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**SHERIFF-CORONER**

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**C O U N T Y   O F   S A N T A   C R U Z**

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**MARK TRACY**  
**SHERIFF-CORONER****701 OCEAN ST, ROOM 340, SANTA CRUZ, CALIFORNIA 95060**  
**PHONE (831) 454-2311 FAX (831) 454-2353 TDD (831) 454-2123****October 2, 1998**

Agenda Date: November 10, 1998

**Board of Supervisors**  
**County of Santa Cruz**  
**701 Ocean Street**  
**Santa Cruz, California 95060****SHERIFF'S COMMUNITY SERVICE CENTER-APTOS****Dear Members of the Board:**

**The Sheriff's Office has continued to develop our Master Community Policing Plan operating four Sheriff's Community Service Centers. The Aptos Center was opened in April, 1996. We have trained civilian volunteers and continue to expand their role in making our communities safer places to live and work. To date, volunteers and Sergeant Joseph Hemingway have taken hundreds of police reports from Aptos residents. The Sheriff's Center in Aptos, currently located at 19D Rancho Del Mar, has been an integral part of community activities, including the Aptos Fireworks benefit, and well received by the residents and businesses. The Aptos Sheriff's Center has streamlined and coordinated crime prevention efforts for this community and Sergeant Hemingway has provided a single point of contact for the Sheriff's Office.**

**As part of our efforts to expand services from the Center and provide better accessibility to the residents, the current location at 19D Rancho Del Mar is ideally suited to our need for a convenient and highly visibly storefront office. Our calls for service and walk-in clients to the Aptos Sheriff's Center has increased over previous years. Our current lease agreement expired October 1, 1998. We have an opportunity to continue the current lease agreement stipulating a retroactive beginning date of October 1, 1998, with the same conditions and costs. The Sheriff-Coroner's Office will be the lessee on this lease at the cost**

Board of Supervisors  
October 2, 1998  
Agenda Date: November 10, 1998  
Page 2

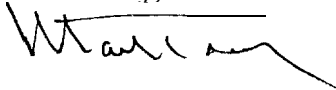
of one thousand dollars (\$1,000) per month. Funds sufficient to pay this (12) month cost in FY 98/99, as well as utilities, are already included in the Sheriff's budget. Therefore, there is no increase in the net county cost involved in this lease. A copy of the lease agreement is currently on file with the Clerk of the Board.

The Sheriff's Office is very excited to continue offering this level of service to the Aptos residents and businesses who seek guidance on crime prevention, neighborhood problems, and general information.

Both County Counsel and Risk Management have reviewed this lease agreement for appropriate form and insurance provisions and approved it. It is therefore **RECOMMENDED** that your Board:

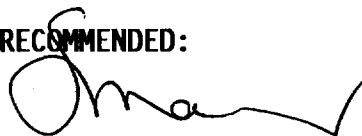
1. APPROVE the attached lease agreement extension between the Sheriff's Office and the Rancho Del Mar Shopping Center for the Sheriff's Community Service Center, Aptos, at #19D Rancho Del Mar; at a cost of \$1,000.00 per month from October 1, 1998 through September 30, 1999; and
2. AUTHORIZE the Sheriff-Coroner to sign and execute the lease agreement.

Sincerely,



MARK S. TRACY  
Sheriff-Coroner

**RECOMMENDED:**



SUSAN A. HAURIELLO  
**County** Administrative Officer

COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

01 123

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: Sheriff Coroner (Dept.)  
W. Anthony (Signature) 10/19/98 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

- Said agreement is between the Santa Cruz County Sheriff's Office (Agency)  
and, James Fenton Co., Inc. 140 Rancho Del Mar Shopping Center, Aptos, CA 95003 (Name & Address)
- The agreement will provide office space for Sheriff's Community Policing Service Center.
- The agreement is needed because the County does not provide this office space.
- Period of the agreement is from 10/1/98 to 10/1/99
- Anticipated cost is \$ \$1,000/month, not to exceed \$9,000 in FY 98/99 (Fixed amount; Monthly rate Not to exceed)
- Remarks: Continuing section II agreement. Adds \$9,000 to original encumbrance for FY 98/99, to cover remaining costs for FY 98/99 fiscal year. Contract # 81366
- Appropriations are budgeted in 661800 (Index#) 3810 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered. Contract No. CO 81366A Date 10/19/98  
are not will be

GARY A. KNUTSON, Auditor - Controller  
BY Linda T. Kou Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the  
\_\_\_\_\_ to execute the same on behalf of the \_\_\_\_\_  
\_\_\_\_\_ (Agency).

Remarks: \_\_\_\_\_  
\_\_\_\_\_ (Analyst)

County Administrative Officer  
BY Bolton Date 11-2-98

Agreement approved as to form. Date \_\_\_\_\_

Distribution:  
Bd. of Supv. - White  
Auditor-Controller - Blue  
County Counsel - Green \*  
Co. Admin. Officer - Canary  
Auditor-Controller - Pink  
Originating Dept. - Goldenrod

\*To Orig. Dept. if rejected.

ADM - 29 (6/95)

State of California )  
County of Santa Cruz ) ss  
I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_  
\_\_\_\_\_ 19 \_\_\_\_\_ By \_\_\_\_\_ Deputy Clerk

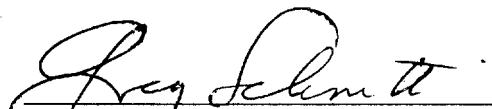
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**SECOND ADDENDUM TO LEASE BETWEEN JAMES FENTON CO., INC.  
AND COUNTY OF SANTA CRUZ/SHERIFF-CORONER OFFICE**

The lease by and between James Fenton Co., Inc., (Owner) and the County of Santa Cruz (Tenant) dated October 1, 1996 is hereby amended in the following particulars. All other provisions shall remain unchanged.

The term of the current lease agreement which expired September 30, 1998 shall be renewed. The renewal period will begin retroactively from October 1, 1998 and expire September 30, 1999.

Dated 10/14/98

  
JAMES FENTON CO., INC.

