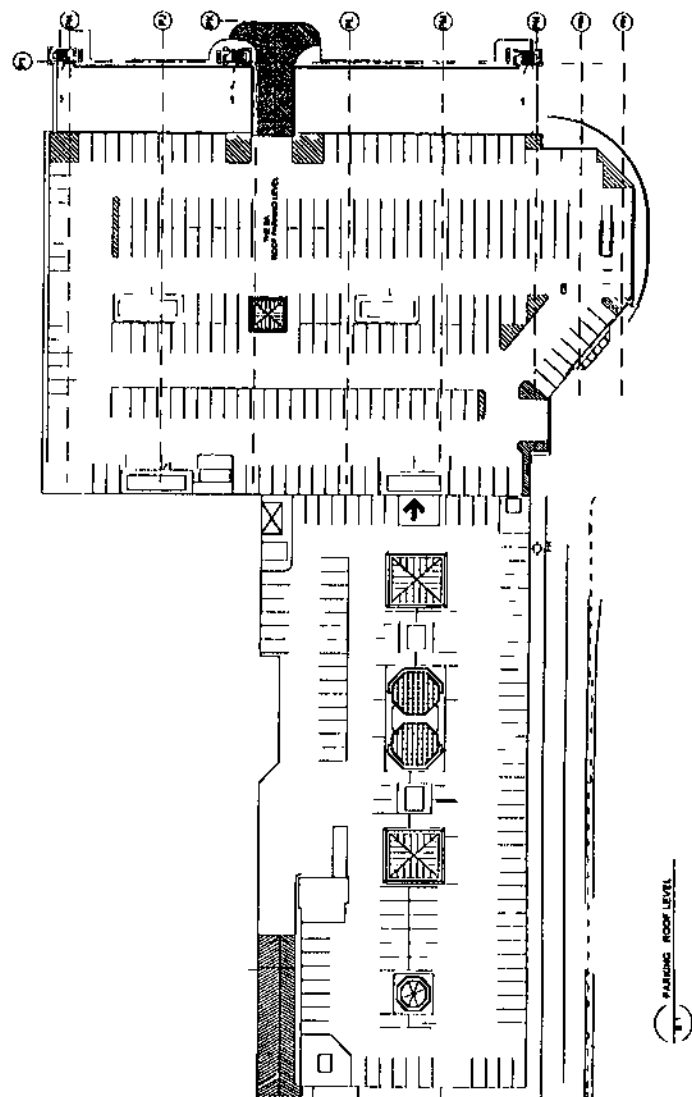
**2 TENANT'S WORK**

- a) Heating and Air-Conditioning Kitchen exhaust hood and exhaust fan capacity of make-up air unit and system
- b) Electrical Lighting and receptacle panel (up to a maximum of 30 circuits)
- c) Sprinkler Distribution Sprinkler distribution and heads as required so as to maintain overall fire protection of the Centre
- d) Hot Water Heater Hot water heater having maximum capacity of 15 gallons, 5 KW single element, at the Tenant's designated point within the Bay Shop
- e) Plumbing Installation of water, check meter with remote read-out

BAY PARKING GARAGE



Schedule G





**THIS IS EXHIBIT "I" 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

April 7, 2025

**DELIVERED BY ELECTRONIC MAIL**

**Alvarez & Marsal Canada Inc.**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 29000  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Alan J Hutchens

**RE: Lease dated as of March 28, 1973, as amended, extended or assigned from time to time (the “Lease”) between Hudson’s Bay Company ULC (the “Tenant”) and Morguard Corporation and Bramalea City Centre Equities Inc. (collectively, the “Landlord”) for the lease of the Hudson’s Bay Store (the “Premise”) at Bramalea City Centre in Brampton, Ontario**

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The Landlord requests that this letter be added to the Bramalea City Centre Lease file to be reviewed by any prospective purchasers of the Lease.

The Landlord confirms there are a number of maintenance and repair issues as a result of the Tenant’s failure to maintain the Premises in accordance with the terms of the Lease and these issues have not been rectified. These issues include the following items,

1. Customer washroom being in disrepair with some faucets, toilets and urinals not functioning,
2. Lack of maintenance of the roof leading to ponding and pooling of water, drainage issues and vegetation growth,
3. Boiler not being maintained since 2023,
4. HVAC system requires a full inspection and has not been maintained, inspected or serviced regularly, air filters in need of replacement,
5. Mechanical equipment and back-up generator has not been inspected and serviced regularly,
6. Elevators and escalators required servicing to be fully operational as escalators are out of service,
7. Fire safety system has not been inspected and serviced and main incoming water valve requires repair and maintenance,
8. Remainder of Premises, including entry ways, services doors, floors and cleanings, require maintenance and repair due to water infiltration, corrosion, and wear and tear.