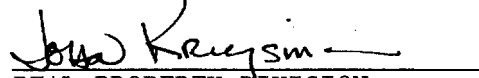
Dated \_\_\_\_\_

\_\_\_\_\_  
COUNTY OF SANTA CRUZ  
Tenant

APPROVED AS TO FORM:

  
HARRY A. OBERHELMAN, III  
Assistant County Counsel

RECOMMENDED FOR APPROVAL:

  
REAL PROPERTY DIVISION

APPROVED AS TO INSURANCE:

Janet McKinley 10-16-98  
Janet McKinley



**RANCHO DEL MAR**  
SHOPPING CENTER OF APTOS

125

140 Ranchodel Mar  
Aptos, California 95003  
(408) 688-2312

**September 8, 1998**

**Sheriff-Coroner's Office  
County of Santa Cruz  
701 Ocean St  
Santa Cruz, Ca 95060**

**Attn: Roger Wildey  
Lieutenant  
Community Services (South Sector)**

**Dear Roger:**

**This letter is to confirm our understanding that both parties to the existing lease-agreement for the premises at #19D Rancho Del Mar, Aptos, California agree to extend the agreement on the same terms and conditions for an additional year commencing October 1, 1998 and expiring September 30, 1999.**

**Sincerely,**

James Fenton Co., Inc.  
RANCHO DEL MAR SHOPPING CENTER

*Greg Schmitt*  
Greg Schmitt  
Vice President & General Manager

**ACKNOWLEDGED:**

**COUNTY OF SANTA CRUZ  
Tenant**

Date \_\_\_\_\_

*For* *Greg Schmitt V.P.*  
James Fenton Co., Inc.  
Owner

Date 10/6/98



MEMBER: INTERNATIONAL COUNCIL OF SHOPPING CENTERS

*Approved as to Form:*  
*Marie Costa* **23**



**RANCHO DEL MAR**  
**SHOPPING CENTER OF APTOS**

126

140 Rancho del Mar  
Aptos, California 95003  
(408) 688-2312

**July 24, 1997**

**Sheriff-Coroner's Office  
County of Santa Cruz  
701 Ocean St.  
Santa Cruz, Ca 95060**

**Attn: Steve Robbins  
Lieutenant  
Community Services**

**Dear Steve:**

**This letter is to confirm our understanding that both parties to the existing lease agreement for the premises at #19D Rancho Del Mar, Aptos, California agree to renew the agreement, which expires on September 30, 1997, for an additional period of one year under the same terms and conditions. This renewal period begins October 1, 1997 and expires September 30, 1998.**

**Sincerely,**

James Fenton Co., Inc.  
RANCHO DEL MAR SHOPPING CENTER

*Greg Schmitt*  
Greg Schmitt  
Vice President & General Manager

**ACKNOWLEDGED:**

*Bruce Simpson* - acting sheriff  
COUNTY OF SANTA CRUZ  
Tenant

Dated 9-2-97

*Greg Schmitt* for  
James Fenton Co., Inc.  
Owner

Dated 8/18/97

APPROVED AS TO FORM:

By: *Hanya A. Oberkrom*  
Office of the County Counsel



ADDENDUM TO LEASE BETWEEN JAMES FENTON CO., INC.  
AND COUNTY OF **SANTA CRUZ, DATED**

The lease by and between James Fenton Co., Inc., (Owner), and the County of Santa Cruz (Tenant) dated 10-1-96, is hereby amended in the following particulars. All other provisions shall remain unchanged.

Section 5 is amended to change the payment **schedule rent** from 'monthly to quarterly in advance.

Section **13 is** deleted.

Section 18 **is** amended to read in its entirety: Tenant shall keep the display windows, **exterior** signs (including roof sign) and signs, if any, in the leased premises well lighted during those hours that shall be designated by Owner, unless prevented by causes beyond the control **of Tenant**.

Section 22 is deleted.

**Section 23** is deleted.

Section 30 is amended by adding the following sentences at the **end** of the first and second sub-paragraphs, respectively: Tenant may **self-insure for risks** to leasehold improvements. Tenant may self-insure for public liability and property damage.

**Section 36** shall read in its entirety: If Tenant refuses or neglects to repair, replace or **maintain properly** as required hereunder and to the reasonable satisfaction of Owner, Owner reserves the right **to make** such repairs, replacement or perform the **necessary maintenance** without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property or to Tenant's business by reason thereof, if, in Owner's opinion, the situation so warrants and, upon completion thereof, **Tenant** shall pay Owner's costs for making such repairs, replacement or maintenance, **upon presentation** of bill thereof, as additional rent.

Section 49 is deleted.

Section 51 is deleted.

Section **61 is** amended to read in **its** entirety: In the event of **litigation** over this lease, Owner **shall be entitled** to reasonable attorney's fees **as well as legal** costs of suit.

Section 63 is amended to read in its entirety: Owner or Owner's agents shall have the right to enter the leased premises at reasonable times and upon reasonable advance notice to the Sheriff's Office to examine the same, and to show them to prospective purchasers or lessees of the building, and to make such repairs, alterations, improvements or additions as Owner may deem necessary or desirable, and Owner shall be allowed to take all material into and upon said premises, that may be required therefor without the same constituting an eviction of Tenant in whole or in part and the rent reserved shall in no wise abate while said repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. During the six months prior to the expiration of the term of this lease or any renewal term, Owner may exhibit the premises to prospective tenants or purchasers, and place upon the premises the usual notices "To Let" or "For Sale" which notices Tenant shall permit to remain thereon without molestation.

Dated: 10/4/96

James Fenton  
JAMES FENTON CO., INC.  
Owner

Dated: 11/26/96

Maureen  
COUNTY OF SANTA CRUZ  
Tenant

APPROVED AS TO FORM:

Harry A. Oberhelman  
HARRY A. OBERHELMAN, III  
Assistant County Counsel

Approved as to insurance  
Janet McKinley 10-13-96



## RANCHO DEL MAR SHOPPING CENTER LEASE

JAMES FENTON CO., INC., a California corporation, herein called "Owner", whose address is 140 Rancho Del Mar, Aptos, California 95003, and

herein called "Tenant", whose address is 701 Ocean St., Rm 340, Santa Cruz, Ca 95060, agree to the following terms and conditions relating to the lease of land and improvements within the RANCHO DEL MAR SHOPPING CENTER, including the Addendum to the Lease attached hereto and incorporated by reference herein.

## 1. LEASED PREMISES.

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, the Owner demises and leases to the Tenant, and Tenant rents from Owner, those certain premises now or hereafter to be erected in the RANCHO DEL MAR SHOPPING CENTER (herein called the "Shopping

Center"), in the County of Santa Cruz, California, which premises consist of a store containing approximately 833 square feet of leasable area, herein called the "leased premises". The boundaries and location of the leased premises are outlined in red on the site plan of the Shopping Center, which is marked Exhibit "A" attached hereto and made a part hereof.

## 2. USE OF ADDITIONAL AREAS.

The use and occupation by the Tenant of the leased premises shall include the use in common with others on the premises of the common areas, employees' parking areas, shown and depicted on Exhibit "A" and other facilities as may be designated from time to time by the Owner, subject however to the terms and conditions of this agreement and to reasonable rules and regulations for the use thereof, as prescribed from time to time by the Owner.

## 3. COMMENCEMENT OF TERM.

The term of this lease and Tenant's obligation to pay rent shall commence on October 1, 1996.

## 4. LENGTH OF TERM.

The term of this lease shall be for one years and no months following the commencement of the term as provided in Paragraph 3 hereof.

## 5. RENT: MINIMUM.

The fixed minimum annual rent during the term of this lease shall be payable by Tenant in equal monthly installments, on or before the first day of each month in advance, at the office of Owner or at such other place designated by Owner, without any prior demand therefor, and without any deduction or set-off whatsoever, and shall be as follows:

One thousand and no/100 dollars per month or Twelve thousand and no/100 dollars (\$12,000.00) per annum.