Please be advised that any prospective purchaser of the Lease will be required to rectify the above noted maintenance issues, including the HVAC system, roof system and mechanical systems.

Please contact the undersigned should you have any questions.

**PENSIONFUND REALTY LIMITED**

By its agent, Morguard Investments Limited



Andrea Rossanese  
Senior Director, Retail Legal



the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.2 billion to 1.5 billion.

As the world's population grows, the demand for food and other resources will increase. This will put pressure on the environment and on the world's resources.

One of the ways to meet this demand is to increase the efficiency of food production. This can be done by using better farming techniques and by using more resources.

Another way to meet this demand is to reduce the amount of food that is wasted. This can be done by using food more efficiently and by reducing the amount of food that is thrown away.

There are many other ways to meet this demand, and it is important that we find ways to do so. This will help to ensure that everyone has enough to eat and that the environment is protected.

One of the most important things we can do is to make sure that we are using resources in a sustainable way. This means that we are using resources in a way that does not harm the environment and that we are able to use them for generations to come.

There are many things we can do to make sure that we are using resources in a sustainable way. This includes using energy more efficiently, recycling, and using water more efficiently.

It is important that we all do our part to make sure that we are using resources in a sustainable way. This will help to ensure that everyone has enough to eat and that the environment is protected.

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April 10, 2025

**DELIVERED BY ELECTRONIC MAIL**

**Alvarez & Marsal Canada Inc.**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 29000  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Alan J Hutchens

**RE: Lease dated as of March 25, 1997, as amended, extended or assigned from time to time (the "Lease") between Hudson's Bay Company ULC (the "Tenant") and 713949 Ontario Limited (the "Landlord") for the lease of the Hudson's Bay Store (the "Premise") at St. Laurent Shopping Centre in Ottawa, Ontario**

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The Landlord requests that this letter be added to the St. Laurent Shopping Centre Lease file to be reviewed by any prospective purchasers of the Lease.

The Landlord confirms there are a number of maintenance and repair issues as a result of the Tenant's failure to maintain the Premises in accordance with the terms of the Lease and these issues have not been rectified. These issues include the following items,

1. HVAC system requires a full inspection and has not been maintained, inspected or serviced regularly,
2. Three RTU's are out of service and HVAC system is unable to maintain appropriate store temperatures,
3. Emergency generator has not been maintained and requires testing;
4. Remainder of Premises, including entry ways, services doors, floors and cleanings, require maintenance and repair due to water infiltration, corrosion, and wear and tear.

Please be advised that any prospective purchaser of the Lease will be required to rectify the above noted maintenance issues, including the HVAC system and mechanical systems.

Please contact the undersigned should you have any questions.

**713949 Ontario Limited**

By its agent, Morguard Investments Limited



Andrea Rossanese  
Senior Director, Retail Legal

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion.

As the world's population grows, the demand for food and other resources will increase. This will put pressure on the environment and on the world's food supply.

One way to meet this demand is to increase the amount of food that is produced. This can be done by using more land for agriculture, by using more water, or by using more fertilizers.

Another way to meet this demand is to reduce the amount of food that is wasted. This can be done by improving food storage and distribution, or by changing eating habits.

There are many other ways to meet this demand, and it is important that we find ways to do so that do not harm the environment or the world's food supply.

One of the most important ways to meet this demand is to reduce the amount of food that is wasted. This can be done by improving food storage and distribution, or by changing eating habits.

There are many other ways to meet this demand, and it is important that we find ways to do so that do not harm the environment or the world's food supply.

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April 2, 2025

**DELIVERED BY ELECTRONIC MAIL**

**Alvarez & Marsal Canada Inc.**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 29000  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Alan J Hutchens

**RE: Lease dated as of January 6, 1979, as amended, extended or assigned from time to time (the "Lease") between Hudson's Bay Company ULC (the "Tenant") and Pensionfund Realty Limited (the "Landlord") for the lease of the Hudson's Bay Store (the "Premise") at Coquitlam Centre in Coquitlam, British Columbia**

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We are forwarding our letter dated July 23, 2024 regarding the Premises and the Tenant's failure to maintain the Premises in accordance with the terms of the Lease. Please note, although the attached letter is marked as "Without Prejudice", the Landlord waives its right to prejudice as set out in this letter and requests that the attached letter be added to the Coquitlam Lease file to be reviewed by any prospective purchasers of the Lease.