## 6. ADDITIONAL RENT.

If any installment of rent or any other sum due from Tenant shall not be received by Owner or Owner's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Tenant, Tenant shall pay to Owner as additional rent, a late charge equal to ten percent (10%) of such overdue amount. Acceptance of such late charge by Owner shall in no event constitute a waiver of Tenant's default or breach with respect to such late charge is payable hereunder, whether or not collected for any three (3) installments of rent or any other sum due from Tenant, consecutive or nonconsecutive, during any twelve (12) month period, then this shall constitute a breach of

## 7. INTEREST.

Any monetary payment due Owner hereunder that is not paid when due shall bear interest from the date due until paid at the maximum rate allowed by law (12%) per annum but not exceeding the maximum rate allowed by law plus any costs incurred.

**8. PERCENTAGE RENT.**

In addition to the payment of the fixed minimum rent as hereinbefore provided, Tenant shall pay to the Owner in the manner upon the conditions and at the times hereinafter set forth, during each year of the term hereof, as additional percentage rent, a sum equivalent to the amount if any, by which ~~none~~

of the gross receipts as hereinafter defined from all business done on and from the premises, exceeds the monthly fixed minimum rent. The percentage rent period shall be monthly. "Monthly" rent periods are calendar months within each lease year, except that the first monthly rent period shall commence on the date the term of the lease commences. On or before the tenth (10th) day of the calendar month immediately following the close of each percentage rent period, Tenant shall pay to Owner the amount by which the sum computed as a percentage of Tenant's gross sales during the percentage rent period exceeds the minimum monthly rent that Tenant has paid during the percentage rent period under paragraph five (5) above. The percentage rent shall be payable at the office of the Owner or such place as Owner designates, without any prior demand therefor, and without any set-off or deduction, whatsoever.

**9. GROSS SALES DEFINED.**

The term "gross sales" as used herein means the entire amount of revenues, less sales taxes, generated in, at, on or from the leased premises whether by mail, telephone or any other manner. Each sale, whether for Cash or upon installment or credit, shall be treated as a sale for the full price in the month during which such sale shall be made irrespective of the time of payment. No deduction shall be allowed for uncollected or uncollectable credit accounts.

For the purpose of computing percentage rent, the gross sales for any period during which the Tenant does not conduct its business as required by this lease shall be deemed to be the greater of gross sales generated on the premises during that period, or the gross sales generated during the corresponding period of the preceding year.

**10. TENANT'S RECORDS.**

For the purpose of ascertaining the amount of rent due, Tenant agrees to prepare and keep on the leased premises available to Owner during all business hours for a period of not less than five (5) years adequate records which shall include income tax reports, sales taxes collected and paid to taxing authorities, inventories and receipts from merchandise and daily receipts from all sales made in, at, on or from the leased premises.

Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales whether for cash or credit. Tenant shall issue to each customer at time of purchase a serially numbered sales slip or Cash register tape for each transaction.

**11. REPORT OF SALES.**

Tenant shall submit to Owner within ten (10) days following the end of each percentage rent period a statement certified by Tenant or, if Tenant is a corporation, by one of Tenant's executive officers, of Tenant's gross sales made during the preceding month as well as an annual statement of gross sales for the preceding calendar year (January 1 thru December 31), certified by an independent Certified Public Accountant approved by Owner, within twenty (20) days following the end of the calendar year in reasonably accurate detail, satisfactory in scope to Owner, indicating the gross receipts for the preceding calendar year.

In the event that these statements are not received by Owner within the times specified hereinabove then Tenant agrees to pay Owner a late charge of ten percent (10%) of the percentage rent due or fifty dollars (\$50.00), whichever is greater.

**12. AUDIT.**

Tenant grants to Owner the right to audit Tenant's entire business affairs and records relating to business conducted in, at or from the leased premises for the period covered by any statement issued by Tenant. Should such audit show that actual gross sales by Tenant exceeded those reported, Tenant shall forthwith pay the percentage rent due for the excess. If such audit discloses that said gross sales exceeded those reported by more than one (1) percent, Tenant shall, in addition, pay the cost of such audit and examination. If such audit discloses that gross sales exceeded those reported by more than five (5) percent any one time, Owner shall have, in addition to all other available rights and remedies, the right to terminate the lease upon five (5) days notice.

**13. REAL ESTATE TAXES.**

Tenant agrees to pay Tenant's pro rata share of all real property taxes and assessments which may be levied or assessed by any lawful authority against the land on which the buildings are located, and improvements thereon in the Shopping Center. Tenant shall pay said taxes semi-annually upon receipt from Owner of a statement delineating Tenant's share of said taxes and said share shall be paid within ten (10) days after receipt of said statement. Tenant's pro-rata share shall be apportioned according to the floor area of the demised premises as it relates to the total leasable area of the buildings in the Shopping Center including the demised premises. All taxes for the Year in which this lease commences or terminates shall be apportioned and adjusted. \*included in minimum rent

**14. EXCUSE OF OWNER'S PERFORMANCE.**

Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of the Owner, the Owner shall not be deemed in default with respect to the performance of any of the terms, covenants or conditions of this lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, rain or muddy conditions, through Act of God or other cause beyond the control of Owner.

**15. CHANGES AND ADDITIONS TO BUILDINGS.**

Owner hereby reserves the right at anytime to make alterations or additions to and to build additional stories on the building in which the premises are contained and to build adjoining the same. Owner also reserves the right to construct or buildings or improvements in the Shopping Center from time to time and to make alterations thereof or additions thereto, to build additional stories on any such building or buildings and build adjoining same. Easements for light and air are included in the leasing of these premises to Tenant. Owner further reserves the exclusive right to the roof except as provided

**17. USE OF PREMISES.**

Tenant shall use the leased premises solely for the purpose of conducting the business of ~~a business office~~.

Tenant will not use or permit to be used any area outside of leased premises for any commercial or promotional purpose without the express written consent of the Owner. Tenant may not place any coin or money value operated device in leased premises without Owner's written consent.

Tenant shall occupy the leased premises within ten (10) days after the date of the lease provided for in paragraph 3 hereof and shall conduct continuously in the leased premises the business above stated. Tenant will not use or permit, or suffer the use of, the leased premises for any other business or purpose without Owner's approval, which shall not be unreasonably withheld.