Further, the Landlord confirms that the maintenance issues related to the Tenant's failure to maintain the Premises, specifically including the HVAC system and the cracked flooring, have not yet been rectified. In addition, since the receipt of the attached letter by the Tenant, the following additional maintenance issues have been noted and brought to the attention of the Tenant for rectification,

1. Fire extinguishers in the Premises are expired.
2. There is a missing button in their passenger elevator.
3. Track lighting has been modified to power other items around the Premises causing a safety concern.
4. Rusted hatches for water shut offs in public washrooms.
5. All lighting above the escalators is not functioning.
6. Within the Men's washroom, there is a hole in the stall wall, missing tiles and drywall, and exposed rusted steel stud.
7. Broken EAS system at mall entrance.

Please be advised that any prospective purchaser of the Lease would be required to rectify the above noted maintenance issues, including the HVAC system.

Please contact the undersigned should you have any questions.

**PENSIONFUND REALTY LIMITED**

By its agent, Morguard Investments Limited



Andrea Rossanese  
Senior Director, Retail Legal

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion.

As the world's population grows, the demand for food and other resources will increase. This will put pressure on the environment and on the world's resources.

One of the ways to meet this demand is to increase the efficiency of food production. This can be done by using better farming techniques and by using more resources.

Another way to meet this demand is to reduce the amount of food that is wasted. This can be done by using food more efficiently and by reducing the amount of food that is thrown away.

There are many other ways to meet this demand, and it is important that we find ways to do so. This will help to ensure that everyone has enough to eat and that the environment is protected.

One of the most important things we can do is to make sure that we are using resources in a sustainable way. This means that we are using resources in a way that does not harm the environment and that we are able to use them for generations to come.

There are many things we can do to make sure that we are using resources in a sustainable way. This includes using energy more efficiently, recycling, and using water more efficiently.

It is important that we all do our part to make sure that we are using resources in a sustainable way. This will help to ensure that everyone has enough to eat and that the environment is protected.

There are many things we can do to make sure that we are using resources in a sustainable way. This includes using energy more efficiently, recycling, and using water more efficiently.

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It is important that we all do our part to make sure that we are using resources in a sustainable way. This will help to ensure that everyone has enough to eat and that the environment is protected.

April 10, 2025

**DELIVERED BY ELECTRONIC MAIL**

**Alvarez & Marsal Canada Inc.**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 29000  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Alan J Hutchens

**RE: Lease dated as of April 3, 1974, as amended, extended or assigned from time to time (the "Lease") between Hudson's Bay Company ULC (the "Tenant") and Morguard Corporation (the "Landlord") for the lease of the Hudson's Bay Store (the "Premise") at Centerpoint Mall in Toronto, Ontario**

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The Landlord requests that this letter be added to the Centerpoint Mall Lease file to be reviewed by any prospective purchasers of the Lease.

The Landlord confirms there are a number of maintenance and repair issues as a result of the Tenant's failure to maintain the Premises in accordance with the terms of the Lease and these issues have not been rectified. These issues include the following items,

1. Customer washroom being in disrepair with some faucets, toilets and urinals not functioning,
2. Lack of maintenance of the roof leading to ponding and pooling of water, drainage issues and vegetation growth,
3. Boiler and Chiller not being maintained since 2024,
4. HVAC system requires a full inspection and has not been maintained, inspected or serviced regularly, air filters in need of replacement,
5. Elevators and escalators required servicing to be fully operational as escalators are out of service,
6. Fire safety system has not been inspected and serviced and main incoming water valve requires repair and maintenance, (January 2024)
7. Remainder of Premises, including entry ways, services doors, floors and cleanings, require maintenance and repair due to water infiltration, corrosion, and wear and tear.

Please be advised that any prospective purchaser of the Lease will be required to rectify the above noted maintenance issues, including the HVAC system, roof system and mechanical systems.

Please contact the undersigned should you have any questions.

**Morguard Corporation**

By its agent, Morguard Investments Limited



Andrea Rossanese  
Senior Director, Retail Legal

**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 II 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>