**18. OPERATION OF BUSINESS.**

Tenant shall operate one hundred percent (100%) of the leased premises during the entire term of this lease with due diligence and efficiency so as to produce all of the gross sales which may be produced by such manner of operation, unless prevented from doing so by causes beyond Tenant's control. Subject to inability by reason of strikes or labor disputes, Tenant shall carry at all times in said premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Tenant. Tenant shall conduct its business in the leased premises and remain open on all days during the entire lease term, including such evenings and during such hours as shall be determined by Owner, and for any day that Tenant does not fully comply with this provision, in addition to any other remedies available to Owner at law or in equity, the fixed minimum rent, prorated on a daily basis, shall be increased by fifty Percent (50%), such sum representing minimum damages (and not a penalty) which the parties agree that Owner will suffer by reason of Tenant's non-compliance. Additionally, failure by Tenant to maintain the hours designated by Owner on any three (3) occasions, consecutive or non-consecutive, during any twelve (12) month period shall constitute a breach of this lease. Tenant shall install and maintain at all times displays of merchandise in the display windows (if any) of the leased premises. Tenant shall keep the display windows, exterior signs (including roof signs) and signs, if any, in the leased premises well lighted during those hours that shall be designated by Owner, unless prevented by causes beyond the control of Tenant. No auction, fire or bankruptcy sales may be conducted in the leased premises without the previous written consent of Owner.

**19. COMPETITION:**

During the term of this lease Tenant shall not directly or indirectly engage in any similar or competing business within a radius of five (5) miles from the outside boundary of the Shopping Center. Tenant shall not perform any acts or carry on any practices which may injure the building or be a nuisance or menace to other tenants in the Shopping Center.

**20. STORAGE, OFFICESPACE:**

Tenant shall warehouse, store and/or stock in the leased premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the leased premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant, if any, not located in the Shopping Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the leased premises as is from time to time reasonably required for Tenant's business in the leased premises.

**21. CONDITIONS TO GRANT CONCESSIONS.**

The provision against subletting elsewhere contained in this lease shall not prohibit Tenant from granting concessions for the operation of one or more departments of the business which Tenant is permitted to conduct in or upon the leased premises; provided, however, that (a) each such concession may be granted only upon receipt by Tenant of the written consent of the Owner and shall be subject to all the terms and provisions of this lease; (b) at least seventy-five percent (75%) of the sales floor area of the leased premises shall be at all times devoted to the business of and be operated by Tenant.

**22. AMOUNT OF SECURITY DEPOSIT.**

Tenant, contemporaneously with the execution of this lease, will deposit with Owner forthwith the sum of One thousand and no/100 Dollars (\$1000.00). Said deposit shall be held by Owner, without liability for interest, as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this lease by said Tenant to be kept and performed during the term hereof. If at any time during the term of this lease any of the rent herein reserved shall be overdue and unpaid then Owner may, at the option of Owner (but Owner shall not be required to), appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum.

**23. USE AND RETURN OF DEPOSIT.**

In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this lease to be kept and performed by Tenant, then the Owner at its option may, after terminating this lease, appropriate and apply said entire deposit or so much thereof as may be necessary, to compensate the Owner for all loss or damage sustained or suffered by Owner due to such breach on the part of Tenant. Should, the entire deposit, or any portion thereof, be appropriated and applied by Owner for the payment of overdue rent or other sums due and payable to Owner by Tenant hereunder, then Tenant shall, upon the written demand of Owner, forthwith remit to Owner a sufficient amount in cash to restore said security to the original sum deposited and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this lease. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all of the rental here provided for as it falls due, and all other sums payable by Tenant to Owner hereunder, the said deposit shall be returned in full to Tenant at the end of the term of this lease, or upon the earlier termination of this lease.

**24. TRANSFER OF DEPOSIT.**

Owner may deliver the funds deposited hereunder by Tenant to the purchaser of Owner's interest in the leased premises. In the event that such interest be sold, and thereupon Owner shall be discharged from any further liability with respect to such deposit.

**25. CONTROL OF COMMON AREAS BY OWNER.**

All the automobile parking areas, driveways, entrances and exits thereto, and other facilities furnished by Owner in or in the Shopping Center, including employee parking areas, the truck way or ways, loading docks, package pickup and delivery areas, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, first aid stations, comfort stations and other areas and improvements provided by Owner for the general use, in common of Tenants, their officers, agents, employees and invitees, shall be under the exclusive control and management of Owner, and Owner shall have the right to use all facilities and areas.

parking areas; to enforce parking charges (by operation of meter or other device) with appropriate provision for the parking ticket validating by Tenants; to close all or any portion of said areas or facilities to such extent as may, in the opinion of Owner's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person of the public therein; to close temporarily all or any portion of the parking areas or facilities; to discourage noncustomer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, the Owner shall determine to be advisable with a view to the improvement of the convenience and use thereof by Tenants, their officers, agents, employees and customers. Owner will operate and maintain the common facilities referred to above in such manner as Owner, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Owner shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common areas and facilities.

#### 26. LICENSE:

All common areas and facilities not within the leased premises which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if any such license be revoked, or if the amount of such areas be diminished, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall revocation or diminution of such areas be deemed constructive or actual eviction.

#### 27. TENANT TO BEAR PRO RATA SHARE OF EXPENSE.

(a) In each lease year hereof, Tenant will pay to Owner as further additional rent, subject to the limitation hereinafter set forth, a proportion of the Shopping Center's operating cost, hereinafter defined, based upon the ratio of the square feet of the leased premises to the total square feet of all the leasable building space in the Shopping Center.

\*included in minimum rent

(b) The "Shopping Center's operating cost" means the total cost and expense incurred in operating and maintaining the common facilities, hereinafter defined, actually used or available for use by Tenant and the employees, agents, servants customers and other invitees of Tenant, specifically including without limitations, gardening and landscaping, the cost of public liability and property damage insurance, fire and extended coverage insurance, repairs, line painting, pest control, lighting, sanitary control, removal of trash, rubbish, garbage and other refuse, reasonable reserves for replacements and repairs, property management, bookkeeping, real estate property taxes and assessments thereon, and the cost of personnel to implement such services, to direct parking, provide security services, and to police the common facilities. "Common facilities" means all areas, space, equipment, and special services provided by Owner for the common or joint use and benefit of the occupants of the Shopping Center, their employees, agents, servants and customers and other invitees, including without limitation parking areas; access roads, driveways, retaining walls, landscaped areas, truck serviceways or tunnels, loading docks, pedestrian malls, courts, stairs, ramps and sidewalks, comfort and first aid stations, washrooms and parcel pick-up stations.

(c) The estimated additional rent to be paid shall be paid monthly in advance without any prior demand therefore. The monthly charge shall be adjusted annually upwards or downwards to reflect the actual costs incurred. Tenant will then be notified accordingly at year end to reflect this adjustment.

(d) Changes in any particular floor area occurring during any monthly period shall be effective on the first day of the next succeeding monthly period, and the amount of any floor area in effect for the whole of any monthly period shall be the average of the total amounts in effect on the first day of each calendar month in such monthly period.

#### 28. ALTERATIONS & IMPROVEMENTS, FIXTURES, SIGNS.

(a) Tenant shall not make or cause to be made any alterations, decorations, additions, improvements and utility installations such as, without limitation, carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing or install or cause to be installed any trade fixtures, interior electrical signs or signs, awnings or canopies on any exterior door, wall or window or make any changes to the storefront without first obtaining Owner's written approval and consent. Tenant shall present to Owner plans and specifications for such work at the time approval is sought. Additionally, if approved, all such work should be performed by a California licensed contractor satisfactory to Owner and should be completed in a good and workmanlike manner, with first class quality materials, and in compliance with all applicable legal and insurance requirements. Tenant will further provide Owner with a certificate of insurance from the contractor employed. Any fixture installed by Tenant shall be new or completely reconditioned.

(b) Tenant shall not install or cause to be installed any decoration, lettering or advertising matter on the glass or any window or door of the leased premises without first obtaining Owner's approval and consent.

(c) Tenant agrees at Tenant's sole cost to obtain and install a hanging sign for the walkway and an illuminated roof sign. Both of these are to be in strict conformance with Owner's sign criteria as to design, material, color, location, size and letter style. Tenant is to keep said signs in good repair at all times and to keep the roof sign illuminated during the hours specified by Owner.

(d) Tenant agrees that all additions or improvements of whatsoever kind or nature made to the leased premises, other than the furniture or moveable trade fixtures shall become part of the premises as leasehold improvements and subject to this lease. Owner will, however, have the option of requiring Tenant to remove any or all of such additions or improvements and restore the premises to their condition prior to the making of same, normal wear and tear excepted, upon the expiration or earlier termination of the term hereof.

#### 29. TENANT SHALL DISCHARGE ALL LIENS.

Tenant shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the leased premises and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after written request by Owner.

#### 30. INSURANCE BY TENANT.

Tenant shall obtain and maintain at all times during the term of this lease or any extension thereof a policy of fire insurance with "extended coverage" (or "all risks" coverage) in the name of the Owner and Tenant to cover the cost of replacement of all leasehold improvements (whether made by Tenant, made by Owner at Tenant's request or assumed by Owner upon the taking possession of the leased premises) including, without limitation, utility installations, as well as personal property and trade fixtures.

Tenant shall obtain and maintain at all times during the term of this lease a policy of public liability and property damage insurance with respect to the leased premises and the business operated by Tenant and any subtenants of Tenant in the leased premises with not less than \$1,000,000.00 combined single limits bodily injury and property damage. The policy shall name Owner, any firms or corporations designated by Owner, and Tenant as insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Owner 10 days prior written notice. The insurance shall be placed with an insurance company approved by Owner and a copy of the policy or a certificate of insurance shall be delivered to Owner.

### 31. INDEMNIFICATION OF OWNER.

Tenant will indemnify Owner and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the leased premises, or the occupancy or use by Tenant of the leased premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees or concessionaires. In case Owner shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Owner harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Owner in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Owner in enforcing the covenants and agreements in this lease.

### 32. WAIVER OF SUBROGATION.

Tenant shall hold harmless and waive any right of subrogation against Owner, or any employee or agent thereof, for damage as a result of risks insured against under the fire and extended coverage insurance policy that Tenant maintains on the leased premises.

### 33. PLATE GLASS.

Tenant shall replace, at its own expense, any and all plate glass and other glass damaged or broken from any cause whatsoever in and about the leased premises. The repairs are to be made promptly and the replacement glass is to conform to local government agency requirements. Tenant assumes all risks from the damaged or broken glass.

### 34. INSURANCE BY OWNER.

Owner shall maintain fire and extended coverage insurance throughout the term of this lease on the building(s) of which the leased premises are a part. Tenant agrees to reimburse Owner for Tenant's pro-rata share of any premiums for said fire and extended coverage insurance that may be charged during the term of this lease. The reimbursement charge will be paid in advance by Tenant either monthly or annually at Owner's election.

Owner shall not be liable for any damage done to the leased premises or any of the fixtures, merchandise, property or equipment therein contained, whether owned by Tenant or by any other person, due to the overflowing or breaking of steam or water pipes, drains, boilers, basins, toilets, lavatories or gutters or from smoke, rainfall, fire, odor, earthquake, explosion, gas, electricity, lightening, lighting and wiring, or from any other cause and whether having its origin in the leased premises, building or elsewhere.

### 35. MAINTENANCE AND REPAIR.

Owner shall maintain in good condition and repair the roof, exterior walls and structural parts of the premises provided, however, that Owner shall not be required to make repairs necessitated by reason of the negligence of Tenant or acts of negligence on the leased premises. The term "exterior walls" shall not include storefronts, plate glass, window cases or window frames, door or door frames, security grilles or similar enclosures. Owner shall not in any way be liable to Tenant for failure to make repairs as herein specifically required unless Tenant has previously notified Owner, in writing, of the need for such repairs and Owner has failed to commence said repairs within a reasonable time following receipt of Tenant's written notification.

Tenant, by accepting possession of the leased premises, shall be deemed to have accepted the leased premises as being in good condition and repair. Tenant shall at all times during the term hereof, and at Tenant's sole cost and expense keep, maintain and repair the leased premises and other improvements upon and about the leased premises in good and sanitary order and condition, including, without limitation, the maintenance, repair and replacement of any store front, doors, door frames, floor hardware and locks, signs, entrances and exits, interior walls, ceilings (including ceiling tiles and framework floors and floor coverings, fire detectors or sprinklers, window casements, glazing, window sash and frames, heating and air conditioning systems as well as any greasetraps which includes contracting with a service company for custodial maintenance with a copy of the service contract furnished to Owner, plumbing, pipes, sewer and utility lines, utility meter electric panels, electric wiring and conduits, and all such items of repair, maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereon.

Tenant is responsible for repairing any leaks around ducts, pipes, vents or other parts of the heating, plumbing or air conditioning system which protrude through the roof or walls and to maintain same in good condition and repair, including reasonably periodic painting as determined by Owner.

If applicable, Tenant shall install and maintain in good working order at all times devices as necessary to ensure that the sewage and drainage system shall not have stoppages. In the event of stoppages created by Tenant's operations, Tenant shall pay or reimburse Owner for the cost of clearing said stoppages.

### 36. OBLIGATION OF TENANT TO COMPLY.

If Tenant refuses or neglects to repair, replace or maintain properly as required hereunder and to the reasonable satisfaction of Owner, then Tenant, commencing twenty-five (25) days after written notice from Owner will incur replacement or maintenance additional rent in the amount of twenty-five (25) dollars (\$25.00) per day until such time as repairs, replacement or maintenance has been performed to Owner's satisfaction. In addition, Owner reserves the right to make such repairs, replacement or maintenance without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property or to Tenant's business by reason thereof; if, in Owner's opinion, the situation warrants and, upon completion thereof, Tenant shall pay Owner's costs for making such repairs, replacement or maintenance, upon presentation of bill thereof, as additional rent.

### 37. SURRENDER OF PREMISES.

Tenant shall remove all of its movable trade fixtures, equipments

All alterations, improvements, additions or utility installations which Tenant may have made on the leased premises shall become the property of Owner at this time. Owner, however, shall have the election to require Tenant to remove all or any part of these Tenant improvements and restore the premises to their condition on lease commencement date, reasonable wear and tear excepted. In any event, Tenant shall surrender the premises in good and broom clean condition and shall furnish Owner with a certification by a qualified company that all mechanical equipment in the leased premises is in good working condition. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.

### 38. RULES AND REGULATIONS.

#### TENANT AGREES TO COMPLY WITH THE FOLLOWING:

##### 1. DELIVERIES.

The delivery or shipping of merchandise, supplies and fixtures to and from the leased premises shall be subject to such rules and regulations as in the judgment of Owner are necessary for the proper operation of the leased premises or Shopping Center. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by Owner.

##### 2. GARBAGE AND RUBBISH.

Tenant is to contract with the collection service designated by Owner and bear the cost of such service. If Owner does provide such service for Tenant, Tenant shall contribute Tenant's share as determined by Owner. Collections shall be in a manner and at the times necessary, in Owner's opinion, to adequately service Tenant's business needs. Tenant is to keep all garbage and rubbish inside a container and in an area specified by Owner. The outside areas immediately adjoining the premises shall be kept free of garbage, rubbish or any other objects by the Tenant to the satisfaction of Owner and if Tenant is not in compliance, Tenant will be assessed a fee of twenty-five dollars (\$25.00) per infraction as well as the cost for removal.

##### 3. AERIALS/ROOF INSTALLATIONS.

No aerial shall be erected on the roof or exterior walls of the premises, or on the grounds nor shall any other installation, without in each instance, the written consent of Owner. Any installation so installed without the written consent of the Owner shall be subject to removal without notice at any time.

##### 4. LOUDSPEAKERS, ETC.

No loud speakers, televisions, stereos, radios or other devices shall be used in a manner so as to be heard or seen outside of the premises without the prior written consent of Owner.

##### 5. PARKING

Tenant shall furnish Owner with a list of automobiles and trucks owned or used by Tenant or Tenant's employees including make, year, style, color, registered owner and license number and shall keep the list current by notifying Owner of all changes. These vehicles must display an identifying sticker, issued by Owner, before the drivers are allowed parking privileges in the Center.

Tenant and Tenant's employees shall park their vehicles during their working hours only in those portions of the parking areas designated for that purpose by Owner. Owner not only does not guarantee parking places at all times for Tenant or Tenant's employees but, additionally, does not warrant the safety of the vehicles while parked in the Center and requires that Tenant shall hold Owner harmless from any damage while so parked. Further, it is Owner's policy for deliveries. Tenant to see that the vehicles used by Tenant's suppliers are parked in the locations specified by

#### Tenant, Tenant's

any vehicle, belonging to or being used by employee or Tenant's supplier, is parked in an unauthorized area or is not displaying an identifying vehicle (if so required), Owner may assess Tenant a fee of twenty-five dollars (\$25.00) per infraction and/or cause the vehicle to be towed to a public garage or other parking area. The same penalties apply to vehicles in violation of Owner's parking lot regulations. The expense of such towing and storage charges shall be paid by Tenant. Neither Owner nor any of Owner's agents shall be liable to Tenant, or any employee or supplier for any costs, expenses or damages resulting from such removal.

##### 6. PLUMBING.

The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.

##### 7. BURNING:

Tenant shall not burn any trash or garbage of any kind in or about the leased premises, or the Shopping Center.

Owner reserves the right from time to time to amend or supplement the foregoing rules and regulations, and to adopt and promulgate additional rules and regulations applicable to the leased premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant.

### 39. ENVIRONMENTAL MATTERS.

Tenant shall, at its own cost and expense, at all times and in all respects comply with all government agencies regarding the management, handling, generation, storage, transportation, presence, discharge or disposal of any oil, petroleum products, carcinogens, reproductive toxins, flammable or explosive materials, asbestos, pollutants, contaminants, or formaldehyde, freon or other radioactive, hazardous, toxic or infectious wastes, materials or substances. Hazardous Materials: Tenant agrees not to treat, dispose, release, handle, store or generate or install any Hazardous Materials in or about the leased premises without Owner's prior written consent and this consent may be withdrawn by Owner at any time without reason. Upon Owner's withdrawal of consent to such activities, Tenant shall remove those Hazardous Materials from the leased premises as are no longer permitted. Tenant shall comply with government agency standards for removal and disposal of any and all Hazardous materials and prior to the expiration or termination of this lease, Tenant shall cause all Hazardous Materials to be removed from the leased premises; transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Materials La



acting for or on behalf of Tenant related to the presence, discharge, use, storage, transportation, disposal, release, or generation of Hazardous Materials in, on, from under or around the leased premises.

#### 40. UTILITY SERVICES:

It is the Tenant's responsibility to arrange for gas and electrical service.

#### 41. UTILITY CHARGES.

Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in the leased premises. Should Owner elect to supply the water, gas, heat, electricity or any other utility used or consumed in the leased premises, Tenant agrees to purchase and pay for the same as additional rent as apportioned by the Owner. In no event shall Owner be liable for an interruption or failure in the supply of any such utilities to the leased premises. \*gas & water on common meter included in minimum rent.

#### 42. OFFSET STATEMENT.

Within ten days after request therefor by Owner, or in the event that upon any sale, assignment or hypothecation of the leased premises and/or the land thereunder by Owner an offset statement shall be required from Tenant; Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to Owner, certifying that this lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Tenant.

#### 43. ATTORNMENET.

Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Owner covering the leased premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Owner, under this lease.

#### 44. SUBORDINATION.

Upon request of the Owner, Tenant will subordinate its rights hereunder to the lien of any mortgage or mortgages or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the land and buildings of which the leased premises are a part of upon any buildings hereafter placed upon the land of which the leased premises are a part, and to all advances made or hereafter to be made upon the security thereof. This section shall be self-operative and no further instrument of subordination shall be required by any mortgagee.

#### 45. ATTORNEY-IN-FACT.

The Tenant, upon request of any party in interest, shall execute promptly such instruments or certificates as shall be requested by the Owner. The Tenant hereby irrevocably appoints the Owner as attorney-in-fact for the Tenant with full power and authority to execute and deliver in the name of the tenant any such instruments or certificates. If fifteen (15) days after the date of a written request by Owner to execute such instruments, the Tenant shall not have executed the same, the Owner may, at its option, cancel this lease without incurring any liability on account thereof, and the term hereby granted is expressly limited accordingly.

#### 46. CONSENT REQUIRED FOR ASSIGNMENT AND SUBLETTING.

Tenant will not assign this lease in whole or in part, nor sublet all or any part of the leased premises, without the prior written consent of the Owner in each instance. The consent by Owner to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. The prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this lease be assigned, or if the leased premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may collect rent from the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained.

Owner's written consent to the assignment shall not be unreasonably withheld. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this lease or a consent to the assignment of the demised premises.

#### 47. WASTE OR NUISANCE.

Tenant shall not commit or suffer to be committed any waste upon the leased premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the leased premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any person within five hundred feet of the boundaries of the Shopping Center.

#### 48. ENVIRONMENTAL REGULATIONS.

Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all city, county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the said premises, including the installation of additional facilities as required for the conduct and continuance of the business and shall faithfully observe in the use of the premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force. In the event that any such authority shall impose any charge, assessment or requirement for improvements or changes on the Shopping Center as a whole or on any part of the common areas, the Tenant shall pay his pro-rata share of such costs as equitably determined by Owner.

#### 49. CHANGE OF NAME.

Tenant agrees not to change the advertised name of the business operated in the leased premises without the written permission of owner.

#### 50. SOLICITATION OF BUSINESS.

Tenant or Tenant's employees and agents shall not solicit business, distribute handbills or other advertising matter, display and sell merchandise or place and maintain any signs or other objects in, on or about the common and parking areas outside the leased premises not place or cause to be placed any sign or object on the exterior doors, windows, walls or roof with Owner's prior written consent issued subject to Owner's sole discretion.

#### 51. ADVERTISING AND PROMOTION.

Tenant agrees to participate in the advertising and promotional program that has been established by Owner. The purpose is to furnish and maintain advertising and sales promotions which, in Owner's judgment, will benefit the Shopping Center and Tenant agree

of each quarter's program and are to be paid within ten (10) days of the presentation of the billing by Owner. Tenant further agrees to advertise Tenant's business operated from the leased premises in any special publications or display advertising that is part of the program at least twice during each lease year.

## 52. TOTAL OR PARTIAL DESTRUCTION.

In the event the premises are damaged by fire or other perils covered by extended coverage insurance, Owner agrees to forthwith repair same, and this lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the minimum rent from the date of damage and while such repairs are being made; such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by the tenant in the premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.

In the event the premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Owner shall forthwith repair the same, provided the extent of the destruction be less than ten (10%) percent of the then full replacement cost of the premises. In the event the destruction of the premises is to an extent of ten (10%) percent or more of the full replacement cost then Owner shall have the option; (1) to repair or restore such damage, this lease continuing in full force and effect, but the minimum rent to be proportionately reduced as hereinabove in this article provided; or (2) give notice to Tenant at any time within sixty (60) days after such damage, terminating this lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this lease shall expire and all interest of the tenant in the premises shall terminate on the date so specified in such notice and the minimum rent, reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with the business carried on by the Tenant in the premises, shall be paid up to date of said such termination.

Notwithstanding anything to the contrary contained in this article, Owner shall not have any obligation whatsoever to repair, reconstruct or restore the premises when the damage resulting from any casualty covered under this article occurs during the last twenty-four months of the term of this lease or any extension thereof.

Owner shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

Any reference to "premises" or "leased premises" in this section refers strictly to the structural components such as bearing walls, posts, roof and floor. Any obligation for repairs or abatement of rent occurs only in case of damage to these structural parts. Damage, by any cause whatsoever, to leasehold improvements including, but not limited to, non-bearing partitions, floor covering, light fixtures, heating and conditioning equipment or components, plumbing fixtures, suspended ceilings or ceiling tiles, trade fixtures, etc. does not create a liability on the part of Owner for any cost of repairs or for abatement of rent.

## 53. TOTAL CONDEMNATION.

If the whole of the leased premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to that date and Tenant shall have no claim against Owner for the value of any unexpired term of this lease.

## 54. TOTAL PARKING AREA.

If the whole of the common parking areas in the Shopping Center shall be acquired or condemned by eminent domain or any public or quasi-public use or purpose, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding unless Owner shall take immediate steps to provide other parking facilities substantially equal to the previously existing ratio between the common parking areas and the leased premises, and such substantially equal parking facilities shall be provided by Owner at its own expense within ninety (90) days from the date of acquisition. In the event that Owner shall provide such other substantially equal parking facilities, then this lease shall continue in full force and effect. In any event, Tenant shall have no claim against Owner for the value of any unexpired term of this lease.

## 55. PARTIAL CONDEMNATION.

If any part of the leased premises shall be acquired or 'condemned by eminent domain' for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the leased premises unsuitable for the business of the Tenant, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding and Tenant shall have no claim against Owner for the value of any unexpired term of this lease. In the event of a partial taking or condemnation which is not extensive enough to render the premises unsuitable for the business of the Tenant, then Owner shall promptly restore the leased premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this lease shall continue in full force and effect.

## 56. OWNER'S DAMAGES

In the event of any condemnation or taking as hereinabove provided, whether whole or partial, the Tenant shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and Owner is to receive the full amount of such award, the tenant hereby expressly waiving any right or claim to any part thereof.

## 57. TENANT'S DAMAGES.

Although all damages in the event of any condemnation are to belong to the Owner whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the leased premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Owner, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all account of any cost or loss to which Tenant may be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

## 58. CONDEMNATION OF LESS THAN A FEE.

In the event of a condemnation of a leasehold interest in all or a portion of the leased premises without the condemnation of the fee simple title also, this lease shall not terminate, and such condemnation shall not excuse Tenant from performance of all of its covenants hereunder, but Tenant in such event shall be entitled to present or pursue against the condemning authority its claim for and to receive all compensation or damages sustained by it by reason of such condemnation, but such damages shall be limited to compensation for and damage.



money. Tenant shall have ninety (90) days after the restoration of possession to it within which to carry out its obligations under such covenants or covenants. During such time as Tenant shall be out of possession of the leased premises by reason of such leasehold condemnation, Tenant shall pay to Owner, in full, Of the minimum rents provided for hereunder, and in addition to any other payments required of Tenant hereunder, an annual rent equal to the average annual minimum rent paid by Tenant for the period from the commencement of the term until the condemning authority shall take possession, or during the preceding three full calendar years; whichever period is shorter & any time after such condemnation proceedings are commenced. Owner shall have the right, at its option, to require Tenant to assign to Owner all compensation and damages payable by the condemnor to Tenant, to be held without liability for interest thereon as security for the full performance of Tenant's covenants hereunder, such compensation and damages received pursuant to the terms of this lease as such sums fall due, and the remainder, if any, to be payable to Tenant at the end of the term hereof or on restoration of possession to Tenant, whichever shall first occur, it being understood and agreed that such assignment shall not relieve Tenant of any of its obligations under this lease with respect to such rents, and other sums except as the same shall be actually received by Owner.

#### 59. RIGHT TO REENTER UPON DEFAULT OF THE TENANT.

In the event of any failure of Tenant to pay any rental due hereunder within ten (10) days after the same shall be due, or any failure to perform any other Of the terms, conditions or covenants of this lease to be observed or performed by Tenant for more than thirty (30) days after written notice of such default shall have been mailed to Tenant, or if Tenant shall become bankrupt or insolvent, or file any debtor proceedings, or take or have taken against Tenant in any court pursuant to any statute "either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property," or if Tenant makes an assignment for the benefit of creditors, Or petitions for or enters into an arrangement, or if Tenant shall abandon said premises, or suffer this lease to be taken under any writ of execution, then Owner besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the leased premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which maybe occasioned thereby.

#### 60. RIGHT TO RELET.

Should Owner elect to re-let, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time without terminating this lease: make such alterations and repairs as may be necessary in order to relet the premises, and relet said premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as Owner in its sole discretion may deem advisable; upon each such reletting all rentals received by the Owner from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Owner; second, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Owner and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Owner. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Owner shall be construed as an election on its part to terminate this lease, unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Owner may at any time thereafter elect to terminate this lease for such previous breach. Should Owner at any time terminate this lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the leased premises, reasonable attorney's fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the leased premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Owner. In determining the rent which would be payable by Tenant hereunder subsequent to default, the annual rent for each year of the unexpired term shall be equal to the average annual total rents paid by Tenant from the commencement of the term to the time of default, or during the preceding three full calendar years, whichever period is shorter.

#### 61. LEGAL EXPENSES.

Tenant agrees that if, as a result of any actual or anticipatory breach or default by Tenant of any term, covenant, condition responsibility or obligation of this lease, Owner decides to consult an attorney in an effort to remedy such breach or default or to recover damages therefor, or to terminate this lease and evict Tenant, or to explore any other remedy that may be available to Owner, or in the event of any action or proceeding brought by Tenant against Owner, or in any appeal of judgment then Tenant hereby agrees to reimburse Owner for any and all expenses incurred in Owner's consultation with or use of such attorney and in any action which such attorney may take. The reimbursement herein prescribed shall come direct from Tenant and/or Tenant's security deposit as Owner may decide. Expenses recoverable by Owner herein shall include but not be limited to, consultation and legal fees, court costs, witness fees, costs of filing and serving summonses complaints, notices and like documents.

#### 62. WAIVER OF RIGHTS OR REDEMPTION.

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or disposed of any cause, or in the event of Owner obtaining possession of the leased premises by reason of the violation by Tenant of any of the covenants or conditions of this lease, or otherwise.

#### 63. RIGHTS OF ENTRY.

Owner or Owner's agents shall have the right to enter the leased premises at all times to examine the same, and to show them to prospective purchasers or lessees of the building, and to make such repairs, alterations, improvements or additions as Owner may deem necessary or desirable, and Owner shall be allowed to take all material into and upon said premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part and the rent therefor shall in no wise abate while said repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. During the six months prior to the expiration of the term of this lease or renewal term, Owner may exhibit the premises to prospective tenants or purchasers, and place upon the premises notices "To Let" or "For Sale" which notices Tenant shall permit to remain thereon without molestation.

#### 64. TAXES ON LEASEHOLD.

Tenant shall pay before delinquency all municipal, county or state taxes assessed during the term of this lease and any taxes assessed in or about

**65. LOSS AND DAMAGE.**

Owner shall not be liable for damage to improvements or property of Tenant or of others located on the leased premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Owner shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the leased premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature. Owner shall not be liable for any such damage caused by other tenants or persons in the leased premises, occupants of adjacent property, of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the leased premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Owner harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act of gross neglect of Owner.

**66. NOTICE BY TENANT.**

Tenant shall give immediate notice to Owner in case of fire or accidents in the leased premises or in the building of which the premises are a part or of defects therein or in any fixtures or equipment.

**67. HOLDING OVER.**

If Tenant remains in possession of the premises after expiration or termination of the term or after the date in any notice given by Owner to Tenant terminating this lease, such possession by Tenant shall be deemed to be a month to month tenancy terminable on 30 days notice at any time by either party. During any such month to month tenancy Tenant shall pay the rents herein specified (prorated on a monthly basis) plus

One hundred and no/100 dollar (\$ 100.00) per month, unless otherwise agreed by the parties in writing, and all of the provisions of this lease except those pertaining to term shall apply to the month to month tenancy.

**68. SUCCESSORS:**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, Successors; and assigns of the said parties; and if there shall be more than one tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Owner in writing.

**69. OWNER'S COVENANT FOR QUIET ENJOYMENT.**

Upon payment by the Tenant of the rents herein provided, and upon the observance and performance of all the covenants terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the leased premises for the term hereby demised without hindrance or interruption by Owner or any other person or persons lawfully & equitably claiming by, through or under the Owner, subject, nevertheless, to the terms and conditions of this lease.

**70. WAIVER.**

The waiver by Owner of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Owner shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Owner's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this lease shall be deemed to have been waived by Owner, unless such waiver be in writing by Owner.

**71. ACCORD AND SATISFACTION.**

No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than an account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction; and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided.

**72. ENTIRE AGREEMENT.**

This lease and the exhibits and rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions or understandings, either oral, or written, between them other than are herein set forth. Except herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Owner or Tenant unless recorded in writing and signed by them.

**73. NO PARTNERSHIP.**

Owner does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise or joint adventurer or a member of a joint enterprise with Tenant.

**74. STRIKES, LOCKOUTS, LABOR TROUBLES.**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrict governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delay in performing work or doing acts required under the terms of this lease, then performance of such act shall be excused the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to period of such delay. The provisions of this section shall not operate to excuse Tenant from the prompt payment of additional rent or any other payments required by the terms of this lease.

**75. NOTICES.**

(a) Any notice by Tenant to Owner must be served by certified or registered mail, postage prepaid, addressed to Owner at the address first hereinabove given or at such other address as Owner may designate by written notice.

Owner to Tenant must be served by certified or registered mail, postage prepaid, addressed to Tenant at the address first hereinabove given or at such other address as Tenant may designate by written notice.

may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Owner or Tenant shall be deemed a proper reference even though Owner or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this lease apply in the plural sense where there is more than one Owner or tenant and to either corporations, associations, partnerships, or individuals, males or females shall be in all instances be assumed as though in each case fully expressed.

#### 77. PARTIAL INVALIDITY.

In any term, covenant or condition of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

#### 78. NO OPTION.

The submission of this lease for examination and execution upon execution constitute a reservation of or option for the leased premises and this lease becomes effective as a lease only and delivery thereof by Owner and Tenant.

#### 79. RECORDING.

Tenant shall not record this lease without the written consent of Owner.

#### 80. BREACH OF LEASE.

If Tenant breaches any term of this lease and abandons the demised premises before the end of the term hereof, or if Tenant's right to possession is terminated by the owner because of a breach of this lease, Owner may recover from Tenant in addition to any provided for at law, in equity, in this lease, or otherwise, that amount by the unpaid rent for the period the Tenant proves could be reasonably avoided.

#### 81. RIDER

A rider consisting of no pages, with sections numbered consecutively            through            is attached hereto and made a part hereof.

Executed this 27 day of Sept, 1996

OWNER: James Fenton  
James Fenton Co., Inc.  
by James B. Fenton, President

TENANT: Mark Tracy  
County of Santa Cruz/  
Sheriff-Coroner's Office  
by Mark Tracy

11/24/96

#### APPROVED AS TO FORM:

By: Harry A. Oberhelman  
Office of the County Counsel

Approved as to insurance  
Janet McKinley 10-13-96

EXHIBIT A  
RANCHO DEL MAR SHOPPING CENTER